

STATE OF VERMONT

SUPERIOR COURT  
WASHINGTON UNIT

CIVIL DIVISION  
DOCKET NO.

STATE OF VERMONT, AGENCY )  
OF NATURAL RESOURCES, )  
Plaintiff, )  
)  
v. )  
)  
KS PINE LLC, )  
Defendant. )

**PLEADINGS BY AGREEMENT**

NOW COME the State of Vermont, Agency of Natural Resources, by and through the Office of the Attorney General, Charity R. Clark, and Defendant, KS Pine LLC, by their undersigned counsel, and hereby submit these pleadings by agreement pursuant to 12 V.S.A. Chapter 167 (the Declaratory Judgment Act) and Vermont Rule of Civil Procedure 8(g).

**FACTUAL BACKGROUND**

***Parties***

1. The Vermont Agency of Natural Resources (ANR) is an Agency of the State of Vermont, with its principal offices in Montpelier.
2. KS Pine LLC (KS Pine) is a Vermont limited liability corporation with its principal place of business in Burlington, Vermont.

***The Site***

3. On September 8, 1983, the United States Environmental Protection Agency (EPA) pursuant to Section 105 of the Comprehensive Response

Compensation and Liability Act (CERCLA) placed the Pine Street Canal Superfund Site (Site) on the National Priorities List set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register at 48 Fed. Reg. 40658.

4. The Site is an abandoned shipping canal and former coal gasification plant located in Burlington, Vermont, and depicted generally on the map attached to the proposed Consent Order as Appendix A.<sup>1</sup>

5. The Site includes a parcel located at 501 Pine Street, and all areas in which hazardous substances, pollutants, and/or contaminants have come to be located.

6. The parcel located at 501 Pine Street that is the subject of this matter (501 Pine Gatehouse) is owned by KS Pine and is identified as 053-1-001-000 on Appendix A. 501 Pine Gatehouse is subject to a Grant of Environmental Restrictions and Right of Access in favor of ANR dated July 8, 2004, recorded in the City of Burlington Real Property Records at Book 880 Page 623 (Grant). The Grant describes 501 Pine Gatehouse as follows:

Being a portion of the land and premises conveyed by Warranty Deed from Green Mountain Power Corporation to Vermont Gas Systems, Inc. dated December 30, 1964 and recorded on January 7, 1965 in Volume 167 at Page 719 of the City of Burlington Land Records, which portion is described in the Warranty Deed from Vermont Gas Systems, Inc. to the City of Burlington dated March 21, 1967 and recorded in Volume 181 at Page 494 of the City of Burlington Land Records as being “a parcel of land along Pine Street ... having a frontage along Pine Street of 92 feet and a depth of 60 feet and being a lot of land on which the city gate station is now located.”

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<sup>1</sup> All further citations to appendixes within this Pleadings by Agreement shall refer to those appendixes included with and attached to the proposed Consent Order filed with the Court on even date hereof.

7. 501 Pine Gatehouse includes areas where EPA has already determined or may in the future determine that Institutional Controls<sup>2</sup> are necessary.

***The Conveyance***

8. KS Pine purchased 501 Pine Gatehouse to develop a seasonal outdoor patio and picnic area that offers open-air dining via container kitchens, food trucks and/or food carts.

9. The State alleges that KS Pine is a current “owner” of a “facility” under 10 V.S.A. § 6615(a)(1).

10. KS Pine neither admits nor denies that it is a current “owner” of a “facility” under § 6615(a)(1).

11. KS Pine facilitated the formation and adequately capitalized KS Pine for the purposes of (1) purchasing 501 Pine Gatehouse from Vermont Gas Systems, Inc.; (2) completing the Corrective Action Plan described in Appendix B; (3) preserving EPA’s and ANR’s access to the site; and (4) complying with the Grant.

12. The proposed Consent Order addresses the obligations of KS Pine for the remediation and long-term management of 501 Pine Gatehouse as set forth in the Corrective Action Plan described in Appendix B.

13. KS Pine and the State seek to avoid the costs and uncertainties of litigation concerning KS Pine’s rights and obligations with respect to the Facility and Corrective Action there.

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<sup>2</sup> See definition of “Institutional Controls” at ¶1(G) of the parties’ proposed Consent Order.

**DECLARATION OF RIGHTS AND OBLIGATIONS OF  
PLAINTIFF AND DEFENDANT**

14. The State and KS Pine have agreed to resolve any dispute regarding the rights and obligations of KS Pine for Corrective Action at 501 Pine Gatehouse through a Stipulation for Entry of Consent Order and a Consent Order, which have been executed by the parties and are being filed in this action together with these Pleadings by Agreement.

15. The purpose of this action is to declare KS Pine's legal obligations with regard to 501 Pine Gatehouse and to complete the Corrective Action Plan described in Appendix B.

16. KS Pine agrees that it shall be responsible for the completion of the Corrective Action Plan described in Appendix B.

17. The State reserves all rights, remedies, claims, and interests with respect to any violations by KS Pine of federal, state, or local statutes, regulations, permits, directives, or judicial orders.


18. KS Pine reserves all defenses to any action the State may bring against it for any violations of federal, state, or local statutes, regulations, permits, directives, or judicial orders.

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STATE OF VERMONT

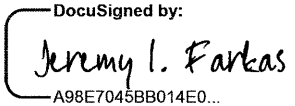
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Dated: 1/19/24

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KS PINE LLC

Dated: 1/19/2024

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