

9693

7

DOCKET NUMBER	00000
APR 11 1996	
ALLEN	

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

PENTA WOOD PRODUCTS, INC.,

Defendant.

Civil Action No:

'96 C 0112 C

A TRUE COPY, Certified

APR 12 1996
Joseph W. Skapniewitz, Clerk
U. S. District Court
Western District of Wisconsin

CONSENT DECREE

By J. Lowe
Deputy Clerk

I. BACKGROUND

A. Plaintiff, the United States of America ("United States"), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the United States Environmental Protection Agency ("EPA"), herein simultaneously files a Complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA") against Penta Wood Products, Inc. ("Penta Wood").

B. The Complaint alleges that Penta Wood is liable to the United States for unreimbursed response costs that the United States has incurred in responding to the release or threat of release of hazardous substances at the Penta Wood Products Site ("Site") located in Burnett County, Wisconsin.

C. The Complaint alleges that hazardous substances as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), are

Copy of this document has been provided to: AUSA Cameli and Atty Payne this 12th day of April, 1996.

By J. Lowe
Deputy Clerk

present at the Site and that such hazardous substances have been or are threatened to be released into the environment from the Site.

D. The Complaint alleges that such releases or threatened releases required response actions to be undertaken at the Site by EPA pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and may require further response actions to be undertaken.

E. The Complaint alleges that in performing response actions, response costs have been incurred at or in connection with the Site and that additional response costs may be incurred.

F. The Complaint alleges that Penta Wood is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs incurred at or in connection with the Site.

G. The United States and Penta Wood (the "parties") agree that settlement of this action is in the public interest, and this Court, by entering this Decree, finds that settlement of this matter will avoid expensive and protracted litigation and that this Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the parties to this Decree and in consideration of the certifications herein, but without any admission as to any legal or factual contentions, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9604, 9607 and 9613(b). This Court also has personal

jurisdiction over Penta Wood. The Complaint of the United States states a claim upon which relief may be granted. Solely for the purposes of this Consent Decree, Penta Wood waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District and shall not challenge the entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

2. Venue is proper in this Court pursuant to 42 U.S.C. § 9613(b) and under 28 U.S.C. § 1391(b) and (c).

III. PARTIES BOUND

3. This Consent Decree shall be binding upon the United States and upon Penta Wood and its successors and assigns. The undersigned representative of Penta Wood represents that he or she is fully authorized to enter into the terms and conditions of this Decree and to bind legally such party to this document. Penta Wood consents to undertake all actions required by this Decree and consents to and will not contest the United States' authority to implement or enforce its terms. Any change in ownership or corporate or other legal status, including but not limited to any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Penta Wood under this Consent Decree.

IV. SETTLEMENT BETWEEN PENTA WOOD AND THE STATE OF WISCONSIN

4. Penta Wood hereby attests that it entered into a separate Stipulation and Judgment with the State of Wisconsin in the case of State of Wisconsin v. Penta Wood Products, Inc. and

listed in attached Appendix B represent the sum total of Penta Wood's remaining assets.

8. Penta Wood further certifies that on June 24, 1994, with the concurrence of EPA, it paid \$11,890 from the Initially Available Funds to BioTrol, Inc. in full satisfaction of Penta Wood's entire indebtedness to BioTrol, Inc. for a wastewater treatment unit (hereinafter the "BioTrol Unit"), and that Penta Wood owns the unit without encumbrances.

9. Penta Wood certifies that, since March 1, 1995, it has collected some limited additional funds as a result of efforts to collect accounts receivable. Penta Wood further certifies that it has certain additional outstanding accounts receivable, as set forth in paragraph 14.a, below, which must be collected before they are available for distribution.

10. Penta Wood further certifies that as of March 1, 1995, it owed its unsecured creditors approximately \$78,212.

11. Penta Wood further certifies that as of the date it signed this Decree, it owned a pentachlorophenol pressure vessel and an ACA pressure vessel.

12. Penta Wood certifies that, to the best of its knowledge and belief, 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). Provision of false, fictitious or fraudulent statements or representations to the United States may subject Penta Wood to criminal penalties under 18 U.S.C. § 1001.

VI. REIMBURSEMENT OF PAST RESPONSE COSTS

13. a. Within 30 days of the date of entry of this Consent Decree, Penta Wood agrees to pay to the United States \$37,400 in partial reimbursement of Past Response Costs by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing the DOJ Number 90-11-3-1369 and the U.S.A.O. file number 96V0039. "Past Response Costs" shall mean all costs, including direct and indirect costs, that EPA has incurred and paid in connection with the Site through the date of entry of this Consent Decree, plus accrued Interest on all such costs through such date. "Interest," in accordance with 42 U.S.C. § 9607(a), shall mean interest at the rate specified for interest on investments of the Superfund, compounded annually on October 1 of each year. Payment pursuant to this paragraph shall be made in accordance with instructions provided by the United States to Penta Wood upon execution of the Consent Decree. EFTs must be received at the U.S. DOJ lockbox bank by 11:00 A.M. (Eastern Time) in order to be credited on that day.

b. The United States agrees that if Penta Wood completely fulfills its obligations as specified in Paragraph 13a above, it may pay \$15,498 of any remaining Initially Available Funds to the State of Wisconsin, pursuant to the State Stipulation Agreement (Appendix A), and any additional remaining Initially Available Funds to other unsecured creditors.

c. Upon entry of this Consent Decree, Penta Wood hereby transfers full ownership of the BioTrol wastewater

treatment unit to EPA, in partial satisfaction of the United States' claim for Past Response Costs. EPA has been successfully using the BioTrol unit to treat wastewater in performing response actions at the Site.

14. a. Penta Wood shall make all necessary and reasonable good faith efforts to collect all outstanding Accounts Receivable for a period of one year following the date of entry of this Decree. "Accounts Receivable" shall include accounts receivable from "MacGillis and Gibbs" and "Other Land Contracts" as listed in Appendix B. "Accounts Receivable" shall not include the Initially Available Funds.

b. This subparagraph applies to all monies collected by Penta Wood from the receipt of Accounts Receivable and to the additional funds, referenced in Paragraph 9, above, that have already been collected. After paying all reasonable and necessary administrative expenses arising out of the collection, or the attempted collection, of Accounts Receivable, Penta Wood shall distribute the proceeds from the collection of any amounts collected and the additional funds referenced in Paragraph 9, above, as follows: Penta Wood shall pay fifty percent (50%) of any such amounts to the Superfund and fifty percent (50%) of any such amounts to the State of Wisconsin pursuant to the State Stipulation Agreement (Appendix A), until Penta Wood has paid \$9600 to the Superfund and \$9600 to the State of Wisconsin. "Reasonable and necessary administrative expenses" shall include real estate brokerage fees, marketing fees, postage, and fees of

Penta Wood's counsel specifically related to the collection of Accounts Receivable and to compliance with Section XIII of this Consent Decree (Notices and Submissions). Payment pursuant to this Paragraph shall be made by Penta Wood to the Superfund on a monthly basis, in accordance with the instructions in Paragraph 16.

c. Penta Wood estimates that after it pays \$9600 into the Superfund and to the State pursuant to subparagraph b of this paragraph, an additional \$49,991 may be collected by Penta Wood through its efforts under this Decree to collect all Accounts Receivable. Of this \$49,991 amount (or any lesser amount collected by Penta Wood pursuant to the requirements in subparagraph b), Penta Wood shall pay fifty percent (50%) to its creditors, and fifty percent (50%) to the Superfund, on a monthly basis, as such funds become available, until Penta Woods has concluded its efforts to collect all Accounts Receivable as required by subparagraph a of this paragraph.

d. Provided it has complied with its obligations under this Paragraph to make all necessary and reasonable good faith efforts to collect all Accounts Receivable, Penta Wood may cease its efforts to collect any remaining Accounts Receivable one year after the date of entry of this Decree. At such times, Penta Wood shall, at the option of EPA and/or the State of Wisconsin, assign any uncollected Accounts Receivable to one or both entities, as those entities may agree between themselves, pursuant to a memorandum of understanding.

15. Penta Wood shall advertise the sale of the pentachlorophenol pressure vessel and the ACA pressure vessel and shall make all necessary and reasonable good faith efforts to sell the vessels for a period of one year following the date of entry of this Decree. If either vessel is sold (or if they are sold together) Penta Wood shall pay ninety-five percent (95%) of the sum received for such vessel(s) to the Superfund, within 14 days of receipt of such sum in accordance with the payment instructions in Paragraph 16. If Penta Wood sells one such vessel, it shall continue its efforts to sell the other, and shall fully comply with the requirements of this Paragraph for both such vessels. If Penta Wood is unable to sell either or both of the vessels in the one-year period provided, at the end of that period Penta Wood shall, at EPA's option, convey full ownership of such pressure vessel(s) to EPA, at no charge.

16. a. All payments made pursuant to Paragraphs 14 and 15 shall be mailed by the end of the first week of every month, until termination of this Decree pursuant to Paragraph 29. Accompanying each monthly payment, or if no payment is made, Penta Wood shall provide a monthly written report to EPA and to the Department of Justice (at the addresses listed in Section XIII) regarding the performance of its obligations under this Decree, and shall specifically describe its good faith efforts to collect all Accounts Receivable, and sell the pentachlorophenol pressure vessel and the ACA pressure vessel. This monthly report shall also contain a detailed description of Penta Wood's

advertising efforts and shall list all offers made to Penta Wood regarding the purchase of the pentachlorophenol pressure vessel and the ACA pressure vessel.

b. Each payment required pursuant to Paragraphs 14 and 15 shall be made by certified or cashier's check made payable to "EPA-Hazardous Substance Superfund." The check shall reference the name and address of Penta Wood, the site name and identification number (Penta Wood Products, Inc, Superfund Site # WE) and the civil action number for this action and shall be sent by Penta Wood to:

United States Environmental Protection Agency, Region V
Attention: Superfund Accounting
Regional Superfund Lockbox
P.O. Box 70753
Chicago, Illinois 60673

Penta Wood shall simultaneously send a copy of its check to the United States as provided in Section XIII (Notices and Submissions).

17. If at any time in the future, Penta Wood comes into possession of income of any kind, and that income is not payable to the State or to others under this Consent Decree or the State Stipulation Agreement, then, unless the United States and the State inform Penta Wood otherwise in writing, fifty percent (50%) of the income shall be payable to the United States and fifty percent (50%) of the income shall be payable to the State within ten days of its receipt by Penta Wood. Such income may include, but is not limited to, proceeds from insurance, sales of land or of the facility, sales of any other assets, or the receipt of any

other accounts receivable. At no time shall Penta Wood ever pay to any member of the Penta Wood Board of Directors any salary, dividends, expenses, or other payments, except as specifically permitted under the terms of this Consent Decree or the State Stipulation Agreement.

VII. STIPULATED PENALTIES AND INTEREST

18. a. If any payment required under Paragraphs 13, 14, and 15 of this Decree is not paid by the required date, Penta Wood shall pay to EPA, as a stipulated penalty, \$200.00 per day for each day that such payment is late. If Penta Wood does not comply with any other requirement of this Decree, then Penta Wood shall pay to EPA, as a stipulated penalty, \$500.00 per violation per day of such noncompliance.

b. Stipulated penalties are due and payable within 30 days of Penta Woods' receipt from EPA of a demand for payment of such penalties. All payments to EPA under this Paragraph shall be made in accordance with the requirements of Paragraph 16b. Penalties shall accrue as provided above regardless of whether EPA has notified Penta Wood of the violation(s) or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due, or the day a violation occurs, and shall continue to accrue through the final date of full correction of the noncompliance or completion of the activity. The payment of stipulated penalties shall in no way alter Penta Wood's obligation to complete the performance required under this Consent Decree. Nothing herein shall prevent

the simultaneous accrual of separate penalties for separate violations of this Decree. If Penta Wood invokes the dispute resolution procedures in Section VIII of this Decree, stipulated penalties shall continue to accrue, but payment shall be stayed pending final resolution of the dispute. If Penta Wood does not prevail in the dispute, stipulated penalties shall be assessed and paid as provided for in this subparagraph.

c. In addition to the above stipulated penalties, Interest, as defined in Paragraph 13a, shall continue to accrue on any unpaid balance of any late payment, through the date payment in full is mailed.

d. Payments made pursuant to this Section shall be in addition to any other remedies or sanctions available to the United States by virtue of Penta Wood's failure to make timely payments required by this Decree. Penta Wood shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Consent Decree or otherwise obtain such payments; except, Penta Wood shall not be liable for such costs in the proportion and to the extent that Penta Wood prevails in any disputed issue pursuant to Section XIII, unless otherwise ordered by the Court.

VIII. DISPUTE RESOLUTION

19. The dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under or with respect to this Decree.

a. Any dispute which arises with respect to this Decree shall in the first instance be the subject of informal negotiations between Penta Wood and EPA. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless such time is extended by written agreement of EPA and Penta Wood. The dispute shall be considered to have arisen when one party sends the other party a written Notice of Dispute. All such Notices sent by Penta Wood to EPA shall also be sent to the Department of Justice at the address provided in Section XIII.

b. If the dispute is not resolved through informal negotiations under the preceding subparagraph, then the position advanced by EPA shall be considered binding unless, within 20 days after the conclusion of the informal negotiation period, Penta Wood invokes the formal dispute resolution procedures of this Section by serving on EPA and the Department of Justice a written Statement of Position on the matter in dispute, including, but not limited to, any factual information and opinion supporting that position and any supporting documentation relied upon by Penta Wood.

c. After receipt of Penta Wood's Statement of Position, EPA will serve on Penta Wood its Statement of Position, including, but not limited to, any factual information, opinion, and supporting documentation relied upon by EPA.

d. Following receipt of Penta Wood's Statement of Position, a Branch Chief in the Office of Superfund, Remedial

Response Branch, EPA Region V, will issue to Penta Wood a written decision on the dispute (the "Written Decision"). This Written Decision shall be binding upon Penta Wood and shall not be subject to judicial review unless, within 20 days of the service upon Penta Wood of the Written Decision, Penta Wood serves upon the United States and files with this Court a motion challenging the decision. Such motion shall be served upon the United States as provided in Section XIII (Notices and Submissions). The United States shall have 60 days from the date of service to serve and file a response to Penta Wood's motion, and Penta Wood's motion shall inform the Court of this provision regarding the length of time allowed for a response.

e. Judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

IX. COVENANT NOT TO SUE BY THE UNITED STATES

20. Except as otherwise provided in this Decree, upon Penta Wood's compliance with all provisions of this Decree and payment of all amounts required under Section VI (Reimbursement of Past Response Costs) and Section VII (Stipulated Penalties and Interest), the United States covenants not to sue, maintain suit, or take administrative action against Penta Wood for any and all civil liability to the United States for the Site (1) for reimbursement of "Past Response Costs," as defined in Paragraph 13a, under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and (2) for civil penalties under Section 106 of CERCLA regarding Penta Wood's compliance with a unilateral administrative order by U.S.

EPA on August 12, 1993. Resolution of Penta Wood's liability under this Paragraph is conditioned upon the accuracy and adequacy of Penta Wood's March 1, 1995 Statement of Net Assets and Schedule of Assets (Appendix B hereto) and Penta Wood's certifications in Section V of this Decree. This Paragraph is null and void if the United States determines that any such information or certifications are materially false or incomplete. Provision of false, fictitious, or fraudulent statements or representations to the United States may subject Penta Wood to criminal penalties under 18 U.S.C. § 1001.

X. RESERVATIONS OF RIGHTS

21. Except as provided in Section IX above, nothing contained herein shall in any way limit or restrict the response or enforcement authority of the United States, including EPA, to initiate appropriate action, either judicial or administrative, under Sections 104, 106, and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606, 9607, or any other provision of law, against Penta Wood or against any other person or entity not a party to this Decree. The covenant not to sue set forth in Paragraph 20 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Decree is without prejudice to, all rights against Penta Wood with respect to all other matters, including but not limited to the following:

a) liability for failure by Penta Wood to meet any requirement of this Decree;

b) liability for costs that have been or may be incurred at or in connection with the Site by the United States that are not within the definition in Paragraph 13a of "Past Response Costs;"

c) liability for damages for injury to, destruction of, or loss of natural resources, as defined in Section 101(6) of CERCLA, 42 U.S.C. § 9601(6), and for the costs of any natural resource damage assessments;

d) liability arising from any future disposal, release or threat of release of a hazardous substance, pollutant or contaminant at the Site;

e) criminal liability; and

f) liability for past, present or future violations of federal or state law other than the liability specifically resolved by this Decree.

22. Nothing in this Decree 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 Decree.

23. Nothing in this Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. The

United States and Penta Wood reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which either may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

XI. COVENANTS BY PENTA WOOD

24. Penta Wood hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States and its officials, contractors, subcontractors, and employees, with respect to "Past Response Costs," or this Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Superfund through Sections 106(b)(2), 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, or 9613, or any other provision of law, any claim against any department, agency or instrumentality of the federal government pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, related to "Past Response Costs" or any claims arising out of response activities at the Site. Nothing in this Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 CFR 300.700(d).

XII. CONTRIBUTION PROTECTION

25. With respect to claims for contribution against Penta Wood, Penta Wood is entitled, as of the effective date of this Decree, 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 "Past Response Costs" as defined in Paragraph 13a. Such protection is conditioned upon Penta Wood's compliance with the requirements of this Decree. Penta Wood agrees that with respect to any suit or claim for contribution brought against it for matters related to this Decree, Penta Wood will notify the United States in writing within 10 days of service of the complaint on it. In addition, Penta Wood shall notify the United States 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 Decree.

26. In any subsequent administrative or judicial proceeding initiated by EPA or the United States on behalf of EPA for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Penta Wood 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 action; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in Section XI.

XIII. NOTICES AND SUBMISSIONS

27. Whenever, under the terms of this Consent Decree, 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 party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and Penta Wood, respectively.

As to the United States:

John J. Breslin, Assistant Regional Counsel
U.S. Environmental Protection Agency
77 W. Jackson Blvd., C-30A
Chicago, Illinois 60604

and

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
Re: DJ# 90-11-3-1369

As to Penta Wood:

Vernon C. Lundequam
820 Pine Street
Grantsburg, WI 54840

XIV. PUBLIC COMMENT

28. This Decree shall be subject to a thirty-day public comment period. The United States may modify or withdraw its consent to this Decree if comments received disclose facts or

considerations which indicate that this Decree is inappropriate, improper or inadequate.

IV. EFFECTIVE DATE

29. The effective date of this Consent Decree shall be the date on which the Court enters this Decree.

XVI. TERMINATION

30. This Decree shall remain effective until Penta Wood has fully complied with all requirements hereunder. Upon the complete satisfaction of all of the requirements of this Decree, and after at least 60 days written notice to the United States, Penta Wood may move this Court for a termination of this Decree. If the Court determines that Penta Wood has satisfied all of its obligations hereunder, the Court may terminate this Decree.

XVII. CONTINUING JURISDICTION

31. The Court retains jurisdiction to enforce the terms of this Decree.

Dated and entered this 11th day of April, 1996.

Marshall W. Crabbe
UNITED STATES DISTRICT COURT JUDGE

FOR THE UNITED STATES OF AMERICA

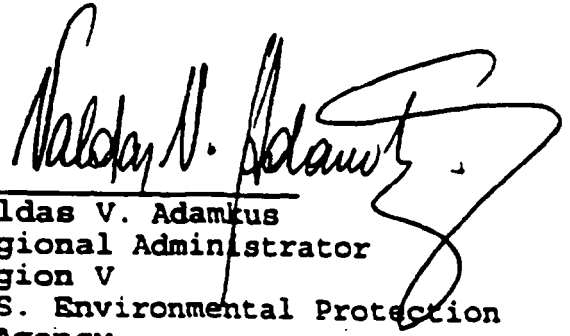
Date: 12/20/91-

L. J. Schiffer
Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Leslie Allen
Leslie Allen
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611 Ben Franklin Station
Washington, DC 20044-7611
(202) 514-4114

Peg Lautenschlager
United States Attorney
Western District of Wisconsin

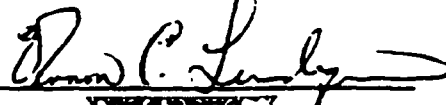
M. A. Cameli
Mark A. Cameli
Assistant United States Attorney
550 West Washington Ave., Suite 200
P.O. Box 1585
Madison, WI 53701-1585
(608) 264-5158

A handwritten signature in black ink, appearing to read "Valdas V. Adamkus". The signature is written in a cursive style with a large, sweeping flourish at the end.

Valdas V. Adamkus
Regional Administrator
Region V
U.S. Environmental Protection
Agency
77 W. Jackson Blvd.
Chicago, IL 60604

FOR PENTA WOOD PRODUCTS, INC.

Date: 9/26/95


~~XXXXXXXXXX~~
Vernon C. Lundequam
Its Secretary
820 South Pine Street
Grantsburg, Wisconsin 54840

APPENDIX A

(Note: Exhibits to State Stipulation
have not been included.)

STATE OF WISCONSIN

CIRCUIT COURT

BURNETT COUNTY

STATE OF WISCONSIN,
123 West Washington Avenue
Post Office Box 7857
Madison, Wisconsin 53707-7857

Plaintiff,

v.

Case No. _____

PENTA WOOD PRODUCTS, INC.,
a domestic corporation, and
VERNON C. LUNDEQUAM,
820 Pine Street
Grantsburg, Wisconsin 54840

Unclassified: 30703

Defendants.

STIPULATION AND ORDER FOR JUDGMENT

The plaintiff State of Wisconsin (State) brought this civil action against the defendants Penta Wood Products, Inc. (PWP) and Vernon C. Lundequam (Lundequam) seeking forfeitures and injunctive relief for the defendants' violations of the State's hazardous waste and hazardous substance spill laws. The parties now wish to settle this matter by agreement and avoid further expense and litigation and, therefore, enter into this stipulation.

A separate settlement agreement between the defendants herein and the United States of America has been achieved under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and has been, or shortly will be, filed with the court in the Western District of Wisconsin. The separate settlement agreement [hereinafter the "USA/PWP Consent Decree"] is intended to resolve claims by the USA against the defendants which arise out of the same facts and circumstances as those which form

the basis of the State's complaint. The parties to this stipulation intend that certain assets of defendant PWP remain available for distribution to the USA and others pursuant to the terms of the USA/PWP Consent Decree, and that the terms of this stipulation be construed to be consistent with the terms of the USA/PWP Consent Decree, a copy of which is attached hereto as Exhibit A.

IT IS HEREBY STIPULATED AND AGREED between the parties, the State by its attorneys James E. Doyle, Attorney General, and Lorraine C. Stoltzfus, Assistant Attorney General, and defendants PWP and Lundequam by their attorneys James A. Payne and Theodore A. Franti, that this case shall be settled on the following terms and conditions:

1. The Burnett County Circuit Court has both personal and subject matter jurisdiction over the defendants named in the State's complaint.

2. Judgment on the Complaint shall be entered and, subject to the terms of Exhibit A, defendant PWP shall pay forfeitures and statutory penalty assessments to the State of Wisconsin totalling \$25,000, and costs of \$98. The first \$15,498 of this amount shall be paid to the State no later than thirty days after the entry of this judgment by the court. Payment shall be by check made payable to the "State of Wisconsin" and submitted to Lorraine C. Stoltzfus at the Wisconsin Department of Justice, P.O. Box 7857, Madison, WI 53707-7857. The State agrees that all "Initially Available Funds," as defined in paragraph 7 of Exhibit A, which remain available to defendant PWP after its initial payment of \$15,498, may be reserved

for later payment to the USA or others pursuant to the terms of the USA/PWP Consent Decree as set forth in paragraph 13 of Exhibit A.

3. Pursuant to paragraph 14 of Exhibit A, which is incorporated herein by reference, defendant PWP shall pay 50% of any monies collected to the State until \$9,600 has been paid to the State of Wisconsin. Payment shall be made by PWP to the State on a monthly basis, in accordance with the instructions for payment at para. 2 of this Stipulation.

4. Defendant Lundequam will pay forfeitures and statutory penalty assessments to the State of Wisconsin totalling \$5,000. The State will forego \$500 of that amount if Lundequam does not accept payment for the \$836 currently owed to him by PWP for expenses. By signing this stipulation, defendant Lundequam certifies that he has not accepted and will not accept payment from PWP for the \$836 currently owed to him for expenses.

5. The State will forego \$750 of Lundequam's payment in return for his efforts in selling PWP's assets from July 1, 1994, to the date of entry of this Judgment. The State will further forego up to a maximum of another \$750 of that amount in return for Lundequam's good faith efforts to sell the treatment vessels and to collect PWP's remaining accounts receivable, as described in paras. 14 and 15 of Exhibit A. Lundequam's efforts shall be deemed to be worth \$25 per hour. Lundequam shall provide quarterly statements to counsel for the State indicating how much time he spent in these efforts and how the time was spent. These quarterly statements shall be provided to counsel for the State on the dates of December 31, March 31, June 30, and September 30 for a period of one year

following the date of entry of this Judgment. After that year, any amount that has not been worked off as described above shall be owed to the State as cash payments, payable according to the schedule outlined in paragraph 6 below.

6. Defendant Lundequam shall pay to the State in cash the sum of \$3,000 plus any amounts not foregone as described in paragraphs 4 and 5 above. Payment shall be by check made payable to the "State of Wisconsin" and submitted to Lorraine C. Stoltzfus at the Wisconsin Department of Justice, P.O. Box 7857, Madison, WI 53707-7857. Payment shall be according to the following schedule:

A. A lump sum of \$750 shall be paid to the State within thirty days of entry of this Judgment.

B. The remaining amount shall be payable at \$750 per year, to be paid each year no later than September 1 of that year, beginning with the calendar year of 1996.

7. This Stipulation and Judgment as approved by the court shall apply to, and be binding on, the parties and on their successors and assigns.

8. Compliance by defendants with the terms of this Stipulation and with the Judgment entered pursuant to this Stipulation shall resolve any liability defendants may have for the violations alleged and the claims made in the complaint filed in this action, and for any violations or claims arising out of the same facts and circumstances which could have been alleged or made, provided that the financial information given to the State as of June 14, 1994, and March 1, 1995, for PWP and June 15, 1994, for

Lundequam [See Exhibits B, C, and D] is, to the best of the defendants' knowledge, substantially true and correct.

9. No release of liability shall be effective as to the defendants if at any time subsequent to the execution of this Stipulation the State discovers that any of the financial statements relied on in agreeing to the Stipulation herein were not substantially true and correct to the best of the defendants' knowledge.

10. No release of liability shall be effective as to the defendants if at any time subsequent to the execution of this Stipulation the State discovers that defendants have liens and encumbrances against their personal and real property, filed prior to the execution date of this Stipulation, which were not disclosed by defendants in their financial information provided to the State.

11. If at any time in the future, defendant PWP comes into possession of income of any kind, and that income is not payable to the USA or to others under the USA/PWP Consent Decree attached hereto as Exhibit A, then the income shall be payable to the State of Wisconsin within ten days of its receipt by PWP, for the State's Environmental Repair Fund. Such income may include but is not limited to proceeds from insurance, sales of land or of the facility, sales of any other assets, or the receipt of any other accounts receivable. At no time shall defendant PWP ever pay to any member of the PWP Board of Directors any salary, dividends, expenses, or other payments, except as specifically permitted under the terms of this agreement or the attached USA/PWP Consent Decree.

12. Nothing herein shall be construed to preclude the parties from pursuing any further legal action to enforce the terms of this Stipulation.

13. The accompanying Judgment may be entered incorporating the terms of this Stipulation without further notice or proceedings and without costs to either party.

Dated: _____

James E. Doyle
Attorney General

Dated: 10-4-95

Popham, Haik

Lorraine C. Stoltzfus
Assistant Attorney General
State Bar No. 1003676
Attorneys for Plaintiff

James A. Payne
Attorney at Law (Minnesota)
State Bar No. 84621
Attorneys for Defendants

Dated: 9-27-95

Theodore A. Franti
Theodore A. Franti
State Bar No. _____
Attorney for Defendants

Dated: September 26, 1995

Vernon C. Lundequam
Vernon C. Lundequam, individually

Dated: September 26, 1995

Vernon C. Lundequam SECRETARY
On behalf of defendant PWP

Order For Judgment

The terms and conditions of the foregoing Stipulation are hereby accepted by the court and the court orders that judgment be entered accordingly.

Dated this _____ day of _____, 1995.

By the court:

Honorable James A. Taylor
Circuit Court Judge

STATE OF WISCONSIN
123 West Washington Avenue
Post Office Box 7857
Madison, Wisconsin 53707-7857

Plaintiff,

v.

Case No. _____

PENTA WOOD PRODUCTS, INC.,
a domestic corporation, and
VERNON C. LUNDEQUAM,
820 Pine Street
Grantsburg, Wisconsin 54840

Unclassified: 30703

Defendants.

JUDGMENT

Based on the stipulation of the parties and the court's order, judgment is hereby granted in favor of the plaintiff, State of Wisconsin, and against defendants, Penta Wood Products, Inc., and Vernon C. Lundequam. Judgment is granted against defendant Penta Wood Products, Inc., in the amount of forfeitures of Twenty Thousand Eight Hundred Thirty-Three Dollars and Thirty-Four Cents (\$20,833.34), plus a 20% penalty assessment of Four Thousand One Hundred Sixty-Six Dollars and Sixty-Six Cents (\$4,166.66), and costs of Ninety-Eight Dollars (\$98), for a sum total of Twenty-Five Thousand and Ninety-Eight Dollars (\$25,098).

Judgment is granted against defendant Lundequam in the amount of forfeitures of Four Thousand One Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$4,166.67), plus a 20% penalty assessment of Eight Hundred Thirty-Three Dollars and Thirty-Three Cents (\$833.33), for a sum total of Five Thousand Dollars (\$5,000).

Dated this _____ day of _____, 1995.

BY THE COURT:

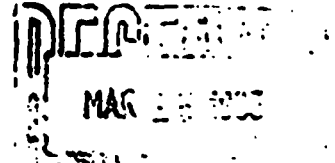
Terri Stone
Clerk of Circuit Court
Burnett County

APPENDIX B



Penta Wood Products, Inc.

8682 State Road 70
Strom, Wisconsin 54872



715-349-2134
715-349-2464

March 13, 1995

Mr. James Payne
Popham-Haik-Schnobrich & Kaufman, Ltd.
222 South Ninth Street
Suite 3300
Minneapolis, Mn. 55402

Dear Mr. Payne,

The attached are a true and complete list of the assets and liabilities of Penta Wood Products, Inc. as of the first day of March 1995. To the best of my knowledge all figures are included. The 40 acres that Taylor wants to return is being worked on by Crex Realty.

Yours very truly,

A handwritten signature in dark ink, appearing to read 'Vernon C. Lundequam', with a long horizontal flourish extending to the right.

Vernon C. Lundequam



Posts - Poles - Building Materials



Pressure Treated With Penta or Chemonite



Penta Wood Products, Inc.

Siren, Wisconsin 54872

715-349-2434
715-349-2464

Penta Wood Products, Inc.
STATEMENT OF NET ASSETS
MARCH 1, 1995

Prepared By		Date
Adjusted By		

CASH IN BANK	80098.83
ACCOUNTS RECEIVABLE	21012.00
LAND CONTRACTS RECEIVABLE (APPROX)	2699.00
EQUIPMENT	0.00
TOTAL ASSETS	103809.83
LESS LIABILITIES	
UNSECURED CREDITORS	27049.09
NET ASSETS	76760.74



Posts · Poles · Building Materials



Pressure Treated With Penta or Chemonite

(-)



Penta Wood Products, Inc.

Siren, Wisconsin 54872

715-349-2434
715-349-2464

PENTA WOOD PRODUCTS, INC.
SCHEDULE OF ASSETS
MARCH 1, 1995

Prepared By		Date	
Approved By			

ACCOUNTS RECEIVABLE

MacGibbin & Gibbs	Merchandise	16,412.00
Taylor Investment Corp.	40 Acres Land	4,520.00

NOTE: TAYLOR NOW WANTS TO RETURN
THIS 40 ACRE TRACT AND GET THEIR
MONEY BACK WORKING WITH REALTOR TO
COMPLETE SALE.

LAND CONTRACT RECEIVABLE

Phillip Hanks	129,350.00
JANE LAY	140,550.00

LANDS:

Plant site DANIEL TOWNSHIP	(UNKNOWN)
----------------------------	-----------

TOTAL 737,110.00





Penta Wood Products, Inc.

Siren, Wisconsin 54872

715-349-2434

715-349-2464

Penta Wood Products, Inc.
SCHEDULE OF ASSETS
March 1, 1995

Prepared By	100-011	Date
Approved By		

EQUIPMENT	EST. VALUE	SALE VALUE	
PART Poles	500		FUNDS PUT IN (CASH ON HAND)
FUEL HOG	500		FUNDS PUT IN (CASH ON HAND)
CHIPPER	500		FUNDS PUT IN (CASH ON HAND)
BEETLE UNIT		TRANSFERRED TO P.A.	
PARTS TAXI TRUCK			(UNKNOWN)
ACZA TRACTOR			(UNKNOWN)
MISC. RIDG			(UNKNOWN)
		TOTAL	0

THE FUEL HOG WAS SOLD AND MONEY DEPOSITED ON 11/2/93
 BUYER DID NOT PICK UP TILL MAY 4, 1994. DUE TO DELAYS BY
 EPA FINA ON T... COPY OF CHECK AND DEPOSIT TICKET ENCLOSED



Posts · Poles · Building Materials



Pressure Treated With Penta or Chemonite

C-4



Penta Wood Products, Inc.

Siren, Wisconsin 54872

715-349-2534
715-349-2564

CHECKS ISSUED SINCE 6/14/94

Prepared By	
Approved By	

1	2	3	4	5	6
					8.6.8 71,961.11
6/24/94	Biopro Corp.	PAYMENT FOR AGREEMENT W/EPB			1189.00
4/19/95	Wisconsin Dept of Revenue	MIN. TAXES (Income)			25.00
4/19/95	U.S. Postmaster	POSTAGE			32.00
					<u>1194.70</u>

REG. 1099-INTS LIQS FOR CHEMICALS SINCE 6/14/94

6/15/94	CRAZY REALTY, INC	CONTRACT PURCHASE OF LAND			4764.72
6/27/94	JANICE LAY	(LAND CONTRACT)			100.00
9/15/94	JANICE LAY	(LAND CONTRACT)			300.00
10/20/94	Post Office	7000 (MOSAIC) 4500 (CHILDREN'S BOOK)			14520.00
1/12/95	JANICE LAY	(LAND CONTRACT)			200.00
2/25/95	JANICE LAY	(LAND CONTRACT)			200.00
					<u>20084.72</u>
				CHECKING BAL 3/1/95	\$90098.73



Posts · Poles · Building Materials




Pressure Treated With Penta or Chemonix

ITEMS	QUANTITY	UNIT PRICE	TOTAL
NO Forest Prod			
Spec to order			
Weekday			
Hand Cut			
and Chtered			
Reming			
70% Huming			
(Nancy, Will, Gary)			
TOTAL			1550.00

8132

79-973/918



RAND FOREST PRODUCTS
P.O. BOX 97 PHONE 866-8320
WEBSTER, WISCONSIN 54993

10/22 1993

PAY TO THE ORDER OF Penta Wood Products, Inc. \$ 8000.00

Eight thousand and no/100 DOLLARS

First American Bank Wisconsin
Member Bremer Financial Corporation
P.O. Box 688
Siren, Wisconsin 54872

FOR Truck

David J. Bond

⑈008132⑈ ⑆091809731⑆ 30 649 8⑈

JANICE E. LAY
L-000-368-210-406
PHONE 430-0165
10560 - 62ND ST N.
STILLWATER, MN 55082

2410

17-7000/2910
BRANCH 18

PAY TO THE ORDER OF _____ \$ _____

_____ DOLLARS

TCF BANK 2989 White Bear Ave.
Maplewood, MN 55109

FOR _____

⑆29107000⑆ ⑆6851038594⑆ 2410

DAVID OR NANCY CHENAL
C540-1735-4292-00 C540-8325-6709-07
BOX 220 PH. 327-8977
FREDERIC, WI 54837

8304

79-973/918

10/29 1993

Pay to the order of Penta Wood Products, Inc. \$ 700.00

Seven hundred Dollars

FIRST AMERICAN BANK WISCONSIN
MEMBER BREMER FINANCIAL CORPORATION
P.O. BOX 648 PH. 327-4756
FREDERIC, WISCONSIN 54837

FOR Hog

David J. Bond

⑆091809731⑆ 30 639 9⑈ 8304

C-6