

STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

CIVIL DIVISION
DOCKET NO.

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

CONSENT ORDER

Based upon the parties' Pleadings by Agreement in this action and the Stipulation for the Entry of Consent Order, and pursuant to 10 V.S.A. § 8221 and the court's inherent equitable powers, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1) Definitions.

Unless otherwise expressly provided herein, terms used in this consent order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

- A. "ANR" shall mean the Vermont Agency of Natural Resources. For purposes of this Settlement Agreement, ANR shall include the Vermont Department of Environmental Conservation (DEC) and any successor departments, agencies or instrumentalities of the State of Vermont (State).

- B. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601-9675.
- C. “Corrective Action Plan” or “CAP” shall mean the Corrective Action Plan prepared for KS Pine LLC by Nobis Engineering, Inc. d/b/a Nobis Group as File No. 100359.000 dated May 9, 2022 attached as Appendix B.
- D. “Day” shall mean a calendar day. In computing any period of time under this Consent Order, 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.
- E. “Defendant” shall mean KS Pine LLC (KS Pine).
- F. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- G. “Existing Contamination” shall mean any hazardous substances, pollutants or contaminants, present or existing on or under the Site, including under 501 Pine Gatehouse, as of the effective date of this Consent Order.
- H. “Institutional Controls” shall mean those aspects of response actions relating to the Site involving legal and administrative measures, but not engineering controls, required to ensure the long-term effectiveness and protectiveness of response actions performed at the

Site, including but not limited to the Institutional Controls required by Paragraph 3 of this Consent Order.

- I. “Parties” shall mean the State of Vermont and KS Pine.
- J. “Response Actions” or “respond” or “response” means remove, removal, remedy, and remedial action; all such terms (including the terms “removal” and “remedial action”) include enforcement activities related thereto.
- K. “Site” shall mean the Pine Street Canal Superfund Site depicted generally on the map attached as Appendix A, and that the EPA pursuant to Section 105 of CERCLA placed on the National Priorities List set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, at 48 Fed. Reg. 40658, and all areas to which hazardous substances, pollutants or contaminants have come to be located.
- L. “State” shall mean the State of Vermont.
- M. “Transfer” shall mean to sell, assign, convey, lease, mortgage or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.
- N. “United States” shall mean the United States of America, its departments, agencies, and instrumentalities.
- O. “501 Pine Gatehouse” shall mean the parcel within the Site that is

located at 501 Pine Street, Burlington, Vermont, owned by KS Pine, and identified as 053-1-001-000 on Appendix A. 501 Pine Gatehouse is subject to a Grant of Environmental Restrictions in favor of ANR dated July 8, 2004, that is recorded in the City of Burlington Real Property Records at Book 880 Page 623 and which 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.”

2) Performance of Corrective Action Plan.

Defendant agrees that it is responsible for performance of the actions specified in the Corrective Action Plan attached as Appendix B in accordance with its terms.

3) Access and Institutional Controls.

- a. *Site Access.* Defendants shall, commencing on the effective date of this Consent Order, irrevocably provide the State, and its representatives, contractors, and subcontractors, with access to 501 Pine Gatehouse at all reasonable times for the purpose of conducting activities relating to response action at the Site, including, but not limited to, the following activities:

1. Performing monitoring, investigation, corrective action or other activities at the Site;
 2. Conducting activities associated with the design, implementation, monitoring, operation, or maintenance of any corrective actions at the Site;
 3. Verifying any data or information submitted to the State;
 4. Conducting investigations relating to contamination at or near the Site;
 5. Obtaining samples, documenting sample locations, or mapping the Site;
 6. Assessing the need for, planning, or implementing corrective actions at or near the Site;
 7. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Order;
 8. Assessing Defendant's compliance with this Consent Order;
 9. Implementing, monitoring, maintaining, reporting on and enforcing any Institutional Controls.
- b. *Institutional Controls.* 501 Pine Gatehouse is subject to a Grant of Environmental Restrictions and Access in favor of ANR dated July 8, 2004, recorded in the City of Burlington Real Property Records at Book 880 Page 623, and Defendant shall comply with its terms.

4) Grant of Access and Environmental Use Restrictions.

If the State determines that, in addition to the existing Grant in place at 501 Pine Gatehouse, further use restrictions in the form of restrictive covenants, state or local laws, regulations, ordinances, or other governmental controls are needed to implement any response action determinations, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Defendant shall cooperate with the State's efforts to secure such controls.

5) Subsequent Transfers and Assignments.

Defendant shall ensure that assignees, successors-in-interest, lessees, and sublessees of 501 Pine Gatehouse shall provide the same access and cooperation to the State as Defendant, including obtaining or complying with any Institutional Controls. On and after the effective date of this Consent Order, Defendant shall ensure that a copy of this Consent Order is provided to all current lessee or sublessee of 501 Pine Gatehouse, and shall ensure that any subsequent leases, subleases, assignments or transfers of 501 Pine Gatehouse, or an interest in 501 Pine Gatehouse, are consistent with this Consent Order.

6) Disclosure of Information.

Defendant hereby certifies that it has fully and accurately disclosed to the State all information known to it, and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any release of a hazardous material or any past or potential future release of hazardous materials at or from the Site, and to its qualification for this Consent

Order. Defendant also certifies that it has not caused or contributed to a release or threat of release of hazardous materials or pollutants or contaminants at the Site. If the information provided by Defendant is not accurate and complete, this Consent Order shall be voidable at the State's sole option and discretion as to Defendant, and the State of Vermont reserves all rights it may have under 10 V.S.A. § 6615 and any other applicable statutes or rules.

7) State's Covenant Not to Sue.

Subject to Paragraphs 6 and 8, the State covenants not to sue or take any other civil or administrative action against Defendant for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to 10 V.S.A. §§ 6615 or 6615b with respect to any of the following:

- (1) A release or threatened release that existed at the property at the time of the approval of the Corrective Action Plan and complies with one or both of the following:
 - a. was discovered after the approval of the Corrective Action Plan by means that were not recognized standard methods at the time of approval of the Corrective Action Plan;
 - b. the material was not regulated as hazardous material until after approval of the Corrective Action Plan; or
- (2) Cleanup after approval of the Corrective Action Plan was done pursuant to more stringent cleanup standards effective after approval of the Corrective Action Plan; or

- (3) Natural resource damages pursuant to section 6615d of this title, provided that the applicant did not cause the release that resulted in the damages to natural resources.

8) Limitations on State's Covenant Not to Sue.

The covenant not to sue set forth in Paragraph 7, above, does not pertain to any matters other than those expressly specified in Paragraph 7. The State reserves — and the Consent Order is without prejudice to — all rights against Defendant with respect to all other matters, including but not limited to, the following:

- a. liability for failure by Defendant to meet a requirement of this Consent Order;
- b. any liability resulting from past or future releases of additional hazardous materials at or from the Site, not including the Existing Contamination, caused or contributed to by Defendant, their successors, assignees, lessees or sublessees;
- c. any liability resulting from exacerbation of Existing Contamination by Defendant, their successors, assignees, lessees or sublessees;
- d. any liability resulting from the release or threat of release of hazardous materials at the Site after the effective date of this Consent Order and
- e. criminal liability.

9) Burden of Proof; Hazardous Materials.

With respect to any claim or cause of action asserted by the State, Defendant shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination as defined above.

10) Consent Order Limited to Named Parties.

Nothing in this Consent Order shall be construed to create or deny any rights in, or grant or deny any cause of action to, any person not a party to this Consent Order.

11) Non-limitation of EPA and State's Rights.

Nor shall this Consent Order be construed to limit the rights of EPA and the State to seek or compel parties other than Defendant to perform or pay for response actions at the Site. Defendant acknowledges that, in addition to performance of the CAP, further response actions are or may be required at 501 Pine Gatehouse.

12) Effective Dates.

- a. Consent Order. This Consent Order shall become effective only after it is signed by all parties and entered as an order of the Court. On the date it is entered by the Court ("Effective Date"), this Consent Order shall become a judicial order and have all the force and effect of such an order.
- b. Covenant Not to Sue. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete performance by Defendant of all obligations under this Consent Order to the satisfaction of

ANR.

13) Retention of Records.

Defendant agrees to retain and make available upon request of the State all environmental studies and investigations and all documents relating to the implementation of the Corrective Action Plan related to 501 Pine Gatehouse, for at least ten years following the effective date of this Consent Order. At the end of ten years, Defendant shall provide the State with an electronic copy of the documents.

14) Payment of Costs, Including Attorney's Fees.

If Defendant fails to comply with any term of this Consent Order, Defendant shall be liable for all litigation and other enforcement costs, including reasonable attorney's fees, incurred by the State to enforce this Consent Order or otherwise obtain compliance to the extent the State prevails in such litigation or enforcement action.

15) Notices.

Whenever, under the terms of this Consent Order, written notice is required to be given, 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 parties in writing. All notices shall be considered effective upon receipt, unless otherwise expressly agreed otherwise.

As to the State: Jordan Gonda
General Counsel
Vermont Department of Environmental Conservation
One National Life Drive, Davis 1
Montpelier, VT 05620-3704
jordan.gonda@vermont.gov

As to EPA: Mark Habedank
Remedial Project Manager
U.S. EPA Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912
habedank.mark@epa.gov

As to KS Pine LLC: KS Pine LLC
474 South Union St.
Burlington, VT 05401

16) Appeal of Requirements of Consent Order.

Defendant hereby waives: 1) all rights to contest or appeal this Consent Order; and 2) all rights to contest the obligations imposed upon Defendant under this Consent Order in this or any other administrative or judicial proceeding involving the State of Vermont.

17) Enforcement.

Any violation of this Consent Order shall be deemed to be a violation of a judicial order, and may result in the imposition of injunctive relief or penalties, including penalties for contempt, as set forth in 10 V.S.A. Chapters 201 and 211 and 12 V.S.A. Chapter 5.

18) Continuing Jurisdiction.

- a. The State of Vermont and the Court reserve continuing jurisdiction to ensure future compliance with this Consent Order and all statutes, rules, and regulations applicable to the facts and circumstances set forth herein.
- b. Nothing in this Consent Order shall be construed as having relieved, modified, or in any manner affected Defendant's obligations to comply with all federal, state, or local statutes, regulations, permits and directives

applicable to Defendant. The State reserves all rights, claims, and interests not expressly waived herein.

19) Amendment.

This Consent Order may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and incorporated into an order issued by the Vermont Superior Court, Civil Division, Washington Unit. Alleged representations not set forth in this Consent Order, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall be of no legal force or effect.

20) Negotiation in Good Faith.

The Parties agree that they have negotiated this Consent Order in good faith, that implementation of this Consent Order will avoid prolonged and complicated litigation between the parties, and that this Consent Order is fair, reasonable, and in the State's interest.

The Court hereby enters this Consent Order as an Order of the Court.

IT IS SO ORDERED.

DATED at Montpelier, Vermont, this ____ day of _____, _____.

Superior Court Judge