

#19568

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IV

IN THE MATTER OF)
)
Carolina Creosoting Corporation)
Nancy S. Smith President)
North Pole Company, Inc.)
Ed Theobald, Director)
)
Respondents)
)
PROCEEDING UNDER SECTION 106(a) OF THE)
COMPREHENSIVE ENVIRONMENTAL RESPONSE,)
COMPENSATION AND LIABILITY ACT OF 1980)
42 U.S.C. §9606(a))

DOCKET NO. 85-08-C

ORDER

The following order is issued to Carolina Creosoting Corporation, Nancy S Smith, President, and North Pole Company, Inc., Ed Theobald Director (Respondents) pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) 42 U.S.C. §9606(a), and delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order 12316 dated August 14, 1981. 46 Federal Register 42237 (1981) and further delegated to the Regional Administrator of Region IV, EPA. Notice of the issuance of this Order has been given to the State of North Carolina.

EPA has determined that there may be an imminent and substantial endangerment to the public health or welfare or the environment due to the release and threat of release of hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14) from the following location

Carolina Creosoting Company,
Eastbrook Road, Jeland, NC 28451

This Order directs you to undertake certain actions to protect the public and the environment from the endangerment.

FINDING OF FACTS

1. The Carolina Creosoting Company Site (the Site) is an abandoned wood preserving operation that consists of twelve tanks, a process building, an office, and a landfarm used for past creosote disposal.

2. Respondent Nancy Smith is the current owner of the property.
3. Respondent North Pole Company, Inc., doing business as Carolina Creosoting Company, was the operator of the site from approximately 1980-1984.
4. Respondent Ed Theobald is the current director of North Pole Company, Inc.
5. On May 30, 1984, personnel from the North Carolina Solid and Hazardous Waste Management Branch conducted a site investigation and sampling study at the site.
6. During this investigation, creosote and pentachlorophenol (PCP) contaminated bottom sediment sludge was found in two separate disposal areas in adjacent pine woods to the facility.
7. A compliance order was issued on July 23, 1984 to Carolina Creosote, Inc., and North Pole Corporation by the State of North Carolina, ordering them to cease and desist all illegal disposal activities and to clean up the site.
8. On January 28, 1985, personnel from USEPA performed a site sampling evaluation at the site to determine the extent and quantity of contamination.
9. A landfarm containing an estimated 78,000 cubic feet of contaminated soil, a dike area containing approximately 50,000 gallons of contaminated water, tanks containing raw material and waste, and contaminated soil in spill/dump areas were found on site.
10. Water and soil samples taken on site by USEPA indicated high levels of PCP and creosote contamination.
11. Creosote is a known human carcinogen. PCP is a toxic hazardous substance.
12. The site is located in a sparsely populated low lying rural area. The depth to groundwater is very shallow and the surrounding community uses shallow groundwater wells as their source of drinking water. Contamination of this shallow aquifer is quite possible. An on-site well is already contaminated with creosote.
13. The site is located directly adjacent to Mill Creek which drains into the Cape Fear River. Stained soil shows evidence that run-off from the site discharges to these bodies of water.
14. The site is abandoned and the wastes present on the site are not secured. Persons in the area could come into direct contact with the wastes stored on site.

15. In order to protect human health and welfare and the environment, it is necessary that action be taken to contain and terminate the release or threat of release of hazardous substances from the Site into the environment.

CONCLUSIONS OF LAW

1. The above referenced site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
2. Nancy S. Smith, President of Carolina Creosoting Corporation is the current facility owner within the meaning of Section 101(20) of CERCLA, 42 U.S.C. §9601(20).
3. North Pole Company, Inc., is the facility operator within the meaning of Section 101(20) of CERCLA, 42 U.S.C. §9601(20).
4. Creosote and PCP are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
5. The hazardous substances described above were stored, treated or disposed of at the facility in such a manner that they have been released into the environment and there continues to be a threat of release into the environment within the meaning of Section 101(22) and 106(a) of CERCLA, 42 U.S.C. §9601(22) and 9606(a).

DETERMINATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, and the entire record of this proceeding, the Regional Administrator has determined that

- 1) The release and threat of release of hazardous substances from the facility may present an imminent and substantial endangerment to the public health or welfare or the environment
- 2) In order to protect public health and welfare and the environment, it is necessary that action be taken to mitigate the release and threat of release of hazardous substances from the facility into the environment.
- and 3) The actions required in this Order are consistent with the National Contingency Plan.

ORDER

Based on the foregoing findings, conclusions, and determinations, it is hereby ordered that:

1. Respondents shall initiate no later than April 8, 1985, and complete within 90 days, the following measures, which shall be undertaken at the direction of EPA through its On-Scene Coordinator (OSC) and consistent with the National Contingency Plan.
 - a) Remove all contaminated soil in areas where waste was spilled and/or

dumped on the property and transport and dispose of such soil at an approved hazardous waste facility.

- b) Remove, transport, and properly dispose of all raw materials, waste, and/or contaminated water stored in tanks and concrete containment structures on-site for the purpose of alleviating the potential for further discharge.
 - c) Remove all contaminated soil in the areas of the finished pole storage, burn pit, tracks at the process cylinder entrance, and small shed on the west side of the facility where elevated levels of creosote or PCP exist and transport and dispose of such soils at an approved hazardous waste facility.
 - d) Remedy non-compliance of landfarm through removal or settlement with North Carolina to come into compliance with existing regulations.
 - e) Sample and analyze all removal areas for the purpose of determining if all the contaminated soil has been removed.
 - f) Install and sample monitoring wells in appropriate locations to identify the extent of groundwater contamination and to assure that the contamination is not migrating from the property.
2. All actions carried out by the Respondents pursuant to this Order shall be done in accordance with all applicable federal, state, and local laws.
 3. Upon request Respondents will provide EPA with split samples of any samples collected in accordance with the requirements of this Order.
 4. Respondents shall assure access to the site by EPA and its employees, contractors and consultants for purposes of implementation of this Order.
 5. All response work performed pursuant to this Order shall be under the direction and supervision of a qualified professional engineer or certified geologist with expertise and experience in hazardous waste site cleanup. Respondents shall notify EPA as to the identity of such engineer or geologist and of any contractors and subcontractors to be used in carrying out the terms of this Order in advance of their work at the site.
 6. Respondents shall use quality assurance, quality control, and chain-of-custody procedures in accordance with EPA guidance throughout all activities. Respondents shall consult with EPA in planning for sampling and analysis. Respondents shall provide a quality control report to EPA certifying that all activities have been performed as approved.
 7. Respondents shall preserve all records developed pursuant to implementation of this Order for a period of at least six (6) years following completion of all work conducted by Respondents pursuant to this Order.

8. Nothing herein shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations or ownership of the site by the Respondents, their agents, contractors, lessees, successors, or assigns.
9. Notwithstanding compliance with the terms of this Order, Respondents may be required to take further actions as necessary to abate the endangerment posed by conditions at the site.
10. In the event that the OSC determines that activities implemented under or in noncompliance with this Order, or any other circumstances or activities are creating an imminent and substantial endangerment to the public health or welfare or the environment, the Regional Administrator of EPA, Region IV, may order Respondents to halt further implementation of this Order for such period of time as necessary to abate the endangerment.
11. Neither the United States nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondents, its officers, directors, employees, agents, servants, receivers, trustees, successors, or assignees, or of any persons, including but not limited to firms, corporations, subsidiaries, contractors, or consultants, in carrying out activities pursuant to this Order, nor shall the United States or any agency thereof be held out as a party to any contract entered into by the Respondents in carrying out activities pursuant to this Order.
12. All submittals and notifications to EPA pursuant to this Order shall be made to Mr. Thomas W. Devine, Director, Waste Management Division, U. S. Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365, and Mr. Reuben Bussey, Assistant Regional Counsel at the same address.
13. This Order is effective upon receipt, notwithstanding any conferences requested by Respondents. Response actions shall commence on April 8, 1985. All times for performance of response activities shall be calculated from that date.
14. This Order shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, assigns, and contractors.

OPPORTUNITY FOR CONFERENCE

With respect to those actions required above, you must notify EPA in writing within five (5) days after receipt of this Order whether you intend to comply with the terms of this Order. In addition, if you wish to confer with EPA to discuss this Order, its applicability to you, the correctness of any factual

determinations upon which the Order is based, the appropriateness of any action which you are ordered to take, and any other relevant and material issue, you may request an informal conference with appropriate EPA personnel at the EPA Regional Office located at 345 Courtland Street, Atlanta, Georgia. Such a request must be made in writing or by telephone with written follow-up within five (5) days, after receipt of this Order. Respondents may appear in person or may be represented by attorney or other representative at any conference held at their request. Any request for a conference should be made to

Ms. Giezelle S. Bennett
Waste Management Division
Emergency and Remedial Response Branch
U. S. Environmental Protection Agency, Region IV
345 Courtland Street, NE
Atlanta, Georgia 30365
404/881-2930

or

Mr. Reuben Bussey
Assistant Regional Counsel
U.S. E.P.A. - Region IV
404/881-2641

VIOLATIONS OF ORDER

Violation by the Respondents of this Order through failure to comply with any provision herein or otherwise, shall be enforceable pursuant to Sections 106(h) and 113(b) of CERCLA, 42 U.S.C. §9606(h) and 9613(b). Failure to comply may also subject Respondents to civil penalties and/or punitive damages in an amount of three times the amount of any costs incurred by the United States as a result of such failure, as provided in Section 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §9606(b) and 9607(c)(3). Nothing herein shall preclude EPA from taking such other actions as may be necessary to protect the public health and welfare or the environment and recovering the costs thereof.

Date: MAR 26 1985

By: /s/ Charles R. Jeter
Regional Administrator
Charles R. Jeter
Regional Administrator