

#17920

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

IN THE MATTER OF:

BROWN WOOD PRESERVING SITE
LIVE OAK, FLORIDA

DOCKET NO. 88-12-C

PROCEEDING UNDER SECTIONS
104 (a) AND 122 OF THE
COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION AND
LIABILITY ACT OF 1980,
42 U.S.C. Sections 9604(a) and
9622

ADMINISTRATIVE ORDER BY CONSENT

I. JURISDICTION

The following Administrative Order by Consent (hereinafter called "Consent Order") is entered into by the United States Environmental Protection Agency (hereinafter called "EPA") with the Respondents who have executed this Consent Order pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (hereinafter called "CERCLA") 42 U.S.C. Section 9606(a), as amended by the Superfund Amendments and Reauthorization Act (hereinafter called "SARA"), Pub. L. No. 99-499. This authority was delegated to the Administrator of EPA by Executive Order 12580 dated January 23, 1987, 52 Federal Register 2923 (1987) and further delegated to the Regional Administrator of Region IV, EPA. Pursuant to Sections 104 and 122 of CERCLA, 42 U.S.C. Sections 9604 and 9622, the State of Florida has previously been notified of this Consent Order.

The parties stipulate that EPA has made the necessary determinations regarding the release and threat of release of hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14) from the following location:

Brown Wood Preserving Site
Sawmill and Goldkist Roads
Northwest Quarter of Section 22
Township 2 South Range 13 East
Suwannee County
Live Oak, Florida

Respondents agree that EPA has the right to enforce this Consent Order under CERCLA in a court of competent jurisdiction. In any action by the United States to enforce this Consent Order, Respondents shall not challenge the basis for the Consent Order, shall not challenge the jurisdiction of EPA in an action to enforce this Consent Order and shall not challenge the applicability of this

Consent Order to Respondents. The Findings of Fact and Conclusions of Law are effective only for the purposes of this Consent Order and are not binding in any other proceeding. Respondents reserve all rights they may have to object to or contest any allegations of violation of this Consent Order. Nothing in the findings of fact or conclusions of law or determinations made herein constitute an admission of fact or liability by Respondents; however, Respondents agree not to challenge these findings or conclusions for purposes of enforcement of this Consent Order.

II. PARTIES

This Consent Order shall apply to and be binding upon the following parties:

- A. James Graham Brown Foundations, Inc. and AMAX, Inc. (as well as their successors and assigns); and
- B. The United States Environmental Protection Agency.

III. EPA FINDINGS OF FACT

- A. The Brown Wood Preserving Site is located on the Northwest Quarter of Section 22 Township 2 South Range 13 East of Sawmill and Goldkist Roads, Suwanee County, Live Oak, Florida.
- B. The Site location was the business location of Suwanee Wood Preservers, Inc. The Site was later the business location of Brown Wood Preserving Co., Inc., which became W. P. Brown and Sons Lumber Company, Inc.
- C. The James Graham Brown Foundation, Inc. inherited the stock of W.P. Brown and Sons Lumber Company, Inc. in 1969. Upon dissolution of W.P. Brown and Sons Lumber Company, Inc. in 1971, the James Graham Brown Foundation, Inc. operated the site until 1973 when the plant burned.
- D. AMAX Forest Products, Inc., a subsidiary of AMAX Inc., purchased and operated the facility in the mid 1970's later selling it to Live Oak Timber Treaters, Inc.
- E. The Site includes a series of storage tanks, a boiler, several storage yards and a wastewater lagoon.
- F. Sludge and contaminated solids are in the lagoon. Additionally PCP and creosote are contained within the storage tanks.
- G. The Site poses a potential environmental threat because of the inadequate containment of the contaminated soils and sludges.

IV. EPA CONCLUSIONS OF LAW

- A. The above referenced site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).
- B. PCP and creosote are hazardous substances within the meaning of section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).
- C. The Respondents are persons within the meaning of Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).
- D. Respondents are owners or operators within the meaning of Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a).

V. DETERMINATIONS BY THE REGIONAL ADMINISTRATOR

Based on the foregoing Findings of Fact and Conclusions of Law, and the entire record of this proceeding, the Regional Administrator has determined that: (1) In order to protect public health and welfare and the environment, it is necessary that action be taken to mitigate the release and threat of release of hazardous substances from the facility into the environment; and (2) The actions required in this Consent Order are consistent with the National Contingency Plan, 40 C.F.R. Part 300 et seq.

VI. WORK TO BE PERFORMED

The parties having reached a resolution of the issues involved in this proceeding, it is therefore AGREED and ORDERED that Respondents shall undertake the following activities pursuant to CERCLA Sections 104(a) and 122, 42 U.S.C. Sections 9604(a) and 9622:

- A. All activities undertaken by Respondents on the Site will be in accordance with the requirements of CERCLA/SARA, the National Contingency Plan, EPA-Region IV's SOP and QA/QC procedures, OSHA/NIOSH requirements for worker safety, and any applicable state and local laws, regulations, and ordinances. Respondents will also comply with the CERCLA/SARA off-site disposal policy;
- B. Clear and grub the vegetation around the lagoon to allow access for heavy equipment;
- C. Mobilize equipment and construct decontamination and staging areas;
- D. Construct a drainage ditch in the lagoon area to divert surface water drainage (rainwater) to an area north of the lagoon;

- E. Pump lagoon liquids to the storage tanks in the process area for treatment by carbon adsorption followed by disposal of the treated water through on-site irrigation; sample all water once prior to carbon treatment and periodically prior to irrigation;
- F. Excavate the lagoon sediments, ditch sediments, and spill residuals around the process area;
- G. Treat the sludges by stabilization with kiln dust in order to pass the paint filter test;
- H. Transport the wastes to a RCRA-licensed secure landfill in either Emelle, Alabama, or Pinewood, South Carolina, for final disposal;
- I. Sample the soils remaining in the lagoon to determine the volume of contaminants remaining after the initial removal.
- J. All correspondence, reports, work plans and other writings required under the terms of this Consent Order to be submitted to EPA shall be sent by certified mail, return receipt requested, to the following address:

Ms. Dora Ann Danner
On-Scene Coordinator
U.S. EPA - Region IV
345 Courtland Street, NE
Atlanta, Georgia 30365
404/347-2216

- K. Any amendments to this Consent Order pertaining to the work to be accomplished or any activities required hereunder must be reduced to writing by a duly authorized representative of the Respondents and the OSC within 48 hours after agreement is reached, so that there will be no delay in proceeding to accomplish the new work requirements.
- L. No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules or any other writing submitted by the Respondents shall be construed as relieving Respondents of the obligation to obtain such formal approvals as may be required herein.
- M. EPA may determine that tasks are necessary in addition to those tasks included in this Consent Order. Should EPA determine that such additional tasks are necessary, EPA shall notify Respondents. Within thirty (30) days or receipt of this notice, Respondents will notify EPA whether or not Respondents agree to the inclusion of these tasks into this Consent Order. Upon written agreement of the parties hereto, this Consent Order may be modified as necessary to address such further tasks.

Should Respondents not agree to the inclusion of these tasks, EPA retains the right to perform additional work as authorized by CERCLA and to seek cost recovery. Respondents shall not be subject to stipulated penalties for failure to perform tasks not included in this Consent Order.

VII. DESIGNATED PROJECT COORDINATORS

- A. Respondents shall appoint a Project Coordinator who shall be responsible for implementation of this Consent Order and the activities required herein. All reports, comments and other correspondence directed to Respondents will be made available to the Project Coordinator.
- B. All response work performed pursuant to this Consent Order shall be under the direction and supervision of a qualified professional engineer or certified geologist with expertise and experience in hazardous waste site cleanup. Respondents shall notify EPA as to the identity of such engineer or geologist and of any contractors and subcontractors to be used in carrying out the terms of this Consent Order in advance of their work at the site.
- C. EPA shall appoint an On-Scene Coordinator (OSC) who shall have the authority vested by the National Contingency Plan at 40 CFR Part 300. The OSC will be EPA's designated representative at the Site, and will have the right to move freely about the Site at all times when work is being carried out pursuant to this Consent Order. The OSC will advise Respondents as soon as he may become aware that any action taken pursuant to this Consent Order is not consistent with the National Contingency Plan.

VIII. SITE ACCESS

To the extent that areas covered by this Consent Order are presently owned by parties other than those bound by this Consent Order, EPA has obtained Site access agreements from the present owners. Such agreements provide reasonable access by EPA and/or their authorized representatives. In the event that all necessary Site access agreements have not been obtained by EPA, the Respondents shall notify EPA regarding the lack of such agreements within forty-five (45) calendar days of the effective date of this Consent Order. In such event, EPA will assume the responsibility for obtaining such access. Work at the site will be delayed until Site access is obtained.

IX. ACCESS AND DATA/DOCUMENT AVAILABILITY

EPA and/or their authorized representative shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting records, operating logs, and contracts related to the Site; (except those which are attorney work product or subject to the attorney-client privilege); reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as EPA or the Project Coordinator deem necessary; and verifying the data submitted to EPA by the Respondents. The Respondents shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. All parties with access to the Site pursuant to this paragraph shall comply with all approved health and safety plans.

The Respondents may assert a confidentiality claim, if appropriate, covering part or all of the information provided under this Consent Order pursuant to 40 CFR Section 2.203(b). Such an assertion shall be adequately substantiated when the assertion is made. Analytical data may not be claimed as confidential by the Respondents. Information determined to be confidential by EPA will be afforded the protection specified in 40 CFR Part 2, Subpart B. If no such claim accompanies the information when it is submitted or made available to EPA, it may be made available to the public by EPA without further notice to the Respondents.

X. RECORD PRESERVATION

EPA and the Respondents agree that each shall preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, one copy of all records and documents in their possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate to the work performed pursuant to this Consent Order, despite any document retention policy to the contrary. After this six (6) year period, the Respondents shall make available to EPA such records or copies of such records except those which are attorney work-product or subject to the attorney-client privilege.

XI. DISPUTE RESOLUTION

If the Respondents object to any EPA notice of disapproval or decision made pursuant to this Consent Order, the Respondents shall notify EPA in writing of its objections within fourteen (14) calendar days of receipt of the decision. EPA and the Respondents then have an additional fourteen (14) calendar days from the receipt by EPA of the notification of objection to reach agreement. If

agreement cannot be reached on any issue within this fourteen (14) calendar day period, EPA shall provide a written statement of its decision to the Respondents.

XII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

If any event occurs which causes delay in the achievement of the requirements of this Consent Order, the Respondents shall have the burden of proving that the delay was caused by circumstances beyond the reasonable control of the Respondents which could not have been overcome by due diligence. The Respondents shall promptly notify EPA's Project Coordinator orally and shall, within ten (10) calendar days of oral notification to EPA, notify EPA in writing of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and the timetable by which the Respondents intend to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of the Respondent, the time for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances.

If the parties do not agree as to whether or not the circumstances were beyond the reasonable control of the Respondents, the dispute shall be resolved in accordance with the provisions of the "Dispute Resolution" Section (Section XI) of this Consent Order. Except with respect to any extensions agreed to by the parties in writing, and EPA's consent to an extension shall not be unreasonably withheld, and except for delays from events which constitute a force majeure. Stipulated penalties shall accrue against Respondents as follows:

- (a) \$1,000 per day for the first week of violation, and \$2,000 per day thereafter.

Checks should be addressed to:

U.S. Environmental Protection Agency
Superfund Accounting
P. O. Box 371003M
Pittsburgh, PA 15251
Attn: (Collection Officer for Superfund)

XIII. FORCE MAJEURE

Respondent's activities under this Consent Order shall be performed within the time limits set forth in this Consent Order, unless performance is delayed by events which constitute a force majeure. For purposes of this Consent Order, a force majeure is defined as any event arising from causes beyond the reasonable

control of Respondents (for example, but not limited to, fires, natural disasters, riots, wars, unavoidable and unforeseeable labor strikes, adverse weather conditions, contractor failures, and the unforeseeable inability to obtain necessary permits, licenses, certifications) which could not have been prevented by the exercise of due diligence. Increased costs incurred by Respondents in conducting the removal action or changed economic circumstances of Respondents shall not be considered as constituting a force majeure.

The Respondents shall notify EPA in writing no later than ten (10) business days from the inception of any event which Respondents contend constitutes a force majeure as defined above. The written notice shall describe fully the nature of the delay, why the delay is beyond the control of the Respondents, the actions taken and/or that will be taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay and the timetable by which the actions to mitigate, prevent and/or minimize the delay will be taken. The Respondents shall adopt all reasonable measures to avoid or minimize any such delay.

Delay that results from circumstances beyond the control of the Respondents that cannot be overcome by due diligence on the Respondents' part shall not be deemed to be a violation of this Consent Order. To the extent a delay is caused by circumstances beyond the control of the Respondents, the schedule affected by the delay shall be extended for a period equal to the delay resulting from such circumstances.

Failure of the Respondents to comply with the notice requirements of this Section shall constitute a waiver of the Respondents' right to invoke the benefits of this Section with respect to that event.

XIV. RESERVATION OF RIGHTS

Notwithstanding compliance with the terms of this Consent Order, the Respondents are not released from liability, if any, for any actions beyond the terms of this Consent Order taken by EPA respecting the Site. EPA reserves the right to take any enforcement action pursuant to CERCLA/SARA and/or any available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or this Consent Order.

The Respondents and EPA expressly reserve all rights and defenses that they may have, including EPA's right both to disapprove of work performed by the Respondents and to request that the Respondents perform tasks in addition to those detailed in this Consent Order. In the event that the Respondents decline to perform any additional and/or modified tasks, EPA will have the right to undertake any such work. In addition, EPA reserves the right to undertake removal actions and/or remedial actions, other than those required by this Consent Order, at any time. In either event, EPA reserves the right to seek reimbursement from the Respondents

thereafter for such costs incurred by the United States.

Respondents reserve all rights and defenses that they have or may have to assert claims against persons or entities for matters arising out of the Site or its operation and ownership, including, but not limited to, claims for breach of contract, indemnity, contribution, nuisance and claims under federal, state and local laws.

XV. REIMBURSEMENT OF COSTS

Following completion of the removal actions, the Respondents shall, within thirty (30) calendar days of receipt of an accounting, remit a check for the amount of oversight costs made payable to the EPA Hazardous Substance Superfund. Checks should specifically reference the identity of the site and be addressed to:

U. S. Environmental Protection Agency Superfund
Accounting
P. O. Box 371003M
Pittsburgh, PA 15251
Attention: (Collection Officer for Superfund)

A copy of the transmittal letter should be sent to the Project Coordinator.

EPA reserves the right to bring an action against any responsible party pursuant to Section 107 of CERCLA for recovery of all response and oversight costs incurred by the United States related to this Consent Order and not reimbursed by the Respondents, as well as any other past and future costs incurred by the United States from the Fund in connection with response activities conducted pursuant to CERCLA/SARA at this site.

XVI. OTHER CLAIMS

Nothing herein is intended to release any claims, causes of action or demands in law or equity by EPA or the Respondents against any person, firm, partnership, or corporation, not a signatory to this Consent Order, for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

XVII. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

The Respondents agree to indemnify and save and hold the United States Environmental Protection Agency, its agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from or on account of acts or omissions of the Respondents, their agents or assigns, in carrying out the activities pursuant to this Consent Order. EPA is not a party in any contract involving the Respondents at the Site. The liability of EPA, its employees and agents, for their acts and omissions, shall be as set forth in the Federal Torts Claims Act and other applicable statutes.

IT IS SO AGREED AND ORDERED:

BY: Lee A. DeHihns III
Lee A. DeHihns, III Date
Acting Regional Administrator
U. S. Environmental Protection Agency
Region IV

EFFECTIVE DATE: 1-22-88

CONSENT

The Respondents identified below hereby consent to the issuance of this Consent Order and to its terms. Furthermore, the signatory to this Order certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the Respondent so represented by him or her to the Consent Order.

The James Graham Brown Foundation, Inc.

By: Joe M. Rodes
(Please type name and title of Official below)

Joe M. Rodes, President & Chief Executive Office
AMAX, Inc.

By: Edward R. Bingham
(Please type name and title of Official below)

Edward R. Bingham, Senior Vice-President
AMAX Mineral Resources Company