

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 4

In the Matter of:

**TARTER GATE WOOD PRODUCTS,  
LLC,**

Respondent.

Docket No. **CWA-04-2020-0502(b)**

**CONSENT AGREEMENT**

**I. NATURE OF ACTION**

1. This is an administrative penalty assessment proceeding brought under Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B), (CWA or the Act) and Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

**II. PARTIES**

4. Complainant is the Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency (EPA), Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 309(g)(2)(B) of the CWA.
5. Respondent is **TARTER GATE WOOD PRODUCTS, LLC**, (Respondent), a limited liability company formed under the laws of the Commonwealth of Kentucky doing business in the Commonwealth of Kentucky. This proceeding pertains to Respondent's site located at Turkey Creek Road near Mintonville, Casey County, Kentucky.

**III. GOVERNING LAW**

6. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with Section 404 of the CWA, 33 U.S.C. § 1344. Section 404 of the CWA authorizes the Secretary of the Army, acting

through the Chief of Engineers, U.S. Army Corps of Engineers (COE), to issue permits for the discharge of dredged or fill material into navigable waters.

7. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines a “discharge of pollutants” as “[a]ny addition of any pollutant to navigable waters from any point source . . . .”
8. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” as “[a]ny discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit [or] discrete fissure . . . from which pollutants are or may be discharged.”
9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “[t]he waters of the United States, including the territorial seas.”
10. Federal regulations 40 C.F.R. § 232.2 (1993) defined the term “waters of the United States” to include “wetlands adjacent to waters (other than waters that are themselves wetlands).”
11. Federal regulations under 40 C.F.R. § 232.2 (1993) and 33 C.F.R. § 328.3(b) defined or define “wetlands” as “[t]hose areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”
12. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Complainant represents that the Commonwealth of Kentucky was provided a prior opportunity to consult with the Complainant regarding this matter.
13. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45, Complainant will provide public notice of and reasonable opportunity to comment on the proposed issuance of this CAFO prior to issuance of the Final Order.

#### **IV. FINDINGS OF FACTS**

14. The term “Discharge Area” means the jurisdictional waters that have been impacted either through the discharge of dredged and/or fill material as a result of the unauthorized activities that are the subject of this enforcement action. More specifically, the Discharge Area is located off Turkey Creek Road near Mintonville, Casey County, Kentucky, near latitude 37.171612° N and longitude -84.838838° W (the Site) and includes three unnamed perennial tributaries of Turkey Creek. The Discharge Area is indicated on the enclosed Exhibits A and B.
15. The term “Site” means the parcel or parcels of land on which the Discharge Area is located.
16. Commencing on or about November 1, 2014, to April 2015, Respondent, or those acting on behalf of the Respondent, discharged dredged and/or fill material into jurisdictional waters on the Site using earth moving machinery, during unauthorized activities associated with a silviculture operation.

17. The Respondent's activities at the Site impacted approximately 4,600 linear feet of unnamed perennial tributaries to Turkey Creek, a perennial tributary of the Green River, a traditionally navigable water of the United States. The discharge involved the use of heavy equipment, including a Case bulldozer and skidders, which was driven up the unnamed tributary to Turkey Creek, to create a timber haul road. The banks of the tributary were cut, and the material was spread into the channel to create a road large enough for the logging trucks to drive upstream to the landing area (which was approximately 3,500 linear feet from Turkey Creek Road). In addition, smaller tributaries were used as skidder trails to haul cut timber to the landing area.
18. The silvicultural activities, including those activities described in Paragraph 21 below, were not subject to an exemption pursuant to Section 404(f) of the CWA as they were not performed in compliance with the Best Management Practices (BMP) set forth in 40 C.F.R. § 232.3(c)(6). Therefore, these activities were not exempt from and were subject to permitting requirements pursuant to Section 404 of the CWA.
19. On April 28, 2015, the Kentucky Division of Water (DOW) found violations of state water quality standards and observed potential 404 violations. The DOW informed the COE Louisville District. After determining that the Site had a violation of the CWA and seeing the magnitude of the violation, the COE asked the EPA to take the lead on the case.
20. On October 15, 2015, the EPA and the COE performed a Compliance Evaluation Inspection (CEI) to evaluate Respondent's discharge of dredged/fill material at the Site to assess compliance with the CWA, and the regulations promulgated thereunder at 40 C.F.R. § 232.
21. During the CEI of the Site, the EPA inspector observed:
  - (a) The banks of the unnamed tributary had been cut with heavy machinery, and the material spread into the stream bed to create a haul road for logging trucks.
    - i. This haul road was not constructed in accordance with the BMPs set forth in 40 C.F.R. § 232.3(c)(6)(i) – (xv).
      1. Specifically, 40 C.F.R. § 232.3(c)(6)(i) states that such a haul road “shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific farming, silvicultural or mining operations, and local topographic and climatic conditions. Except for possible road crossings over waters of the United States, the haul road could have been constructed in a manner with minimal impacts and not within the stream bed.
      2. Further, 40 C.F.R. § 232.3(c)(6)(ii) states that all roads “shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into the Waters of the United States.” As stated above, the road could have been located such that there would have had minimal impacts, if any, to waters of the United States.

3. In addition, 40 C.F.R. § 232.3(c)(6)(iv) states that “[t]he fill shall be properly stabilized and maintained to prevent erosion during and following construction.” Cutting the banks, which resulted in the deposition of fill into the stream, also destabilized the side slopes of the stream, causing erosion.
  4. And, 40 C.F.R. § 232.3(c)(6)(v) states that “[d]ischarges of dredged or fill material into waters of the United States to construct a road fill shall be made in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within the waters of the United States (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself.” The haul road here was created for the purpose of operating equipment within the waters of the United States.
- ii. In addition, the Kentucky Logging BMP Field Guide<sup>1</sup>, BMP 1: Access Roads, Trails, and Landings: Stream Crossings: MR 1.8 states that the operator should “avoid depositing soil into stream channels.” Kentucky BMP 3: Streamside Management Zones (SMZ): Equipment in Streams: MR 3.8 states: “Streams and ephemeral channels must not be used as roads, trails, or the loading of logs unless topography or other circumstance leaves no other alternative for access or when use of streams and channels would create less water quality degradation than constructing new or using existing roads and trails. In these circumstances the stream or channel bed should be used only for the minimum distance necessary.” As stated above, the EPA inspector’s observations indicate that neither federal BMPs nor the state practices from the Kentucky Logging BMP Field Guide were followed.

(b) Smaller tributaries on the Site had been used as skidder trails creating further discharges.

- i. This skidder trails were not constructed in accordance with the BMPs set forth in 40 C.F.R. § 232.3(c)(6)(i) – (xv).
  1. Specifically, 40 C.F.R. § 232.3(c)(6)(i) states that skid trails for logging in waters of the United States “shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific farming, silvicultural or mining operations, and local topographic and climatic conditions.” The EPA inspector observed that Respondent could have created a road in a location that would not have utilized waters of the United States or Respondent could have hauled the logs to an upland area that was previously logged and utilized existing roads.

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<sup>1</sup> <https://eec.ky.gov/Natural-Resources/Forestry/Kentucky%20Forest%20Conservation%20Act%20Information/Kentucky%20Logging%20BMP%20Field%20Guide%20FOR%20130.pdf>

2. 40 C.F.R. § 232.3(c)(6)(ii) states that all roads “shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into the Waters of the United States.” As stated above, Respondent could have located these roads away from streams or other waterbodies to minimize impacts to waters of the United States; however, Respondent elected to utilize the tributaries as skid trails. The Kentucky Division of Forestry personnel on Site indicated that the operator could have pulled the timber upslope in some of these areas to a previously logged area thereby avoiding operations in the waters.
  3. 40 C.F.R. § 232.3(c)(6)(v) states that “[d]ischarges of dredged or fill material into waters of the United States to construct a road fill shall be made in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within the waters of the United States. EPA inspectors observed that the skid trails were utilized for the purpose of operating equipment within the waters of the United States.
- ii. Kentucky BMP 1 – MR 1.4 states: “Skidders or other logging equipment shall not be operated under conditions that may cause the development of ruts that contribute to water quality degradation and cannot be resurfaced with available equipment.” The EPA inspector observed that the smaller tributaries that were used as skidder trails were rutted due to the equipment use. In some areas the channel flow was split into two or more confined flows due to the rutting.
- (c) Tree tops had been left in jurisdictional waters and did not follow the BMPs set forth in 40 C.F.R. § 232.3(c)(6)(i) – (vi).
- i. Specifically, 40 C.F.R. § 232.3(c)(6)(xv) specifies that “[a]ll temporary fills shall be removed in their entirety and the area restored to its original elevation.” Here, treetops remained in jurisdictional waters.
  - ii. Further, this activity does not comply with Kentucky BMP 3: Streamside Management Zones: Debris and Soil in Streams and Channels: MR 3.6, “DISTURBED SOIL or LOGGING SLASH including tops shall not be left in or have the potential to be washed into perennial or intermittent streams.
22. On July 31, 2019, the EPA sent an Information Request Letter (“Information Request”), pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to Respondent requesting information related to Respondent’s discharge of dredged/fill material at the Site to assess compliance with the CWA, and the regulations promulgated thereunder at 40 C.F.R. § 232. Respondent’s responses to the Information Request stated that all roads and skid trails were cut approximately one month prior to the harvesting by a Case bulldozer. Respondent also stated that Tarter Gate Wood Products, LLC owned all the equipment and performed the work at the Site.

## V. ALLEGED VIOLATIONS

23. At all times relevant to this action, Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
24. At all times relevant to this action, the Respondent owned and/or operated the Site.
25. The discharged dredged and/or fill material, including earthen material deposited at the Discharge Area, are “pollutants” as defined under the CWA § 502(6); 33 U.S.C. § 1362(6);
26. Fill materials means material placed in waters of the United States where the material has the effect of replacing any portion of a water of the United States with dry land; or changing the bottom elevation of any portion of a water of the United States.” 40 C.F.R. § 232.2.
27. The Case bulldozer and skidders employed by the Respondent to deposit the dredged and/or fill material at the Discharge Area are “point sources” as defined under the CWA § 502(14), 33 U.S.C. § 1362(14).
28. Respondent’s placement of the dredged and/or fill material at the Discharge Area constitutes a “discharge of pollutants” as defined under the CWA § 502(12), 33 U.S.C. § 1362(12).
29. At no time during the discharge of dredged and/or fill material at the Discharge Area from November 2014 to April 2015 did the Respondent possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the activities performed by Respondent.
30. Each discharge by the Respondent of pollutants into navigable waters without the required permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
31. Each day the material discharged by the Respondent remains in waters of the United States without the required permit under Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

## VI. STIPULATIONS

32. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
33. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
  - (a) admits that EPA has jurisdiction over the subject matter alleged in this CAFO;
  - (b) neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
  - (c) consents to the assessment of a civil penalty as stated below;

- (d) consents to the conditions specified in this CAFO;
- (e) waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
- (f) waives its rights to appeal the Final Order accompanying this CAFO.

34. For the purpose of this proceeding, Respondent:

- (a) agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- (d) waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and
- (e) agrees to comply with the terms of this CAFO.

35. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by electronic means.

36. The parties acknowledge and agree that this CAFO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a proposed CAFO based on comments received during the public comment period.

## VII. TERMS OF PAYMENT

37. Based on financial information submitted by Respondent, and in accordance with the Act, EPA has determined that **\$260,000** is an appropriate civil penalty to settle this action, which Respondent consents to pay as follows:

- (a) The civil penalty will be paid in six equal installments in order to complete payment of the entire civil penalty including interest. Including the civil penalty and interest, the total amount that will be paid upon completion of all payments will be \$264,534.89. The first payment is due within thirty (30) days of the Effective Date of this CAFO, which is upon

its filing with the Regional Hearing Clerk. Respondent's subsequent payments shall thereafter be due in 90-day intervals from said Effective Date.

(b) Respondent shall make payments in accordance with the following schedule:

<b>Payment Number</b>	<b>Payment shall be made <i>no later than</i></b>	<b>Principal Amount</b>	<b>Interest Amount</b>	<b>Total Payment Amount</b>
1	Thirty (30) calendar days following the Effective Date of this CAFO.	\$42,789.79	\$1,290.36	\$44,089.15
2	90 calendar days following the Effective Date of this CAFO.	\$43,011.20	\$1,077.95	\$44,089.15
3	180 calendar days following the Effective Date of this CAFO.	\$43,224.66	\$864.49	\$44,089.15
4	270 calendar days following the Effective Date of this CAFO	\$43,439.18	\$649.97	\$44,089.15
5	360 calendar days following the Effective Date of this CAFO	\$43,654.76	\$434.39	\$44,089.15
6	450 calendar days following the Effective Date of this CAFO	\$43,871.41	\$217.73	\$44,089.14

(c) If Respondent fails to make one of the installment payments in accordance with the schedule set forth above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall pay a non-payment penalty and other charges as described below in Paragraph 41 in the event of any such failure or default.

(d) Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, EPA may take action as set forth in Paragraph 42.

(e) Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, respondent may pay the entire civil penalty



of \$260,000 within thirty (30) calendar days of the Effective Date of this CAFO and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with interest accrued up to the date of such full payment.

38. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
Mail Station: SL-MO-C2-GL  
St. Louis, Missouri 63101  
Contact Number: (314) 425-1819

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:

5700 Rivertech Court  
Riverdale, Maryland 20737  
Contact: Craig Steffen, (513) 487-2091  
REX (Remittance Express): 1-866-234-5681

39. Respondent shall send proof of payment, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
R4 Regional Hearing Clerk@epa.gov

and

Mr. Joel Strange  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
strange.joel@epa.gov

40. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and “Docket No. **CWA-04-2020-0502(b)**.”
41. Pursuant to 33 U.S.C. § 1319(g)(9), if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may recover, in addition to the amount of the unpaid penalty assessed, the following amounts on any portion overdue:
- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within 30 days, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed currently prevailing rates.
  - b. Non-Payment Penalty. A 20 percent quarterly nonpayment penalty pursuant to 33 U.S.C. § 1319(g)(9); and  
  
Attorneys’ Fees and Costs of Collection. The United States’ attorneys’ fees and costs of collection.
42. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:

- (a) refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13 and 13.14;
- (b) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H;
- (c) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
- (d) request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed, in addition to the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

43. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

44. Effective upon signature of this CAFO by the Respondent, the Respondent agrees that the time period commencing on the date of its signature and ending on the Effective Date shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by EPA related to the matters addressed in this CAFO and that, in any action brought by EPA related to the matters addressed, the Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period.

### **VIII. EFFECT OF CAFO**

45. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

46. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).

47. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, 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, except as expressly provided herein.

48. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
49. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Administrator.
50. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.
51. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
52. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
53. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
54. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
55. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
56. EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA. If such false or inaccurate material was provided, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
57. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.


58. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
59. Respondent hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States, including any department, agency or instrumentality of the United States, with respect to the matters addressed and resolved in this CAFO, including but not limited to, any claim that any of the matters or actions described in this CAFO have resulted in a taking of Respondent's property without compensation.

#### **IX. EFFECTIVE DATE**

60. This CAFO shall become effective after execution of the Final Order by the Regional Administrator, on the date of filing with the Hearing Clerk.

The foregoing Consent Agreement In the Matter of **TARTER GATE WOOD PRODUCTS, LLC,,**  
**Docket No. CWA-04-2020-0502(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

  
\_\_\_\_\_  
Signature  
Printed Name: Kerth Tate  
Date: 11/16/2020  
Title: Member  
Address: PO Box 10, Dunnville, KY 42528

The foregoing Consent Agreement In the Matter of **TARTER GATE WOOD PRODUCTS, LLC**,  
Docket No. **CWA-04-2020-0502(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.  
FOR COMPLAINANT:

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Carol L. Kemker  
Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

In the Matter of:

**TARTER GATE WOOD PRODUCTS,  
LLC,**

Respondent.

Docket No. **CWA-04-2020-0502(b)**

**FINAL ORDER**

The Regional Administrator is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with 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.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED.**

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John Blevins  
Acting Region 4 Regional Administrator



## CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the Matter of **TARTER GATE WOOD PRODUCTS, LLC**, Docket No. **CWA-04-2020-0502(b)**, were filed and copies of the same were emailed to the parties as indicated below.

**Via email to all parties at the following email addresses:**

To Respondent:                   Tarter Gate Wood Products, LLC  
  Attn: Ms. Jennifer Cave  
  Stites & Harbison PLLC  
  400 West Market Street, Suite 1800  
  Louisville, KY 40202-3352  
  [jcave@stites.com](mailto:jcave@stites.com)  
  (502) 681-0380

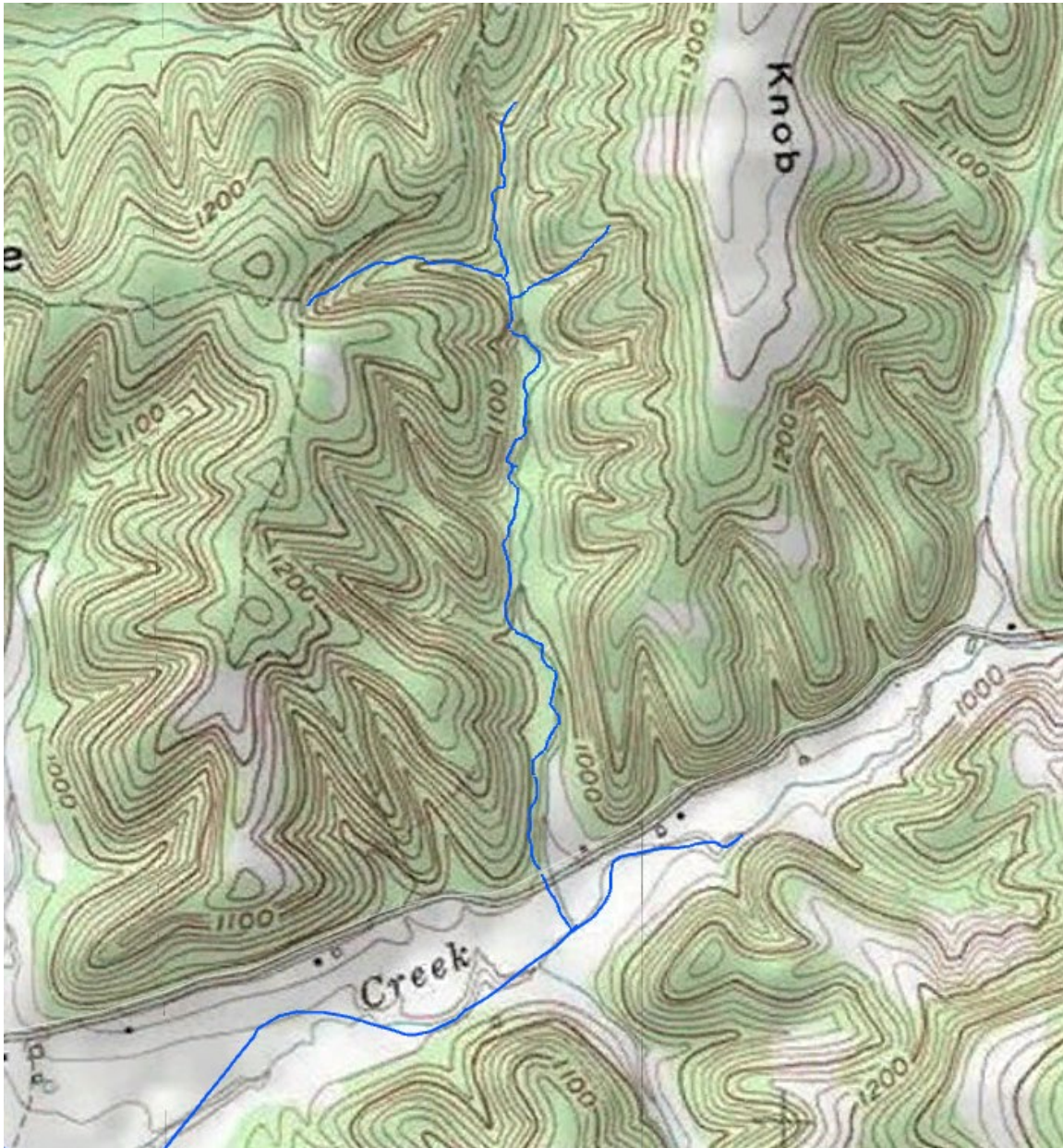
To EPA:                             Mr. Joel Strange  
  Water Enforcement Branch  
  Surface Water and Groundwater Section  
  Enforcement and Compliance Assurance Division  
  U.S. Environmental Protection Agency, Region 4  
  Atlanta Federal Center  
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Saundi Wilson, Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

## Exhibit A



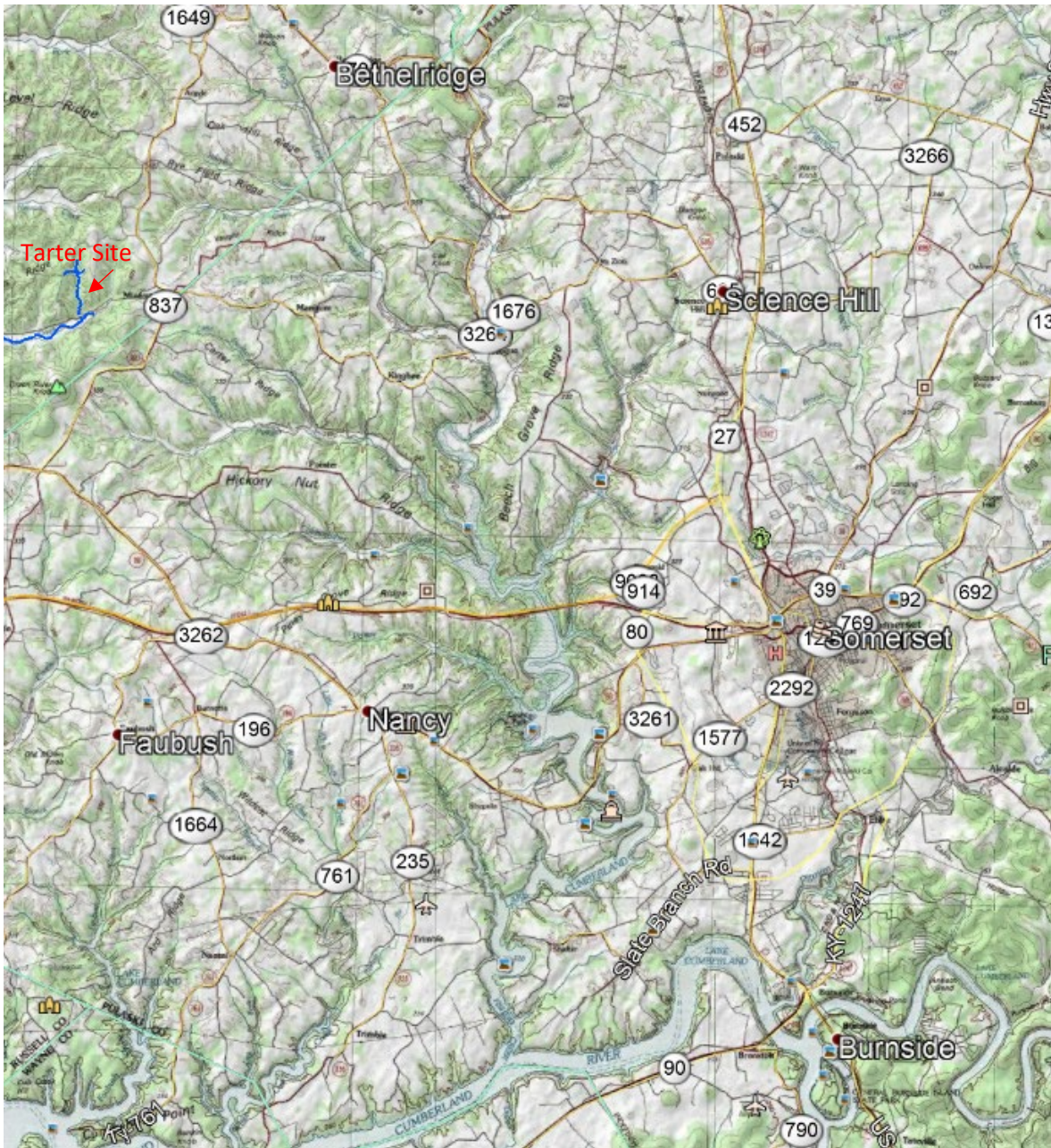
Tarter Gate Wood Products, LLC

Mr. Keith Tarter

Casey County, Kentucky



## Exhibit B



Tarter Gate Wood Products, LLC

Mr. Keith Tarter

Casey County, Kentucky