COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
Blue Ridge Regional Office
www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Steven A. Dietrich
Regional Director

Lynchburg Office
7705 Timberlake Road
Lynchburg, Virginia 24502
(434) 582-5120
Fax (434) 582-5125

Roanoke Office
3019 Peters Creek Road
Roanoke, Virginia 24019
(540) 562-6700
Fax (540) 562-6725

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO GEORGIA-PACIFIC WOOD PRODUCTS LLC EPA ID No. VAR000004887

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455(C) and (F), between the Virginia Waste Management Board, and Georgia-Pacific Wood Products LLC, for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.

2. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.

3. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

4. "CESQG" means a conditionally exempt small quantity generator of hazardous waste, a generator of less than 100 kilograms of hazardous waste in a month and meeting the other restrictions of 40 CFR § 261.5 and 9 VAC 20-80-120(A).

5. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

8. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.

9. "GP" means Georgia-Pacific Wood Products LLC, a limited liability company authorized to do business in Virginia, and its affiliates, partners, subsidiaries, and parents. GP is a "person" within the meaning of Va. Code § 10.1-1400.

10. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.

11. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2,200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions (See 40 CFR § 262.34(a)-(b) and (g)-(l)).

12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

13. "Order" means this document, also known as a Consent Order.

14. "Site" or "Facility" means the wood products manufacturing facility in Brookneal, Virginia that is owned and operated by Georgia-Pacific Wood Products LLC.

15. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.

16. "TCLP" means the Toxicity Characteristic Leaching Procedure, test Method 1311 in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,* EPA Publication SW-846, as incorporated by reference at 40 CFR § 260.11.

17. "Va. Code" means the Code of Virginia (1950), as amended.

18. "VAC" means the Virginia Administrative Code.

19. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

20. "VHWMR" or "Regulations" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effective date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.

SECTION C: Findings of Fact and Conclusions of Law

1. GP owns and operates a wood products manufacturing facility in Brookneal, Virginia. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. GP initially notified as a CESQG of hazardous waste in 1996. GP subsequently notified in June 2009 as a LQG. Solid wastes generated at this facility include fly ash, which is a product of burning wood and is not eligible for regulatory exemptions available to fly ash generated as a product of coal combustion. When this fly ash occasionally exceeds 5.0 mg/L under the TCLP for chromium it is also classified as a characteristic (D007) hazardous waste due to its toxicity characteristic.

3. On May 13, 2009, GP notified DEQ that it had disposed of the contents of a roll-off container containing 20,720 pounds of fly ash at the First Piedmont Industrial Solid Waste Landfill (SWP 065) in Ringgold, Virginia ("First Piedmont Landfill") on March 19, 2009. The fly ash in that load exceeded 5.0 mg/L under the TCLP for chromium based on a grab sample and was accordingly classified as a D007 hazardous waste. Pursuant to 40 CFR § 262.11, GP should have made a determination that the fly ash in that load was a hazardous waste.

4. Because the roll-off container used by GP to ship the hazardous fly ash referenced above was not marked, manifested, and handled in accordance with the Regulations, GP violated 40 CFR § 262.34(a). Because GP did not determine whether the hazardous fly ash referenced above had to be treated before it could be land disposed and did not provide written notification to the disposal facility that the waste did not meet treatment standards, GP violated 40 CFR § 268.

5. On June 22, 2009, DEQ issued a Notice of Violation ("NOV") to GP citing violations related to the disposal on March 19, 2009 of the fly ash that was classified as a hazardous waste at the First Piedmont Landfill.

6. Representatives of DEQ, GP and First Piedmont met on July 17, 2009 to discuss the NOV. During the meeting, GP representatives explained that the load of fly ash in question had been shipped to the First Piedmont Landfill before analytical results had

been received.

7. As a result of the July 17, 2009 meeting, GP agreed to develop an investigation plan to be reviewed and approved by DEQ before implementation. GP submitted and revised a series of Sampling and Analysis Plan ("SAP") drafts in late August 2009. DEQ approved a revised SAP on September 4, 2009. GP began performing sampling and analysis in accordance with the approved SAP on September 14, 2009. GP submitted a Final Sampling and Analysis Report to DEQ on November 23, 2009. The results of that report indicated that although some of the 157 samples taken contained total chromium levels greater than 100 mg/kg, none of those samples with elevated total chromium, when subsequently tested with the TCLP, showed detectable chromium. Accordingly, none of the samples would be defined as hazardous wastes. It is therefore not necessary for GP to take any further corrective action.

8. Based on the letter from GP to DEQ received on May 13, 2009 and information received during the July 17, 2009 meeting between GP and DEQ, the Board concludes that GP has violated VHWMR and the Virginia Waste Management Act, as noted above. More specifically, as noted above, the Board concludes that the GP has violated the following statutes or regulations: 40 CFR § 262, Subpart A and 40 CFR § 268.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455(C) and (F), the Board orders GP, and GP agrees to pay a civil charge of $11,000.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

GP shall include its Federal Employer Identification Number (FEIN) (56-2306374) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of GP for good cause shown by GP, or on its own motion pursuant to the Administrative Process Act after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, GP admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. GP consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. GP declares that it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by GP to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. GP shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. GP shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. GP shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

    a. the reasons for the delay or noncompliance;

    b. the projected duration of any such delay or noncompliance;

c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which GP intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and GP. Nevertheless, GP agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

(a) GP petitions the Director or his designee to terminate the Order after he has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

(b) the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to GP.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve GP from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by GP and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of GP certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind GP to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of GP.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, GP voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2010.

_____
Steven A. Dietrich, Regional Director
Department of Environmental Quality

Georgia-Pacific Wood Products LLC voluntarily agrees to the issuance of this Order.

Date: 1/11/10 By: _____
Georgia-Pacific Wood Products LLC

Commonwealth of Virginia
City/County of Campbell

The foregoing document was signed and acknowledged before me this 11 day of January, 2010, by Morgan Thomas.

Cathy S Harris
Notary Public

205601
Registration No.

My commission expires: 5/31/2011

Notary seal:

CATHY S. HARRIS
Notary Public
Commonwealth of Virginia
205601
My Commission Expires May 31, 2011