

10/20/87
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Stamina Mills
10.8
275797

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND



SDMS DocID 275797

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 v.)
)
 KAYSER-ROTH CORPORATION,)
 AND HYDRO-MANUFACTURING, INC.,)
)
 Defendants.)

C.A. No. 88-0325-B

PARTIAL CONSENT DECREE

WHEREAS, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed an Amended Complaint in this action against, inter alia, Hydro-Manufacturing, Inc. (the "Settling Defendant") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law No. 99-499, 100 Stat. 1613 (1986) (hereinafter "CERCLA") in which the United States seeks reimbursement for costs already incurred by EPA for removal actions at the Stamina Mills Superfund Site (the "Site") together with accrued interest; and a declaratory judgment that the Settling Defendant is liable for costs that will be incurred by EPA in connection with studies and remedial work at the Site; and such other relief as the Court deems appropriate;

WHEREAS, EPA, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, placed the Site, located in the Village of Forestdale, Town of North Smithfield, Rhode Island, on the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40673;

WHEREAS, the legal description of such Site is set forth in a deed from Roger N. Meunier to Hydro-Manufacturing, Inc. dated March 11, 1981, and recorded in book 96 at page 1089 in the land records of the Town Clerk's Office, Town of North Smithfield, Providence County, State of Rhode Island, a copy of which deed is attached hereto as Exhibit A and incorporated herein by reference;

WHEREAS, Settling Defendant Hydro-Manufacturing, Inc. currently owns the Site and has owned the Site continuously since March 11, 1981;

WHEREAS, the United States has incurred and continues to incur response costs in responding to the release or threat of release of hazardous substances at or in connection with the Site;

WHEREAS, EPA has commenced and is continuing to conduct a Remedial Investigation and Feasibility Study ("RI/FS") of the Site pursuant to 40 C.F.R. 300.68;

WHEREAS, upon completion of the RI/FS, EPA will publish notice of completion of the FS and of a Proposed Plan recommending a remedial action for the Site and providing an

opportunity for public comment, after which EPA will decide on a final remedial action plan for the Site which will be embodied in a final Record of Decision (the "ROD");

WHEREAS, EPA and the Settling Defendant agree that settlement with the Settling Defendant without further litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving this action against the Settling Defendant;

WHEREAS, the EPA and the Settling Defendant recognize, and the Court by entering this Consent Decree finds, that implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the EPA and the Settling Defendant, and that entry of this Consent Decree is in the public interest;

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and of the Parties consenting to this Consent Decree pursuant to 28 U.S.C. §§ 1331, 1345, and 42 U.S.C. § 9613(b). Venue is proper in this District pursuant to 42 U.S.C. § 9613 and 28 U.S.C. § 1391. The Settling Defendant waives all objections and defenses that it may have to the jurisdiction of the Court or to venue in this District. The Amended Complaint states a claim against the Settling Defendant upon which relief may be granted. Settling Defendant agrees that

it shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree.

II. PARTIES BOUND

2. This Consent Decree shall apply to and be binding upon the United States and shall apply to and be binding upon the Settling Defendant, its directors, officers, employees, agents, successors, and assigns. The undersigned representative of the Settling Defendant certifies that he is fully authorized to enter into the terms and conditions of this Consent Decree and to bind legally the Settling Defendant. The Settling Defendant agrees to undertake all actions required by the terms and conditions of this Consent Decree. The execution of this Consent Decree by the Settling Defendant is not an admission of liability by it, or by its current shareholders, Henry L. Richard, Sr. and William G. Grande (the "current shareholders"), with respect to any issue dealt with in the Consent Decree nor is it an admission or denial of the factual allegations set out in the Amended Complaint. Neither this Consent Decree nor any performance hereunder by the Settling Defendant creates any right on behalf of any other person not a party hereto. EPA and the Settling Defendant expressly reserve any and all rights (including any right to contribution), defenses, claims, demands and causes of action which each may have with respect to any matter, action, event, claim or proceeding relating in any way to the Site against any person or entity, except as expressly provided in this paragraph or in paragraph 18 of this Consent Decree.

III. SALE OF THE STAMINA MILLS SITE

3. The Settling Defendant shall continue to hold title to the Site until it is sold pursuant to the provisions of this Consent Decree. Prior to such sale the Settling Defendant shall not convey any security interest in the Site or otherwise encumber title to the Site in any way without the prior written approval of EPA. It is the intention of the parties that the Site shall be sold by the Settling Defendant as expeditiously as possible after notification to the Settling Defendant in writing by EPA of the completion of the construction phase of the Remedial Action required by the ROD, and for the best price possible. The Settling Defendant shall use its best efforts to sell the Site upon such terms and conditions, including the selection of a real estate broker and the terms of the listing agreement and the sales price, as have been given prior written approval by EPA. The terms and conditions of the final sale of the Site, including the final sales price, shall also be given prior written approval by EPA. Upon completion of the sale, the Settling Defendant shall provide copies of the closing documents to the EPA.

4. The Parties agree that, after all reasonable costs of the sale which have previously been approved by EPA (including the real estate broker's commission and unpaid real estate taxes and sewer assessments due on the Site prior to July 31, 1989) have been paid, the net proceeds of the sale are to be distributed to EPA.

5. Within ten (10) days of the closing of said sale, the Settling Defendant shall deliver a certified or cashier's check payable to "EPA Hazardous Substances Superfund" in the amount of the net proceeds of the sale to the following address:

EPA - Region I
Attn. Superfund Accounting
Stamina Mills Site
P.O. Box 360197M
Pittsburgh, PA 15251

A copy of the transmittal letter and the check, which shall reference DOJ Case Number 90-11-2-356, shall be served on the United States in accordance with Section IX herein. Such payment by the Settling Defendant is not a penalty, fine, or monetary sanction of any kind, but is partial reimbursement to the United States for past and future costs incurred and to be incurred by the United States in response to the releases and threatened releases of hazardous substances at and from the Site.

6. The United States agrees that the Settling Defendant will not, solely on account of its continued ownership and disposition of the Site in accordance with this Consent Decree, be considered the owner or operator of the Site for purposes of liability under CERCLA, so long as and on the condition that the Settling Defendant does not conduct or allow others to conduct any activity on the Site other than the activities described in paragraph 10.

7. The Successor-in-Interest who purchases the Site from the Settling Defendant, and all subsequent Successors-in-Interest to the Site, shall be bound by the terms and conditions

of this Consent Decree. For purposes of this Consent Decree, a Successor-in-Interest is any person or entity that acquires any possessory interest in the Site or any portion thereof. EPA shall be notified thirty (30) days in advance of any transfer to another by any Successor-in-Interest of any possessory interest in the Site or any portion thereof.

8. Any deed, title or other instrument of conveyance regarding the Site shall contain a notice that the Site is subject to: (a) any terms and conditions which have been established by EPA prior to the conveyance, (b) any restrictions applicable to the property under any ROD relating to the Site, and (c) restrictions under this Consent Decree, identifying specifically the obligation to provide access to the Site pursuant to paragraph 10. The notice shall also set forth the style of this case, the case number, and the Court having jurisdiction herein.

9. Within thirty (30) days of approval by the Court of this Consent Decree, the Settling Defendant, as owner of the Site, shall record a copy of this Decree in the land records of the Town Clerk's Office, Town of North Smithfield, Providence County, State of Rhode Island.

IV. ACCESS

10. From the date of Settling Defendant's signature upon this Consent Decree, the United States and its representatives, including EPA and its contractors, and any persons or entities authorized by the United States, shall have

access at all times to the Site and any property to which access is required for the completion of the RI/FS, for any Removal Action(s), for implementation of any Remedial Action(s) required by a ROD, for operation and maintenance and for purposes of periodic reviews pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), to the extent access to the property is controlled by or available to the Settling Defendant or any Successor-in-Interest to the Site. Such access shall be for purposes of conducting any activity related to the investigation and remediation of the Site, including, but not limited to:

A. Monitoring the work or any other activities taking place on the property;

B. Verifying any data or information submitted to the United States;

C. Conducting investigations and remedial activities relating to contamination at or near the Site;

D. Obtaining samples;

E. Assessing the need for or planning and implementing additional response actions at or near the Site;

F. Inspecting and copying records, operating logs, contracts, or other documents required to assess any person's or entity's implementation of any Remedial Action required by the ROD; and

G. Assessing compliance with the provisions of this Consent Decree by the Settling Defendant and any Successors-in-Interest.

In addition, the Settling Defendant and any Successors-in-Interest to the Site shall not interfere with the performance of any activities related to the investigation and remediation of the Site. The obligations of the Settling Defendant to provide access to the Site pursuant to this paragraph 10 shall run with the land and shall be binding upon all Successors-in-Interest.

11. Notwithstanding any provision of this Consent Decree, the United States hereby retains all authority and reserves all rights to take any and all response actions authorized by law and retains all of its access, information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statute or regulations.

V. TAXES

12. The Settling Defendant shall be liable for and shall pay all real estate taxes and all future assessments for sewer construction which become due and owing on the Site from July 31, 1989, until such time as the Site is sold by the Settling Defendant. Within (30) days after the entry of this Consent Decree, the Settling Defendant shall pay the Town of North Smithfield, Rhode Island (the "Town") all interest due as of the date of the entry of this Consent Decree on any unpaid real estate taxes and sewer assessments that were due and owing on the Site prior to July 31, 1989.

13. Within thirty (30) days after the Settling Defendant signs this Consent Decree, the Settling Defendant shall

make all necessary applications for abatement of past due and future property taxation and the sewer assessments and provide such additional information to the Town as is necessary to enable the Town to re-evaluate its prior assessment of the Site such that no real estate tax liability or sewer assessment would be imposed related to the Site. Copies of any such applications and correspondence shall be provided to EPA. Should the town determine that an abatement of all past due and future property taxes and sewer assessments is not warranted as to the Site, then any portion of such future taxes or assessments not abated, plus any interest due thereon after the date of entry of this Consent Decree shall be paid by the Settling Defendant from the proceeds of the sale of the Site consistent with paragraph 4.

VI. COVENANTS NOT TO SUE

14. Except as specifically provided in paragraphs 15 and 16, the United States hereby covenants not to sue or proceed administratively against (a) the Settling Defendant for Covered Matters or (b) the current shareholders, as shareholders, owners or operators, for Covered Matters. For purposes of Section VI, Covered Matters shall mean any and all civil liability to the United States for causes of action arising under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), or Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6973, relating to the Site.

15. The provisions of paragraph 14 shall not apply to the following:

- A. Claims based on a failure of the Settling Defendant to meet a requirement of this Decree;
- B. Criminal liability, if any;
- C. Liability for damages for injury to, destruction of, or loss of natural resources.

16. Notwithstanding any other provision of this Decree, the United States reserves the right to institute proceedings in this action or in a new judicial or administrative action, seeking to compel the Settling Defendant to perform additional response work at the Site or to reimburse the United States for its response costs associated with any additional response work at the Site if,

A. For proceedings prior to EPA's certification of completion of the Remedial Action,

- (1) conditions at the Site, previously unknown to the United States, are discovered after the entry of this Consent Decree, or
- (2) information is received, in whole or in part, after the entry of this Consent Decree,

and these previously unknown conditions or this information indicates that the Remedial Action is not protective of human health and the environment;

B. For proceedings subsequent to EPA's certification of completion of the Remedial Action,

- (1) conditions at the Site, previously unknown to the United States, are discovered after certification of completion by EPA, or

(2) information is received, in whole or in part, after the certification of completion by EPA, and these previously unknown conditions or this information indicates that the Remedial Action is not protective of human health or the environment.

17. Notwithstanding any other provision in this Consent Decree, the covenants in this Section VI shall be subject to the satisfactory performance by the Settling Defendant of its obligations under this Decree and shall not take effect until such obligations have been performed and EPA has certified the completion of the Remedial Action, and those covenants shall not relieve the Settling Defendant of its obligations to meet and maintain compliance with the requirements set forth in this Decree.

18. For and in consideration of the covenants and promises made herein, the Settling Defendant and its current shareholders covenant not to sue or otherwise assert any cause of action, claims, or demands against the United States for expenses relating to the Site, this case and this Decree, including any claims or demands against the United States or the Hazardous Substance Superfund, directly or indirectly, pursuant to Section 112 of CERCLA, the Equal Access to Justice Act, 28 U.S.C. § 2412, or any other provision of law. The Settling Defendant reserves the right to contest, defend against, and assert claims in any action or proceedings covered by paragraph 16 which may be instituted by the United States.

19. The Parties to this Consent Decree agree that the provisions of Section 113(f)(2) of CERCLA regarding contribution protection are applicable to matters addressed in this Consent Decree.

20. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity, other than the Settling Defendant and its current shareholders, for any liability it may have arising out of or relating to the Site. The United States expressly reserves the right to proceed with litigation or administrative action against any person other than the Settling Defendant and its current shareholders, in connection with the Site.

VII. OTHER CLAIMS

21. Nothing in this Consent Decree shall constitute or be construed as a covenant not to sue with respect to, or a release from, any claim cause of action, or demand in law or equity against any person, firm, partnership, or corporation other than the Settling Defendant and its current shareholders, in their capacity as shareholders, owners or operators.

22. The United States is not to be construed as a party to, and does not assume any liability for, any contract entered into by the Settling Defendant in carrying out any requirements and/or activities pursuant to this Consent Decree.

VIII. ACCOUNTS AND RECORDS

23. The Settling Defendant shall keep proper books, records and accounts, separate from all other books, records and accounts, in which complete and correct entries shall be made of all transactions and other matters relating to the Site.

24. The EPA, or its designated agent or agents, shall have the right at all reasonable times and upon reasonable notice to inspect all books, records and accounts of the Settling Defendant relating to the Site.

IX. NOTICES

25. Whenever, under the terms of this Consent Decree, notice is required to be given, a document is required to be forwarded by one party to another, or any other written communication is required, such correspondence shall be directed to the following individuals at the addresses specified below and notice shall be deemed to be given upon receipt, unless sent by certified or registered mail, in which case notice shall be deemed to be given upon mailing:

A. As to the United States or EPA:

- (1) Regional Counsel
Attn: Audrey Zucker
U.S. Environmental Protection Agency
Region I
John F. Kennedy Federal Building
Boston, Massachusetts 02203
- (2) Director, Emergency and Remedial
Response Division
Attn: Stamina Mills Project Manager
U.S. Environmental Protection Agency
Region I
John F. Kennedy Federal Building
Boston, Massachusetts 02203

(3) Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice
10th and Pennsylvania Avenue, N.W.
Washington, D.C. 20530

B. As to the Settling Defendant:

(1) William G. Grande, Esq.
160 Plainfield Street
Providence, Rhode Island 02903

X. PUBLIC PARTICIPATION

26. Pursuant to Section 122(d)(2) of CERCLA and 28 C.F.R. § 50.7, the United States shall lodge this Consent Decree with the Court and publish a notice in the Federal Register of this Consent Decree's availability for review and comment as a proposed settlement in this matter.

27. The United States will provide any person who is not a party to this proposed settlement with an opportunity to file written comments during at least a thirty (30) day period following such notice. The United States will file with the Court a copy of any comments received and the response of the United States to such comments.

28. After the closing of the public comment period, the United States will review such comments and determine whether the proposed judgment is inappropriate, improper or inadequate, and that its consent should therefore be withdrawn. Should the consent of the United States be withdrawn, it shall inform the Settling Defendant as to the basis for the withdrawal and any modifications necessary for the consent of the United States to a

settlement. The Settling Defendant consents to the entry of this Consent Decree without further notice.

XI. MODIFICATION

29. Except as expressly provided for herein, there shall be no modification of this Consent Decree without written agreement of all parties to this Consent Decree and approval by the Court.

XII. CONTINUING JURISDICTION

30. The Court specifically retains jurisdiction over both the subject matter and the Parties to this Consent Decree for the duration of this Consent Decree for the purposes of issuing such further order or direction as may be necessary or appropriate to construe, implement, modify, enforce, terminate, or reinstate the terms of this Consent Decree or for any further relief as the interest of justice may require.

XIII. EFFECTIVE AND TERMINATION DATES

31. This Consent Judgment shall be effective upon the date of its entry by the Court.


32. This Consent Decree shall terminate upon certification by EPA of completion of the Remedial Action required by the ROD or fifteen (15) days after receipt by EPA of the net proceeds of the sale of the Site, whichever is later. Termination of this Consent Decree shall not affect the Covenant Not to Sue (Section VI), including the provisions relating to the reopening of this matter contained in paragraph 16, and shall not

affect any continuing obligation of the Settling Defendant or any
Successor-in-Interest to the Site under Sections III and IV.

SIGNED AND ENTERED this _____ day of _____, 1989.

UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES:




DONALD A. CARR
Acting Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

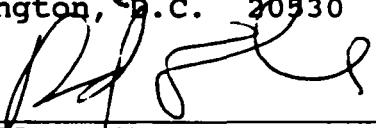
LINCOLN C. ALMOND
United States Attorney
District of Rhode Island

By:

MICHAEL IANNOTTI
Assistant United States Attorney



CYNTHIA S. HUBER
Attorney
Environmental Enforcement Section
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

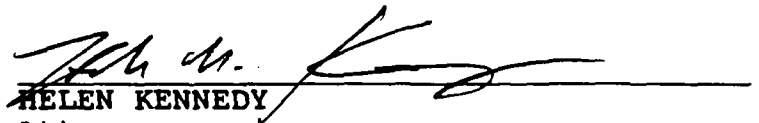


RICHARD S. SHINE
Attorney
Environmental Enforcement Section
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

STAMINA MILLS SUPERFUND SITE
HYDRO-MANUFACTURING, INC. CONSENT DECREE



EDWARD E. REICH
Acting Assistant Administrator for
Enforcement and Compliance Monitoring
U.S. Environmental Protection Agency
Washington, D.C. 20460



HELEN KENNEDY
Attorney
Office of Enforcement and Compliance
Monitoring
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

STAMINA MILLS SUPERFUND SITE
HYDRO-MANUFACTURING, INC. CONSENT DECREE

Paul S. Keough, Acting

MICHAEL DELAND
Regional Administrator
U.S. Environmental Protection Agency
Region I
John F. Kennedy Federal Building
Boston, Massachusetts 02203

Audrey Zucker

AUDREY ZUCKER
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region I
John F. Kennedy Federal Building
Boston, Massachusetts 02203

STAMINA MILLS SUPERFUND SITE
HYDRO-MANUFACTURING, INC. CONSENT DECREE
CONSENT AND AUTHORIZATION

Hydro-Manufacturing, Inc. the Settling Defendant, by the duly authorized representative named, titled, and signed hereunder, hereby consents to this Consent Decree regarding the Stamina Mills Superfund Site in the Village of Forestdale, Town of North Smithfield, Rhode Island, and the filing of this Decree with the United States District Court for the District of Rhode Island, and agrees to be bound by the terms and conditions thereof.

Upon the lodging of this Consent Decree, the Settling Defendant hereto agrees that all requirements as to service of process set forth in Federal Rule of Civil Procedure 4 and all requirements as to service of pleadings and other papers set forth in Federal Rule of Civil Procedure 5 shall be deemed to be met by service by mail upon William G. Grande, Esq., 160 Plainfield Street, Providence, Rhode Island 02903, or such other agent as the Settling Defendant may hereafter designate, who is hereby appointed as agent for service or process for the Settling Defendant and who shall have the responsibility for distributing

copies of the Complaint, pleadings and other papers to the
Settling Defendant.

Haig Barsamian
HAIG BARSAMIAN, Esq.
Suite 902
58 Weybosset Street
Providence, RI 02903

HYDRO-MANUFACTURING, INC.

By: *Henry L. Richard Sr.*
HENRY L. RICHARD, Sr.
President

William G. Grande
WILLIAM G. GRANDE, Esq.
160 Plainfield Street
Providence, Rhode Island 02903

Attorneys for Hydro-Manufacturing,
Inc.

DATED: *June 21*, 1989

DP
No. 30 1/24/89

1089

I. ROGER N. MEUNIER, of Morrill Road,

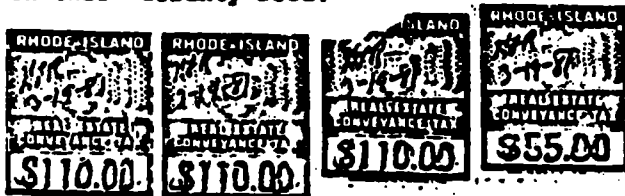
of Canterbury, New Hampshire
for consideration paid, grant to Hydro-Manufacturing, Inc., a duly-created
Rhode Island corporation, with its office at 160 Plainfield Street,
of Providence, Rhode Island with WARRANTY COVENANTS

(Description, and Incumbrances, if any)

That certain lot, parcel of land or real estate with the buildings and improvements thereon, situated on the southerly side of Main Street, and extending on both sides of Branch River, in the Village of Forestdale, in the Town of North Smithfield and State of Rhode Island, known as the Forestdale Mill (hereinafter sometimes called the mill premises), laid out and delineated as lot number 1 (one) on that plat entitled, "Plan No. 5 of Land Conveyed by the Forestdale Manufacturing Company situated in Forestdale, North Smithfield, Rhode Island made by Wm. I. Thompson, Engineer, November, 1930," which said plat was filed on November 26th 1930 with the Records of Deeds for said Town of North Smithfield.

Said lot contains about eight (8) acres, and that portion thereof on the north side of said river is bounded; northerly by Main Street, about one thousand five hundred fourteen (1,514) feet; northeasterly one hundred twenty-five and 55/100 (125.55) feet by lot number 8 (eight) on said Plan, at a fence; easterly, by said lot number 8 (eight) eleven and 5/10 (11.5) feet; northerly again by said lot number 8 (eight) at a bank wall, one hundred eleven (111) feet; easterly, again by Bridge Street ninety two (92) feet and thirty-five and 5/10 (35.5) feet; southerly and southwesterly by said river, about one thousand nine hundred seventy (1,970) feet. The portion thereof on the south side of said river is bounded: northerly by said river about five hundred ninety (590) feet; easterly by said Bridge Street three hundred sixty-five (365) feet;

Also all the right, title and interest in and to all the property rights and real estate described in a Mortgage Deed executed on November 11, 1976 to Marquette Credit Union, which mortgage is recorded in the office of the Recorder of Deeds for the Town of North Smithfield, in Mortgage Book No. 88 at Page 143 and on continuing pages, which said description is incorporated by reference and made part of an included in this Warranty Deed.



Witness with

Witness BY hand this 11th day of March 19 81
Roger N. Meunier
ROGER N. MEUNIER

State of Rhode Island, Etc. }
County of Providence }
In Providence on the 11th day of March 19 81
before me personally appeared Roger N. Meunier

to me known and known by me to be the party executing the foregoing instrument, and he acknowledged said instrument, by him executed, to be his free act and deed.

RECORDED IN NORTH SMITHFIELD, RI 3-19-81
AT 10:50 A.M. ATTEST: *Carol A. Antonelli*
TOWN CLERK Notary Public
Carol A. Antonelli
Notary Public

ATTORNEY: *Joseph H. Mearns*