

**SETTLEMENT AGREEMENT FOR RECOVERY OF PAST RESPONSE COSTS
AT THE GEORGIA-PACIFIC HARDWOOD SITE,
PLYMOUTH, WASHINGTON COUNTY, NORTH CAROLINA**

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GEORGIA-PACIFIC HARDWOOD SITE
Washington County, North Carolina
SETTLEMENT AGREEMENT FOR RECOVERY OF PAST RESPONSE COSTS

IN THE MATTER OF:)	SETTLEMENT AGREEMENT
)	FOR RECOVERY OF
)	PAST RESPONSE COSTS
Georgia-Pacific Hardwood Site)	
Plymouth, Washington County, North Carolina)	
)	U.S. EPA Region 4
)	Docket No. CERCLA- <u>04-2008-3774</u>
CASTPA, LLC, and)	
W.C. Development, Inc.)	PROCEEDING UNDER SECTION
SETTLING PARTIES)	122(h)(1) OF CERCLA
_____)	42 U.S.C. § 9622(h)(1)

I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrator by EPA Delegation No. 14-14-D. Authority to enter into or exercise Agency concurrence with this Settlement Agreement has been further re-delegated from the Regional Administrator through the Director of the Superfund Division, through the Associate Division Director for the Office of Superfund and Emergency Response, to the Chief of the Superfund Enforcement and Information Management Branch by EPA Regional Delegation No. 14-14-D.

2. This Settlement Agreement is made and entered into by EPA and CASTPA, LLC, and W.C. Development, Inc (Settling Parties). The Settling Parties consent to and will not contest EPA's authority to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the 24 acre Georgia-Pacific Hardwood Site (Site) located in Plymouth, Washington County, North Carolina. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. The Site is located on Plywood Drive within the city limits of Plymouth, approximately 0.5 miles east of the downtown district, at 35° 52'27" North latitude and 76° 44'27.5" West longitude.

5. In 1998, Settling Parties purchased the Site which had previously been operated as a hardwood sawmill for more than 20 years.

6. Settling Parties are the current owners of the Site.

7. State of North Carolina and EPA site investigations confirmed that the Site's soils and ground water were contaminated with hazardous substances including dioxins / furans, polynuclear aromatic hydrocarbons (PAHs), pentachlorophenol (PCP), pesticides, polychlorinated biphenyls (PCBs) and a few heavy metals.

8. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

9. In performing the response action, including a Site Investigation, Expanded Site Investigation, Remedial Investigation, and removal oversight activities, EPA has incurred response costs at or in connection with the Site.

10. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred at or in connection with the Site.

11. EPA and Settling Parties recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law.

12. In 2005, EPA entered into a Settlement Agreement with Georgia-Pacific to resolve their liability at the Site. The former operators of the Site paid the sum of \$1.375 million.

III. PARTIES BOUND

13. This Settlement Agreement shall be binding upon EPA and upon Settling Parties and their heirs, successors and assigns. Any change in ownership or corporate or other legal status of Settling Parties, including but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Parties' responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

14. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- c. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- d. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- e. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.
- f. "Parties" shall mean EPA and the Settling Parties.
- g. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site through the effective date of this Settlement Agreement.
- h. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.
- i. "Settlement Agreement" shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

j. "Settling Parties" shall mean CASTPA, LLC and W.C. Development, Inc.

k. "Site" shall mean the Georgia-Pacific Hardwood Site, encompassing approximately 24 acres, located on Plywood Road in Plymouth, Washington County, North Carolina at 35° 52'27" North latitude and 76° 44'27.5" West longitude.

l. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. PAYMENT OF PAST RESPONSE COSTS

15. Within 75 days of the effective date of this Settlement Agreement, Settling Parties shall pay to the EPA Hazardous Substance Superfund Two Hundred Fifty Thousand Dollars (\$225,000.00) in reimbursement of Past Response Costs. In the event that the payment for Past Response Costs is not made within 75 days of the effective date of this Settlement Agreement, Settling Parties shall pay Interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA. The Interest to be paid for Settling Parties' failure to make timely payments on Past Response Costs shall begin to accrue on the effective date of this Settlement Agreement. Interest shall accrue at the rate specified through the date of payment. Payment of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Settling Parties' failure to make timely payments under this Paragraph.

16. Payment shall be made to EPA by Electronic Funds Transfer (EFT) in accordance with current EFT procedures to be provided to Settling Parties by EPA Region 4, and shall be accompanied by a statement identifying the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 04 RF, and the EPA Docket Number CERCLA-_____ for this action. EFT may be directed to:

Federal Reserve Bank of New York
 ABA = 021030004
 Account = 68010727
 33 Liberty Street
 New York, NY 10045

Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental Protection Agency

17. At the time of payment, Settling Parties shall also send notice that payment has been made to EPA in accordance with Section XII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number 04 RF and the EPA Docket Number CERCLA-_____ for this action.

18. The total amount to be paid pursuant to Paragraph 15 shall be deposited in the EPA Hazardous Substance Superfund.

VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

19. Interest on Late Payments. If the Settling Party fails to make any payment required by Paragraph 15 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

20. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 15 are not paid by the required date, Settling Parties shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 19, \$500.00 per violation per day for the first 15 days, \$750.00 per violation per day for each day thereafter that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 04 RF, and the EPA Docket Number CERCLA-_____ for this action. Settling Parties shall send the check (and any accompanying letter) to:

U.S. Environmental Protection Agency
Cincinnati Accounting Operations
Mellon Lockbox 371099M
Atlanta, GA 30384
Attn: Collection Officer in Superfund

c. At the time of each payment, Settling Parties shall also send notice that payment has been made to EPA in accordance with Section XII (Notices and Submissions). Such notice shall identify the EPA Region and Site Spill ID Number 04 RF and the EPA Docket Number CERCLA-_____ for this action. Settling Parties shall send a copy of the check (and any accompanying letter) to:

Paula Painter
U.S. Environmental Protection Agency, Region 4
Superfund Enforcement and Information Management Branch
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the first day of a violation and continue to accrue until the violation is cured. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

21. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Parties' failure to comply with the requirements of this Settlement Agreement, should Settling Parties fail or refuse to comply with the requirements of this Settlement Agreement, Settling Parties shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

22. The obligations of Settling Parties to pay amounts owed to EPA under this Settlement Agreement are joint and several. In the event of the failure of one Settling Party to make the payments required under this Settlement Agreement, the remaining Settling Party shall be responsible for such payments.

23. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have been assessed pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Settling Parties from payment as required by Section V or from performance of any other requirements of this Settlement Agreement.

VII. COVENANT NOT TO SUE BY EPA

24. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Section V (Payment of Response Costs) and any amounts due under Section VI (Failure to Comply with Settlement Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of their obligations under this Settlement Agreement. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

25. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Parties with respect to all matters not expressly included within the Covenant Not to Sue in Paragraph 24. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Parties with respect to:

- a. liability for failure of Settling Parties to meet a requirement of this Settlement Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

26. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

IX. COVENANT NOT TO SUE BY SETTLING PARTIES

27. Settling Parties covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Settlement Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of North Carolina, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

28. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

29. Settling Parties agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Parties with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

30. The waiver in Paragraph 29 shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Party. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

- a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or
- b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

31. Except as provided in Paragraphs 29 and 30, nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement. Except as provided in Paragraphs 29 and 30, the Settling Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

32. EPA and Settling Parties agree that the actions undertaken by Settling Parties in accordance with this Settlement Agreement do not constitute an admission of any liability by Settling Parties. Settling Parties do not admit, and retains the right to controvert in any

subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in Section II of this Settlement Agreement.

33. The Parties agree that Settling Parties are entitled, as of the effective date of this Settlement Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are Past Response Costs.

34. Each Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

35. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section VII.

XI. RETENTION OF RECORDS

36. Until ten (10) years after the effective date of this Settlement Agreement, Settling Parties shall preserve and retain all records, reports, or information (hereinafter referred to as “records”) now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

37. After the conclusion of the ten (10) year document retention period in the preceding paragraph, Settling Parties shall notify EPA at least 90 days prior to the destruction of any such records and, upon request by EPA, Settling Parties shall deliver any such records to EPA. Settling Parties may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Parties assert such a privilege, they shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and

title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Parties shall retain all records that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Parties' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

38. Each Settling Party hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. NOTICES AND SUBMISSIONS

39. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Parties.

As to EPA:

Caroline B. Philson
Associate Regional Counsel
Office of Environmental Accountability, 13th Floor
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303

AND

Paula V. Painter
U.S. Environmental Protection Agency
Region 4
Superfund Enforcement and Information Management Branch
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303

As to CASTPA, LLC:

CASTPA, LLC
c/o Paul E. Waff. Jr.
P. O. Box 237
Edenton, NC 27932

As to W.C. Development, Inc.:

W.C. Development, Inc.
c/o Paul E. Waff. Jr.
P. O. Box 237
Edenton, NC 27932

XIII. INTEGRATION/APPENDICES

40. This Settlement Agreement and its appendix constitute the final, complete and exclusive settlement and agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Agreement: "Appendix A" is a complete list of the Settling Parties; and "Appendix B" is the map of the Site

XIV. PUBLIC COMMENT

41. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper or inadequate.

XV. ATTORNEY GENERAL APPROVAL

42. The Attorney General or his designee has approved the settlement embodied in this Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

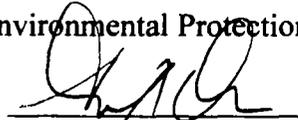
XVI. EFFECTIVE DATE

43. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 41 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By:



Anita L. Davis
Superfund Enforcement and Information
Management Branch
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

9/5/08
Date

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of U.S. EPA Docket Number CERCLA- , relating to the Georgia-Pacific Hardwood Site, Plymouth, Washington County, North Carolina:

FOR SETTLING PARTY: CASTPA, LLC
P. O. Box 237
Edenton, NC 27932

By: Paul E. Waff
Name
Owner
Title
Paul E. Waff
Signature
07/02/08
Date

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of U.S. EPA Docket Number CERCLA- _____, relating to the Georgia-Pacific Hardwood Site, Plymouth, Washington County, North Carolina:

FOR SETTLING PARTY: W. C. Development, Inc.
P. O. Box 237
Edenton, NC 27932

By: Paul E. Waff
Name

Owner
Title
Paul E. Waff
Signature

07/02/08
Date