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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IV**

IN THE MATTER OF:)	AGREEMENT
)	
Brunswick Wood Preserving Site)	U.S. EPA Region IV
Brunswick, Glynn County, Georgia)	CERCLA Docket No.
)	<u>CER-04-2004-3750</u>
Kerr-McGee Chemical L.L.C.,)	PROCEEDING UNDER SECTION
SETTLING PARTY)	122(h)(1) OF CERCLA
)	42 U.S.C. §9622(h)(1)

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated by EPA Region 4 Regional Delegation No. 14-14-D from the Regional Administrator of EPA Region 4 ultimately to the Chief of the CERCLA Program Services Branch (renamed as Superfund Enforcement and Information Management Branch). This Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Associate Attorney General, U.S. Department of Justice ("DOJ").

2. This Agreement is made and entered into by EPA and Kerr-McGee Chemical L.L.C. ("Settling Party"). Settling Party consents to and will not contest the authority of the United States to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Brunswick Wood Preserving Site ("Site") located in Brunswick, Glynn County, Georgia. The Site has also occasionally in the past been referred to as the Escambia Wood Preserving Site - Brunswick. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future. EPA performed an extensive four-year removal involving the excavation and off-site shipment of large volumes of contaminated soil, followed by a full Remedial Investigation and Feasibility Study. For purposes of implementing the remedial action, EPA has defined two operable units. Operable Unit One

will primarily address risks posed to human health from contaminated soils and groundwater site-wide. Following completion of the Baseline Ecological Risk Assessment, Operable Unit Two will primarily address ecological risks posed to Burnett Creek and the surface water pathway. In a Record of Decision ("ROD") for Operable Unit One dated June 19, 2002, EPA selected a remedial action that generally consists of a cap over contaminated on-site soils, the solidification and/or stabilization of materials beneath the cap, and the construction of subsurface barriers to contain contaminated groundwater. As of the date of this Agreement, no ROD has been issued for Operable Unit Two.

5. In performing response action at the Site, EPA has incurred response costs and will incur additional response costs in the future.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs incurred and to be incurred at the Site.

7. EPA and Settling Party recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party in accordance with this Agreement do not constitute an admission of any liability by Settling Party. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

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

IV. STATEMENT OF PURPOSE

9. By entering into this Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Party to make a cash payment to resolve its alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, subject to the reservations of rights included in Section IX (Reservations of Rights by EPA).

V. DEFINITIONS

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

a. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.

e. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

f. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral or a lower case letter.

g. "Parties" shall mean EPA and Settling Party.

h. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, et seq. (also known as the Resource Conservation and Recovery Act).

i. "Section" shall mean a portion of this Agreement identified by a roman numeral.

j. "Settling Party" shall mean Kerr-McGee Chemical L.L.C.

k. "Site" shall mean the Brunswick Wood Preserving Superfund Site, encompassing approximately 84 acres of surface area near the intersection of Burnett Creek and Perry Lane Road, in Brunswick, Glynn County, Georgia and generally shown on the maps included in Appendix A and denominated as "Figure No. 1-1" and "Figure No. 2-2," including all areas addressed and to be addressed in Operable Unit One and Operable Unit Two.

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

VI. REIMBURSEMENT OF RESPONSE COSTS

11. Within 30 days of the effective date of this Agreement as defined by Paragraph 34, Settling Party shall pay to the EPA Hazardous Substance Superfund \$345,000. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") as follows:

Account # 375-021-7962
 Lockbox # 100142
 Routing Transit # 111-0000-12

Such wire transfer shall be accompanied by a statement identifying the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID # 04QF and the EPA docket number for this action.

At the time of payment, Settling Party shall send notice that such payment has been made to:

Gregory D. Luetscher
 Associate Regional Counsel
 Office of Legal Support
 U.S. EPA Region 4
 Atlanta Federal Center
 61 Forsyth Street, S.W.
 Atlanta, Georgia 30303

Paula V. Batchelor
 U.S. EPA Region 4
 Waste Management Division
 Superfund Enf. & Info. Mgmt. Branch
 Atlanta Federal Center
 61 Forsyth Street, S.W.
 Atlanta, Georgia 30303

12. The total amount to be paid pursuant to Paragraph 11 shall be deposited in the Brunswick Wood Preserving Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH AGREEMENT

13. If Settling Party fails to make the payment under Paragraph 11 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

14. If any amount due under Paragraph 11 is not paid by the required date, Settling Party shall be in violation of this Agreement and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 13, \$5,000.00 per violation per day that such payment is late.

15. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous

Substance Superfund." The check, or a letter accompanying the check, shall identify the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID #04QF, and the EPA docket number for this action, and shall be sent to:

U.S. EPA Region 4
 Superfund Accounting
 Attn: Superfund Collection Officer
 P.O. Box 100142
 Atlanta, Georgia 30384

At the time of payment, Settling Party shall send a copy of the check to:

Paula V. Batchelor
 U.S. EPA Region 4
 Waste Management Division
 Superfund Enf. & Info. Mgmt. Branch
 61 Forsyth Street, S.W.
 Atlanta, Georgia 30303

16. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

17. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Party's failure to comply with the requirements of this Agreement, if Settling Party fails or refuses to comply with any term or condition of this Agreement, Settling Party shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

18. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Settling Party's payment of stipulated penalties shall not excuse Settling Party from payment as required by Section VI (Reimbursement Of Response Costs) or from performance of any other requirements of this Agreement.

VIII. COVENANT NOT TO SUE BY EPA

19. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With

respect to present and future liability, this covenant shall take effect upon receipt by EPA of all amounts required by Section VI (Reimbursement of Response Costs) and any amount due under Section VII (Failure to Comply with Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Agreement. This covenant not to sue extends only to Settling Party and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

20. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 19. Notwithstanding any other provision of this Agreement, EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based upon the ownership or operation of the Site, or upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Agreement by Settling Party; and
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

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

X. COVENANT NOT TO SUE BY SETTLING PARTY

22. Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of response activities at the Site; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

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

24. Settling Party agrees not to assert any claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any other person.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

25. Except as provided in Paragraph 24, nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. EPA reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

26. The Parties agree that Settling Party is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or by any other person.

27. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in Paragraph 19.

XII. RETENTION OF RECORDS

28. Until 10 years after the effective date of this Agreement, Settling Party shall preserve and retain all documents or information now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions or response costs at or in connection with the Site, regardless of any corporate retention policy to the contrary.

29. After the conclusion of the document retention period in the preceding paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such documents or information, and, upon request by EPA, Settling Party shall deliver such records or documents to EPA. Settling Party may assert that certain documents or information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the document or information; 2) the date of the document or information; 3) the name and title of the author of the document or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document or information; and 6) the privilege asserted. However, no documents or information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document or information, the document or information shall be provided to EPA in redacted form to mask the privileged portion only. Settling Party shall retain all documents and information that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Party's favor.

XIII. CERTIFICATION

30. By signing this Agreement, Settling Party certifies that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents or information, and has fully and accurately disclosed to EPA, all documents or information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage, or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any documents or information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Party regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e) and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIV. NOTICES AND SUBMISSIONS

31. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete

satisfaction of any written notice requirement of this Agreement with respect to EPA and Settling Party.

As to EPA:

Gregory D. Luetscher
Associate Regional Counsel
Office of Legal Support
U.S. EPA Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Greg Armstrong
Superfund Enf. & Info. Mgmt. Branch
Waste Management Division
U.S. EPA Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

As to Settling Party:

Keith Watson
Kerr-McGee Chemical L.L.C.
Kerr-McGee Center
123 Robert S. Kerr Ave.
Oklahoma City, OK 73102

XV. INTEGRATION/APPENDICES

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

XVI. PUBLIC COMMENT

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

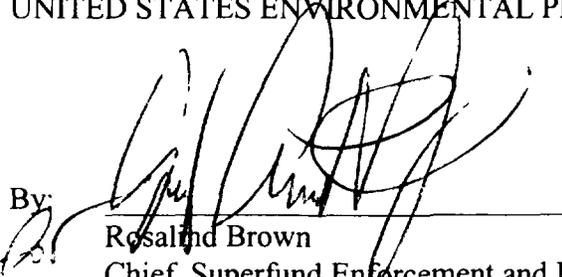
XVII. EFFECTIVE DATE

34. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 33 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Agreement.

In the Matter of Brunswick Wood Preserving Site, Brunswick, Glynn County, Georgia:

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: 

Rosalind Brown
Chief, Superfund Enforcement and Information Management Branch
Waste Management Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Date: 3/2/2004

In the Matter of Brunswick Wood Preserving Site, Brunswick, Glynn County, Georgia:

U.S. DEPARTMENT OF JUSTICE

By: Kelley A. Johnson
~~Thomas L. Sansonetti~~
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530

Acting

Date: 11/26/03

By: Valerie K. Mann
Valerie K. Mann
Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Date: Nov 18 2003

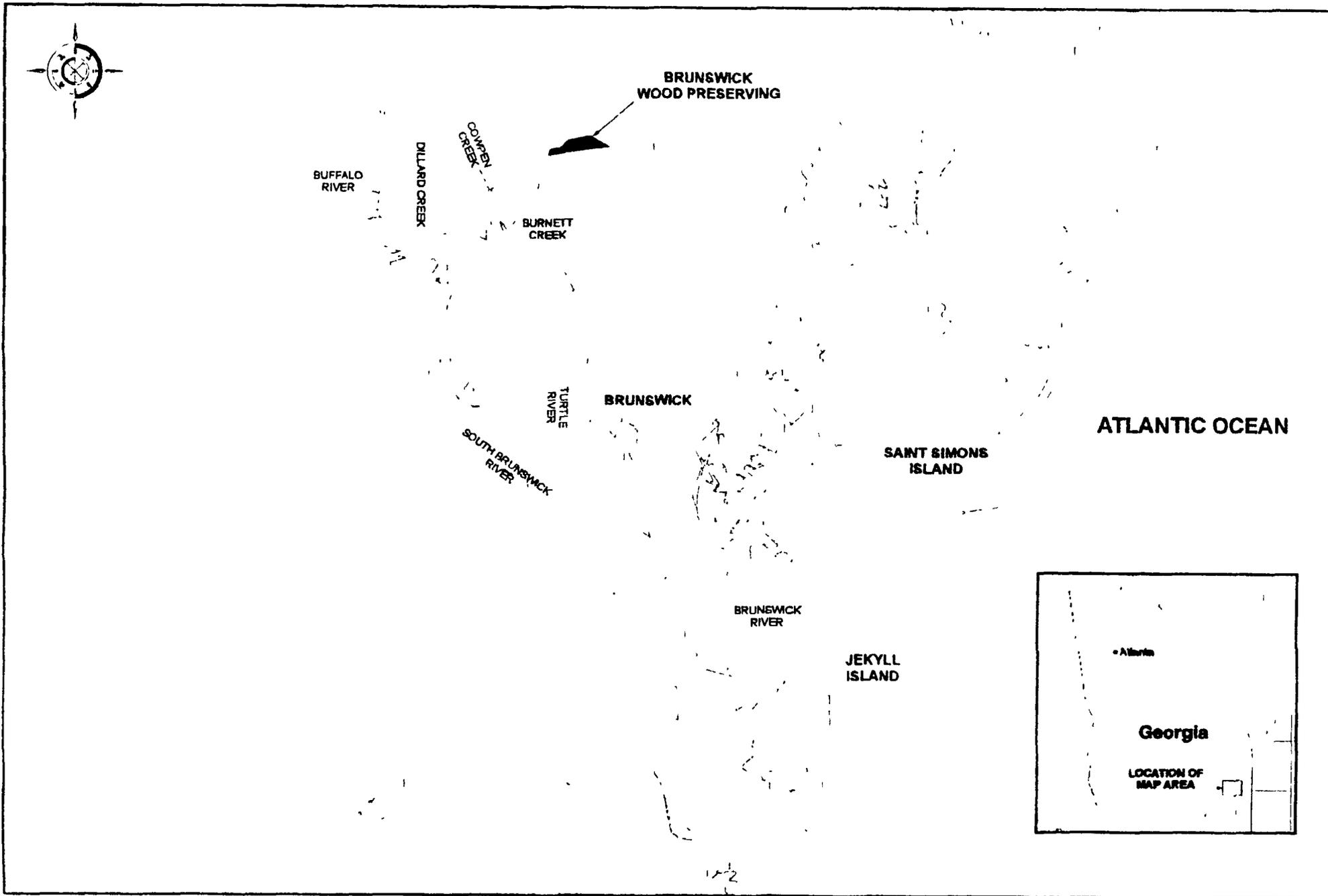
**THE UNDERSIGNED SETTLING PARTY enters into this Agreement
In the Matter of Brunswick Wood Preserving Site, Brunswick, Glynn County, Georgia:**

FOR SETTLING PARTY: Kerr-McGee Chemical L.L.C.

Address: 123 Robert S. Kerr
Oklahoma City, OK 73102

By: *George D. Christiansen*
Typed Name: George D. Christiansen
Title: *Vice President*

Date: *10/13/03*

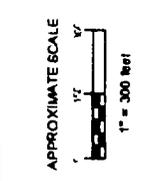


DH1296F1 CDR

FIGURE 1-1
SITE LOCATION MAP
BRUNSWICK WOOD PRESERVING
BRUNSWICK, GEORGIA

NOT TO SCALE





SITE BOUNDARY

- LEGEND:**
- TREES/WOODDED AREA
 - IMPOUNDMENTS
 - ▬ RAILROAD TRACKS
 - ▬ DITCHES, STREAMS W/ DIRECTION OF FLOW
 - ▭ MAIN SITE BUILDING
 - ▭ STRUCTURES (HOUSES, SITE BLDG)
 - ▭ TREATED WOOD PRODUCT

FIGURE 2-2
 CURRENT STATE OF THE SITE MAP
 BRUNSWICK WOOD PRESERVING
 BRUNSWICK, GEORGIA

