

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA and)
the ALABAMA DEPARTMENT OF)
ENVIRONMENTAL MANAGEMENT,)

Plaintiffs,)

v.)

BROWN WOOD PRESERVING COMPANY,)
INC. and the JAMES GRAHAM BROWN)
FOUNDATION, INC.)

Defendants.)

No. 2:08-cv-1720-RDP

CONSENT DECREE

Plaintiffs United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), and the Alabama Department of Environmental Management, and Defendant Brown Wood Preserving Company, Inc. ("Brown Wood"), enter into this Consent Decree resolving claims set forth in a Complaint filed in the above-captioned matter.

RECITALS

A. Plaintiffs have filed a Complaint in this action against Brown Wood and co-Defendant James Graham Brown Foundation, Inc. ("JGBF") to obtain injunctive relief and assessment of civil penalties for violations of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6921 *et seq.*, the Alabama Hazardous Wastes Management and Minimization Act (AHWMMA), ALA. CODE § 22-30-1 (1975) *et seq.*, and the respective implementing regulations promulgated thereunder.

B. Brown Wood owns and operates a wood treatment facility located at 16591 Brownville Road, Northport, Alabama (“the Facility”), where the Complaint alleges hazardous waste has been generated and illegally disposed of.

C. Brown Wood has entered into an Amended Settlement Agreement with JGBF, attached hereto as Appendix A and incorporated herein by reference, that provides for the transfer of the Facility from Brown Wood to JGBF and the subsequent cleanup of the Facility by JGBF pursuant to the terms of a separate Consent Decree that will be entered into among the Plaintiffs and JGBF.

D. By entering into this Consent Decree, Brown Wood does not admit any liability arising out of the transactions, occurrences or claims alleged in the Complaint.

E. The Parties acknowledge that this Consent Decree has been negotiated in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, without any adjudication of any issue of fact and upon consent and agreement of the parties to this Consent Decree,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355, and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1395, and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

3. Brown Wood waives any and all objections it may have to the Court's jurisdiction, and for purposes of this Consent Decree, agrees to submit to the Court's jurisdiction.

4. Notice of the commencement of this action was given to the State of Alabama pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

II. PARTIES BOUND

5. The provisions of this Consent Decree shall apply to and be binding upon the United States, the State of Alabama, and Brown Wood, its officers, directors, employees, successors, assigns and upon all persons, firms, subsidiaries, divisions, or corporations acting under or for it.

6. No change in ownership, corporate or partnership status relating to the Facility will in any way alter the status of Brown Wood, or in any way alter the responsibilities of Brown Wood under this Consent Decree.

7. Brown Wood shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Brown Wood shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

8. In any action to enforce this Consent Decree, Brown Wood shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

9. JGBF is a signatory to this Consent Decree solely for the purpose of providing JGBF an opportunity to obtain judicial review, if necessary, of any claim or determination that Brown Wood has fully complied with its obligations under this Consent Decree, pursuant to the dispute

resolution provisions of this Consent Decree. JGBF shall have no rights or obligations under this Consent Decree except as specifically provided in Section IX (Dispute Resolution) of this Consent Decree.

III. DEFINITIONS

10. Unless otherwise stated in this Consent Decree, the terms used in this Consent Decree are as defined in RCRA, 42 U.S.C. § 6901 *et seq.*, and AHWMMMA, ALA. CODE § 22-30-1 *et seq.*, and the respective implementing regulations promulgated thereunder. The terms used in this Consent Decree shall have the meanings set forth therein. In addition, when the terms listed below are used in this Consent Decree, the following definitions shall apply:

- a. "ADEM" shall mean the Alabama Department of Environmental Management.
- b. "Brown Wood" shall mean Defendant Brown Wood Preserving Company, Inc., a corporation organized and existing under the laws of the Commonwealth of Kentucky and licensed to do business in the State of Alabama.
- c. "Brownville Property" shall have the meaning set forth in the Amended Settlement Agreement between Brown Wood and JGBF, attached hereto as Appendix A.
- d. "Consent Decree" shall mean this Consent Decree, the attachments to this Decree, and all submissions made pursuant to this Decree.
- e. Unless otherwise indicated, the term "day" or "days" as used herein shall mean a calendar day or days.
- f. "EPA" shall mean the United States Environmental Protection Agency;

- g. "Facility" shall mean the facility, as that term is defined in 40 C.F.R. § 260.10, located at the Brownville Property.
- h. "Financial Information" shall mean those documents submitted to EPA by Brown Wood on or about December 1, 2006.
- i. The "JGBF Decree" shall have the meaning set forth in Paragraph 11 of this Consent Decree.
- j. "Plaintiffs" shall mean ADEM and the United States.
- k.. "Amended Settlement Agreement" shall mean the Amended Settlement Agreement entered into by and between Brown Wood and JGBF, attached hereto as Appendix A and incorporated herein by reference.
- l. "United States" shall mean the United States of America, acting on behalf of EPA.

IV. OBJECTIVES

11. This Consent Decree, along with the Amended Settlement Agreement and another Consent Decree to be entered into by and among ADEM, the United States, and JGBF ("the JGBF Decree"), will result in the transfer of the Brownville Property from Brown Wood to JGBF, and the remediation by JGBF of hazardous waste contamination existing at the Brownville Property. The JGBF Decree will require JGBF to perform RCRA corrective action and RCRA closure of the Brownville Property. The JGBF Decree is attached hereto as Appendix B.

V. COMPLIANCE

12. By no later than 270 days following entry of this Consent Decree (the "Termination Activities Completion Date"), Brown Wood shall

a. at its sole expense, remove from the Brownville Property, in accordance with all applicable federal, state, and local laws, those assets, including products, that are described in Exhibit C of the Amended Settlement Agreement ("Removed Assets");

b. comply with all other requirements set forth in Section II, Paragraph 4, of the Amended Settlement Agreement;

c. terminate all of its business and other operations and activities at the Brownville Property and permanently leave the premises in conformity with Section II, Paragraph 3, of the Amended Settlement Agreement; and

d. transfer by recordable documents all right, title and interest in the Brownville Property and all improvements thereon (excepting Removed Assets) and related appurtenances to JGBF or its designee (hereinafter the "Closing").

13. At Closing, Brown Wood shall pay into an Escrow Fund designated by JGBF the sum of Three Hundred Thousand U.S. Dollars (\$300,000.00) for sole use by JGBF in connection with the remediation, removal and clean up at the Brownville Property.

14. Brown Wood shall provide JGBF reasonable notice, not less than 24 hours, before Brown Wood begins to remove the Removed Assets.

15. Within ten days of the Termination Activities Completion Date or within ten days of completion of all requirements specified in Paragraph 12, whichever occurs first, Brown Wood shall certify its compliance with the requirements of this Paragraph in writing via electronic or

overnight mail, and submit such certification as provided in Section XII (Notices and Submittals) of this Consent Decree. Such certification shall be signed by a Brown Wood official and shall include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all Appendices and that this document and its Appendices were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowingly and willfully submitting a materially false statement.

16. This Consent Decree in no way relieves Brown Wood of its responsibility to comply with all applicable federal, state, and/or local laws, regulations, and/or permits. Compliance with this Consent Decree shall not constitute a defense to any action pursuant to said laws, regulations, or permits.

VI. CREATION OF DANGER; EMERGENCY RESPONSE

17. Upon the occurrence of any incident or discovery of any condition that causes or threatens a release of hazardous waste from the Facility or an endangerment to human health or the environment, Brown Wood must immediately notify the National Response Center at 1-800-424-8802, along with any other required notifications to federal, state, or local agencies. Brown Wood must also contact EPA's RCRA Facility Manager, John Kroske, at 404-562-8613. Nothing in this Consent Decree limits the authority of EPA to take or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, hazardous wastes, or solid wastes, at or from the Facility.

VII. DEFAULT

18. Brown Wood may request, and EPA and ADEM, in their sole discretion, may grant, up to two 15 day extensions of time for Brown Wood to perform any of the elements required by Section V (Compliance). Such extensions must be requested in writing no later than 30 days prior to the due date at issue and shall be submitted to the representatives of the United States and ADEM, with a copy to JGBF, as provided in Section XII (Notices and Submission) of this Consent Decree. A request for an extension of time does not toll the due date; if no response is received by the due date, the extension is deemed denied.

19. Notwithstanding the release of claims set forth in Paragraph 49, in the event that Brown Wood fails to fully comply with all obligations set forth in Section V of this Consent Decree within the specified time frame(s), or within any extension granted pursuant to Paragraph 18, such failure shall constitute a default. The failure of Brown Wood to timely submit the certification required pursuant to Paragraph 15 shall constitute a default. In the event that Brown Wood timely submits the certification required pursuant to Paragraph 15 but either the United States, ADEM, or JGBF contends that Brown Wood has failed to fully comply with all obligations set forth in Section V of this Consent Decree within the specified time frame(s), or within any extension granted pursuant to Paragraph 18, such party shall serve a written notice of default to all parties as provided in Section XII (Notices and Submission) of this Consent Decree within 30 days of the date of submission of the certification required pursuant to Paragraph 15.

20. In the event of default, Brown Wood shall be liable for a stipulated penalty of up to \$5,000 per day that Brown Wood fails to fully comply with all obligations set forth in Section V

of this Consent Decree within the specified time frame(s), unless excused under Section VIII (Force Majeure) or as provided in Paragraph 18.

21. Subject to the force majeure provisions of this Consent Decree, stipulated penalties under this Section shall begin to accrue on the day after performance is due and shall continue to accrue until performance is satisfactorily completed. Penalties shall accrue regardless of whether EPA or ADEM has notified Brown Wood that Plaintiffs have elected to seek enforcement of the Consent Decree upon default.

22. Brown Wood shall pay stipulated penalties to ADEM and the United States within 30 days of a written demand by either Plaintiff. Brown Wood shall pay 50 percent of the total stipulated penalty amount due to the United States and 50 percent to ADEM. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

23. ADEM or the United States may, in the unreviewable exercise of their discretion, reduce or waive stipulated penalties otherwise due that sovereign under this Consent Decree.

24. Stipulated penalties shall continue to accrue as provided in Paragraph 21, above, during any Dispute Resolution, but need not be paid until 30 days following the effective date of an agreement resolving the dispute or the receipt of EPA's or ADEM's decision or order resolving the dispute, in the amount determined to be owing, together with interest, to the United States or ADEM.

25. Brown Wood shall pay stipulated penalties owed to the United States by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to JGBF by the Financial Litigation Unit of the U.S. Attorney's Office

for the Northern District of Alabama, 1801 Fourth Ave. North, Birmingham, AL 35203-2101, telephone (205) 244-2015. At the time of payment, Brown Wood shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. Brown Wood Preserving Co., Inc., *et al.*, and shall reference the civil action number and DOJ case number 90-7-1-07281/1, to the United States in accordance with Section XII of this Decree (Notices and Submittals); by email to _____; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

26. Brown Wood shall pay stipulated penalties owed to ADEM by certified or cashier's check. Said penalty shall be made payable to the Alabama Department of Environmental Management and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

All checks shall reference Brown Wood's name and address, and the civil action number of this action.

27. If Brown Wood fails to pay stipulated penalties according to the terms of this Consent Decree, Brown Wood shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due through the date of payment. Nothing in this Paragraph shall be construed to limit ADEM or the United States from seeking any remedy otherwise provided by law for Brown Wood's failure to pay any stipulated penalties.

28. Subject to the provisions of Section XI of this Consent Decree (Effect of Decree; Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to ADEM or the United States for Brown Wood's violation of this Consent Decree.

29. The payment of stipulated penalties shall not alter or diminish Brown Wood's obligation to complete the performance of the actions described in this Consent Decree.

VIII. FORCE MAJEURE

30. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Brown Wood, of any entity controlled by Brown Wood, or of Brown Wood's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Brown Wood's best efforts to fulfill the obligation. The requirement that Brown Wood exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Brown Wood's financial inability to perform any obligation under this Consent Decree.

31. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Brown Wood shall provide notice orally or by electronic or facsimile transmission to the United States and ADEM within 72 hours of when Brown Wood first knew that the event might cause a delay. Within seven days thereafter, Brown Wood shall provide in writing to the United States and ADEM an explanation and description of the reasons for the delay; the anticipated duration of the delay; all

actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Brown Wood's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Brown Wood, such event may cause or contribute to an endangerment to public health, welfare or the environment. Brown Wood shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Brown Wood from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Brown Wood shall be deemed to know of any circumstance of which Brown Wood, any entity controlled by Brown Wood, or Brown Wood's contractors knew or should have known.

32. If the United States and ADEM agree that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by Plaintiffs for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. Plaintiffs will notify Brown Wood in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

33. If the United States and ADEM do not agree that the delay or anticipated delay has been or will be caused by a force majeure event, Plaintiffs will notify Brown Wood in writing of their decision.

34. If Brown Wood elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 days after receipt of Plaintiffs' notice.

35. Unanticipated or increased costs or expenses associated with the performance of Brown Wood's obligations under this Consent Decree shall not constitute a force majeure event. However, any delay in the performance of a compliance obligation resulting from the failure of a governmental permitting authority to issue a necessary permit or permit modification in a timely fashion shall qualify as a force majeure event, if Brown Wood has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or permit modification, including without limitation, submitting to the permitting authority all relevant and available information requested by such authority.

IX. DISPUTE RESOLUTION

36. The dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under or with respect to this Consent Decree. Brown Wood's failure to seek resolution of such a dispute under this Section shall preclude Brown Wood from raising any such issue as a defense to an action taken by ADEM or the United States as a result of Brown Wood's failure to fulfill its obligations under this Consent Decree.

37. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Brown Wood serves Plaintiffs with a written Notice of Dispute stating clearly the matter in dispute, or when the United States, ADEM, or JGBF serves a written notice of default pursuant to Paragraph 19. The period of informal negotiations shall not exceed 20 days from the date the dispute arises, unless that period is modified by written agreement. If

the parties cannot resolve a dispute by informal negotiations, then the position advanced by Plaintiffs shall be considered binding unless, within 15 days after the conclusion of the informal negotiation period, Brown Wood (or JGBF in the event that Plaintiffs reject a notice of default served by JGBF) invokes formal dispute resolution procedures as set forth below.

38. Formal Dispute Resolution. Brown Wood (or JGBF in the event that Plaintiffs reject a notice of default served by JGBF) shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the other parties a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Brown Wood's position and any supporting documentation relied upon by Brown Wood.

39. The United States, after consultation with ADEM (and Brown Wood or JGBF in event that the dispute involves a notice of default) shall serve a Statement of Position(s) within 45 days of receipt of the opening Statement of Position. Such Statement of Position(s) shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the submitting party. The Statement of Position served by the United States shall be binding unless Brown Wood (or JGBF in the event that Plaintiffs reject a notice of default served by JGBF) files a motion for judicial review of the dispute in accordance with the following paragraph.

40. Brown Wood (or JGBF in the event that Plaintiffs reject a notice of default served by JGBF) may seek judicial review of the dispute by filing with the Court and serving on Plaintiffs, in accordance with Section XII of this Consent Decree (Notices and Submittals), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 days of receipt

of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Brown Wood's (or JGBF's) position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

41. The United States, after consultation with ADEM, shall respond to Brown Wood's (or JGBF's) motion within the time period allowed by the Local Rules of this Court. If the dispute involves a notice of default, a response in support of the United States' position may also be filed by Brown Wood or JGBF, as the case may be. Brown Wood (or JGBF) may file a reply memorandum, to the extent permitted by the Local Rules.

42. Except as otherwise provided in this Consent Decree, the party challenging the United States' Statement of Position served pursuant to Paragraph 39 shall bear the burden of demonstrating that its position complies with this Consent Decree and furthers the expeditious achievement of the objectives of this Consent Decree and the JGBF Consent Decree. In any dispute regarding modification of this Consent Decree, the party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

43. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Brown Wood under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 24. If Brown Wood

does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Default).

X. ACCESS; INFORMATION COLLECTION AND RETENTION

44. The United States, ADEM, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into the facility at the Brownville Property, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of any preliminary site evaluation or other related activities conducted by JGBF in association with JGBF's ultimate cleanup of the Brownville Property;
- b. verify any data or information submitted to ADEM in connection with any preliminary site evaluation or other related activities conducted by JGBF in association with JGBF's ultimate cleanup of the Brownville Property;
- c. obtain samples and, upon request, splits of any samples taken by JGBF or its representatives, contractors, or consultants in connection with any preliminary site evaluation or other related activities conducted by JGBF in association with JGBF's ultimate cleanup of the Brownville Property;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess JGBF's compliance with the JGBF Consent Decree.

45. Until five years after the termination of this Consent Decree, Brown Wood shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or

its contractors' or agents' possession or control, that relate in any manner to the treatment, storage, and/or disposal of hazardous waste at the Brownville Property. This information retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or ADEM, Brown Wood shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

46. At the conclusion of the information-retention period provided in the preceding Paragraph, Brown Wood shall notify the United States and ADEM at least 90 days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or ADEM, Brown Wood shall deliver any such documents, records, or other information to EPA and/or ADEM. Brown Wood may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Brown Wood asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Brown Wood. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

47. Brown Wood may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to

any information that Brown Wood seeks to protect as CBI, Brown Wood shall follow the procedures set forth in 40 C.F.R. Part 2.

48. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or ADEM pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Brown Wood to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF DECREE; RESERVATION OF RIGHTS

49. This Consent Decree resolves the civil claims of the United States and ADEM against Brown Wood for the violations alleged in the Complaint filed in this action through the date of lodging of the Consent Decree.

50. The United States and ADEM reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 49. This Consent Decree shall not be construed to limit the rights of the United States or ADEM to obtain penalties or injunctive relief under RCRA, the corresponding state statutes, and their implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 49. The United States and ADEM further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Facility, whether related to the violations addressed in this Consent Decree or otherwise.

51. The United States and ADEM enter into this Consent Decree based, in part, on Brown Wood's representations regarding its financial condition. Notwithstanding any other

provision of this Consent Decree, the United States and ADEM reserve all rights to proceed against Brown Wood for the payment of civil penalties for the violations of RCRA alleged in the Complaint if the Financial Information provided by Brown Wood, or the financial certification made by Brown Wood in Section XIX is false or in any material respect, inaccurate. This right of the United States and ADEM shall be in addition to all other rights and causes of action, civil or criminal, that the United States or ADEM may have in such event.

52. Except as specifically provided by applicable statute or regulation, this Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Brown Wood is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits, and Brown Wood's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and ADEM do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Brown Wood's compliance with any aspect of this Consent Decree will result in compliance with provisions of RCRA, the corresponding state statutes, and their implementing regulations, or with any other provisions of federal, state, or local laws, regulations, or permits.

53. This Consent Decree does not limit or affect the rights of Brown Wood or of the United States or ADEM against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Brown Wood, except as otherwise provided by law.

54. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

55. Any information provided or obtained pursuant to this Consent Decree may be used by the United States or ADEM in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

XII. NOTICES AND SUBMITTALS

56. Unless otherwise specified herein, all notices and submittals required pursuant to this Consent Decree shall be transmitted via electronic or overnight mail, to:

TO THE UNITED STATES OF AMERICA:

Chief, Environmental Enforcement Section
United States Department of Justice
Environmental Enforcement Section
601 D Street, NW (for overnight mail)
Washington, D.C. 20044-7611
P.O. Box 7611 (for postal service)
Washington, D.C. 20004

Vera S. Kornylak
Associate Regional Counsel
United States Environmental Protection Agency
Region 4
Office of Environmental Accountability
61 Forsyth St., S.W., 13th Floor
Atlanta, Georgia 30303

TO ADEM:

Rebecca E. Patty
Associate General Counsel
Alabama Department of Environmental Management
1400 Coliseum Drive
Montgomery, Alabama

TO THE JAMES GRAHAM BROWN FOUNDATION, INC.:

Kim K. Burke
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202-3957

TO THE BROWN WOOD PRESERVING COMPANY, INC.:

David A. Owen
Greenebaum, Doll & McDonald PLLC
300 W. Vine Street, Suite 1100
Lexington, Kentucky 40507-1665

57. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

58. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIII. PUBLIC COMMENT

59. Final approval of this Consent Decree by the United States is subject to the public notice and comment requirements under RCRA and 28 C.F.R. § 50.7. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States and ADEM reserve the right to withdraw or withhold consent to this Consent Decree if the comments received disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Brown Wood consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision

of the Decree, unless the United States or ADEM has notified Brown Wood in writing that it no longer supports entry of the Decree.

XIV. COSTS

60. Each party shall bear its own costs and attorneys' fees in this action, except that the United States and ADEM shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Brown Wood.

XV. MODIFICATION

61. Non-material modifications of this Consent Decree may be made by agreement of EPA, ADEM, and Brown Wood. All such modifications shall be made in writing.

62. Material modifications of this Consent Decree shall only be made through written agreement between the United States, ADEM, and Brown Wood, with approval of the Court.

XVI. INCORPORATION

63. All attachments to this Consent Decree are deemed incorporated into, and made an enforceable part of this Decree.

XVII. RETENTION OF JURISDICTION

64. The Court shall retain jurisdiction of this matter to enforce the terms and conditions of the Consent Decree and for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree until termination of the Consent Decree or further Order of the Court.

XVIII. TERMINATION

65. This Consent Decree shall terminate when Brown Wood has attained and demonstrated, to the satisfaction of the United States and ADEM, full compliance with all the requirements set out in this Decree, subject to the provisions of Section IX (Dispute Resolution). The parties agree to submit a joint motion for termination of the Consent Decree upon such a showing.

XIX. CERTIFICATION

66. By signing this Consent Decree, Brown Wood certifies that it has submitted to the United States Financial Information that fairly, accurately and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to the United States and the time Brown Wood executes this Consent Decree.

XX. SIGNATORIES; SERVICE

67. Brown Wood shall identify on the attached signature page the name, address and telephone number of an agent who is authorized to accept service by mail of all documents on behalf of Brown Wood with respect to all matters arising under or relating to this Consent Decree, including the Complaint and this Consent Decree. Brown Wood waives formal service of process requirements of Federal Rule of Civil Procedure 4 and any applicable local Rules of this Court, including but not limited to, service of a summons.

68. The undersigned representative of Brown Wood certifies that such representative is fully authorized to enter into this Consent Decree and to execute and to legally bind Brown Wood. Brown Wood shall provide a copy of this Consent Decree to each of its officers and

directors. The United States and the State of Alabama certify that signature of the Consent Decree by all of its undersigned representatives constitutes full authorization to enter into the terms and conditions of this Consent Decree, to execute the Consent Decree on behalf of the United States and the State of Alabama, and to legally bind the United States and the State of Alabama.

69. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

XXI. FINAL JUDGMENT

70. Upon approval and entry of this Consent Decree by the Court, and there being no just reason for delay, this Consent Decree shall constitute a final judgment pursuant to FED. R. CIV. P. 54(b) and 58 as among the parties to this Consent Decree.

Dated and entered this _____ day of _____, 2008.

UNITED STATES DISTRICT JUDGE

FOR PLAINTIFF UNITED STATES OF AMERICA

DATE: 9-16-08

STEVEN A. KELLER
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DATE: 9/9/08

2

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United States Environmental
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DATE: 9/9/08

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FOR PLAINTIFF ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

DATE: 9/3/08

REBECCA E. PATTY
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Montgomery, Alabama 36110-2059

FOR DEFENDANT BROWN WOOD PRESERVING CO., INC.

DATE: 9/9/08

[Handwritten Signature]

FOR THE DEFENDANT JAMES GRAHAM BROWN FOUNDATION, INC.

Date: 9-3-08