



SDMS DocID 457813

record  
9/25/90

Entered 12/26/90

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

SUPERFUND RECORDS CTR	
Site:	<u>Pine St. Canal</u>
Block:	<u>10.8</u>
Other:	<u>457813</u>

UNITED STATES OF AMERICA,  
Plaintiff,

v.

GREEN MOUNTAIN POWER CORP.,  
NEW ENGLAND ELECTRIC SYSTEM,  
and VERMONT GAS SYSTEMS, INC.,  
et al.,

Defendants;

Civil Action No. 88 - 307  
Judge Gagliardi

GREEN MOUNTAIN POWER CORP.,  
Defendant and  
Third-Party Plaintiff,

v.

UGI CORP., SOUTHERN UNION CO.,  
THE STATE OF VERMONT and  
CHRISTINE FARRELL,

Third-Party Defendants;

VERMONT GAS SYSTEMS, INC.,  
Defendant and  
Third-Party Plaintiff,

v.

UGI CORP., SOUTHERN UNION CO.,  
E.B. & A.C. WHITING CO., THE  
STATE OF VERMONT, and  
CHRISTINE FARRELL,

Third-Party Defendants;

E.B. and A.C. WHITING COMPANY, )  
 )  
 Third-Party Defendant )  
 and Fourth-Party Plaintiff, )  
 )  
 v. )  
 )  
 HEUBLEIN, INC.; UHLMANN CO. )  
 f/k/a STANDARD MILLING CO.; )  
 ARTELL, INC.; LEVERAGE CORP.; )  
 RICHARD GRUNDLER, ROBERT )  
 PERRIN, CHARLES HADDEN, )  
 RICHARD REED, STANLEY SMITH, )  
 STUART JACOBS, ROBERT WATSON, )  
 CHARLES SHEA, ARTHUR MORRILL, )  
 and STEN FERSING d/b/a )  
 LEVERAGE GROUP; VERMONT )  
 DEVELOPMENT CREDIT CORP.; CITY )  
 OF BURLINGTON; and G.S. )  
 BLODGETT CO., INC., )  
 )  
 Fourth-Party Defendants. )  
 \_\_\_\_\_ )

CONSENT DECREE

Plaintiff, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed the Complaint in this action on December 5, 1988, alleging that the Defendants are jointly and severally liable to the United States, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, for costs incurred and to be incurred by Plaintiff in responding to the release or threat of release of hazardous substances at a portion of the Pine Street Canal Site in Burlington, Vermont, known as the Maltex Pond. Subsequent related third-party claims, fourth-party claims, cross-claims and counterclaims, including, but not limited to claims for contribution, indemnity, restitution and

reimbursement, have been filed by the Defendants, Third-Party Defendants and Fourth-Party Defendants.

This Decree ("Decree") is made and entered into by and between Plaintiff, the United States of America, and the persons defined in this Decree as the Settling Defendants (referred to collectively as "the Parties").

The United States alleges in its Complaint that the "Pine Street Canal Site," is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and that "hazardous substances," within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were transported to, and treated and disposed of at the Pine Street Canal Site.

The United States alleges in its Complaint that "releases" or threatened "releases" of hazardous substances into the "environment," within the meaning of Sections 101(8) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(8) and 9601(22), occurred at and from the Pine Street Canal Site.

Between approximately March 8, 1985 and December 5, 1985, EPA performed an immediate removal action at the Maltex Pond area of the Pine Street Canal Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and the National Contingency Plan, during which EPA incurred Response Costs.

By entering into this Decree, Settling Defendants do not admit any fact or legal or equitable liability under any federal, state or local law, and do not admit to any apportionment between them or any other person for any costs associated with the Pine

Street Canal Site. Settling Defendants reserve the right to contest in any subsequent proceeding, other than a proceeding to enforce this Decree, the validity of any factual or legal allegation or claim made herein. Neither this Decree nor any part thereof shall be admissible in evidence for any purpose except for enforcement of this Decree. Settlement of this action is in the public interest. The Parties have entered into this Decree as a good faith settlement to avoid further litigation and to settle certain claims raised against the Settling Defendants in this action by the United States and/or other of the Settling Defendants.

NOW, THEREFORE, before the taking of any testimony, before adjudication of any issue of fact or law or the merits of this case, and with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action and personal jurisdiction over the Parties to this Decree, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1395(a), and CERCLA Sections 107(a) and 113(b), 42 U.S.C. § 9607(a) and § 9613(b). The Parties agree to be bound by the terms of this Decree and not to contest its validity in any subsequent proceeding arising from it.

II. DEFINITIONS

2. The following definitions shall apply in this Decree:

A. "Consent Decree" ("Decree") means this Consent Decree and all exhibits hereto. All exhibits to the Decree are incorporated into this Decree by reference as if fully set forth herein.

B. "Covered Matters" means those Response Costs that the United States incurred during the removal action conducted in 1985 at the Maltex Pond portion of the Pine Street Canal Site; interest accrued thereon through December 31, 1989; EPA enforcement costs related to the litigation of the 1985 removal incurred through September 30, 1989; and United States Department of Justice enforcement costs related to the litigation of the 1985 removal incurred through September 30, 1989. EPA agrees that its costs relating to the 1985 removal action at the Maltex Pond portion of the Pine Street Canal Site are those costs enumerated in Exhibit 2. Covered Matters does not include, and the United States reserves its rights to pursue in future litigation: enforcement costs (e.g., payroll, travel, indirect costs) incurred after September 30, 1989 by the United States Department of Justice; response costs, including enforcement costs, not related to the 1985 removal incurred at any time by EPA; enforcement costs of the 1985 removal incurred by EPA after September 30, 1989; interest accrued on any of these costs; or any other costs not specified as Covered Matters.

C. "Days" means calendar days.

D. "EPA" means the United States Environmental Protection Agency.

E. For purposes of this Decree, the "Pine Street Canal Site" ("Site") means the property located between Pine Street and Lake Champlain in Burlington, Vt., and "Maltex Pond" means that portion of the Site where EPA conducted the 1985 removal action, as shown generally on the map attached as Exhibit 1. The exact boundary of the Site is not yet known.

F. "Response Costs" means any costs not inconsistent with the National Contingency Plan relating to the Pine Street Canal Site, incurred by Plaintiffs pursuant to 42 U.S.C. § 9601 et seq.

G. "Settling Defendants" means the following Defendants, Third Party Defendants and Fourth Party Defendants in this action:

- (1) Green Mountain Power Corporation
- (2) New England Electric System
- (3) New England Power Service Company
- (4) Vermont Gas Systems, Inc.
- (5) UGI Corp.
- (6) Southern Union Co.
- (7) the State of Vermont
- (8) Christine Farrell
- (9) E.B. & A.C. Whiting Co.
- (10) Heublein, Inc.
- (11) Uhlmann Co. f/k/a Standard Milling Co.
- (12) Richard Grundler, Robert Perrin, Charles

Hadden, Richard Reed, Stanley Smith, Stuart Jacobs, Robert Watson, Charles Shea, and Sten Fersing d/b/a Leverage Group

(13) City of Burlington

(14) G.S. Blodgett Co., Inc.

H. Terms not otherwise defined in this section shall have their ordinary meaning unless defined in 42 U.S.C. § 9601, in which case the statutory definition shall apply.

### III. PARTIES BOUND

3. This Decree shall apply to and be binding upon each Settling Defendant and its directors, officers, employees, successors and assigns. The Decree also applies to and is binding upon the United States. Each signatory to this Decree by or on behalf of a Settling Defendant certifies that he or she is fully authorized to enter into this Decree, to execute this Decree, and to bind that Party to this Decree legally.

### IV. EFFECT OF THIS SETTLEMENT

4. The Parties have negotiated and executed this Consent Decree in good faith and agree that it represents a fair and reasonable settlement of Covered Matters and that this settlement is consistent with the purposes of CERCLA and is in the public interest.

### V. PAYMENT OF COSTS

5. Within fifteen days after entry of this Decree, Settling Defendants shall pay a principal amount of \$945,000.00, plus interest earned thereon, to the United States as reimbursement for Covered Matters. Settling Defendants shall make this payment

through an Escrow Agent appointed by agreement among the Settling Defendants, as described further in this Section.

6. A copy of the Escrow Agreement among Settling Defendants is attached as Exhibit 3. The United States is not a party to the Escrow Agreement and shall not be bound by or assume any responsibility or liability under the Escrow Agreement. The United States has reviewed the terms of the present Escrow Agreement and approved the designation of the Escrow Agent. The Escrow Agreement and the designation of the Escrow Agent shall not be changed without the review and approval of the United States. Settling Defendants may pay for the services of the Escrow Agent, not to exceed \$1000.00, from the interest earned on the \$945,000. The Escrow Agreement may not permit any amount to be paid for the services of the Escrow Agent from the \$945,000 on which the Escrow Account was established. If the Escrow Account incurs a loss such that the balance in the Account is less than \$945,000 when the payment described in Paragraph 5 is due, Settling Defendants shall make up the difference between \$945,000 and the balance in the Account.

7. The execution of this Decree by each Settling Defendant constitutes a certification that it made its respective payment to the Escrow Account by May 9, 1990 (the City of Burlington has until May 18, 1990). Settling Defendants shall provide all original signature pages to the Department of Justice at the address indicated below no later than May 18, 1990. Upon receipt of the funds, Settling Defendants shall cause the Escrow



Agent to invest and continue to invest the funds he/she received from the Settling Defendants in United States government securities or obligations secured by the United States government in a manner designed to minimize fluctuations in the value of the investment and to achieve at least the average rate for United States treasury bills during the period in which the monies are in deposit in the Escrow Account.

8. Payments made pursuant to this Section shall be made by certified or cashier's check payable to the "EPA, Hazardous Substances Superfund" and shall be sent to the U.S. EPA-Region I, P.O. Box 360197M, Pittsburgh, Pennsylvania 15251. The check shall reference the Pine Street Canal Site, the names and addresses of the Settling Defendants, the name and address of the escrow agent making payment, the caption and civil action number of this litigation, the date that this Consent Decree is entered by the Court, and EPA Identification Number 0119.

9. A copy of the check shall also be sent to:

Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region I  
JFK Federal Building, RCO-1903  
Boston, MA 02203

Merrill S. Hohman  
Director, Waste Management Division  
U.S. Environmental Protection Agency  
Region I  
JFK Federal Building, HAA-CAN2  
Boston, MA 02203

Assistant Attorney General  
United States Department of Justice  
Environment and Natural Resources Division  
Washington, D.C. 20530

Payment shall be deemed accomplished upon receipt by EPA of the check.

10. Any payments to be made under this Decree which remain unpaid after the deadline set forth in Paragraph 5 shall be assessed interest from the date of entry of this Decree at a rate established by the Department of Treasury. 42 U.S.C. § 9607(a)(4)(D); 31 U.S.C. § 3717; 4 C.F.R. § 102.13.

11. In addition to any other remedies or sanctions available to the United States, if the Settling Defendants, through their Escrow Agent, fail to make the payment required by Paragraph 5, each Settling Defendant shall pay the United States the following stipulated penalties:

- (1) \$250.00 per day for the first 30 days of noncompliance;
- (2) \$1,500.00 per day for each day of noncompliance thereafter.

12. Stipulated penalties are not payable in avoidance of interest. Interest on any unpaid stipulated penalty shall begin to accrue on the day after a stipulated penalty payment is due and shall be based on the amount of the unpaid stipulated penalty.

13. Stipulated penalties shall be paid, within thirty days after demand, in the same manner as set forth in Paragraphs 8 and 9. Stipulated penalties shall be in addition to any other remedies or sanctions that may be available to the United States

by reason of a Settling Defendant's failure to comply with the terms of this Decree.

VI. CONSENT TO SUIT AND AMENDMENT OF COMPLAINT  
AND WAIVER OF STATUTE OF LIMITATIONS

14. Settling Defendants consent to an amendment of the Complaint in this action to name all Settling Defendants as Defendants. Each Settling Defendant agrees to waive service by summons of the amended Complaint and agrees that its signature to this Decree and receipt of the amended Complaint constitutes effective service on its behalf. No Settling Defendant shall be obligated to answer the amended Complaint or be deemed to admit any of the allegations of the amended Complaint.

15. Each Settling Defendant waives any right it may have to assert the Statute of Limitations as a defense to the claims for Covered Matters in the amended Complaint. Each Settling Defendant reserves any right it may have to assert the Statute of Limitations as a defense to claims for other than Covered Matters.

VII. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

16. In consideration of Settling Defendants' payment, as provided in Paragraph 5 of Section V, and after payment of this sum to EPA, the United States covenants not to sue, execute judgment or take any other judicial or administrative civil action against the Settling Defendants for Covered Matters.

17. The covenant not to sue set forth in the previous paragraph, does not pertain to any matters other than those expressly specified to be Covered Matters. The United States

expressly reserves, and this Decree is without prejudice to, all other rights that the United States may have against any Settling Defendant with respect to all other matters, including but not limited to:

(1) claims based on a failure by that Settling Defendant to meet a requirement of this Decree;

(2) liability for damages for injury to, destruction of, or loss of natural resources incurred at any time;

(3) liability for response costs not defined as Covered Matters; and

(4) criminal liability.

18. The Parties understand that response actions other than the immediate removal action EPA conducted between March 8, 1985 and December 5, 1985 at the Maltex Pond area of the Site, have been and are being conducted regarding the Site and that additional response actions may be necessary in the future. This Decree does not address and does not resolve any liability that Settling Defendants or any other parties may have in connection with these response actions.

19. Nothing in this Decree is intended as a covenant not to sue or a release from liability for any person not a Party bound to this Decree. The United States expressly reserves all claims, demands, and causes of action, either judicial or administrative, past or future, in law or equity, against any person or entity

not party to this Decree for any matter arising at the Pine Street Canal Site.

20. Settling Defendants reserve any rights they may have to assert all factual, equitable or legal defenses to any claim asserted by the United States relating to the Site, except as expressly provided in this Decree. Entry of this Decree shall not be construed as an acknowledgement by any Settling Defendant that there has been a release or threatened release at the Site or that any such release or threatened release constitutes an imminent and substantial endangerment to the public health or welfare or to the environment.

#### VIII. CONTRIBUTION PROTECTION

21. Settling Defendants shall not be liable for claims for contribution with respect to Covered Matters, pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

22. All claims or defenses that the Plaintiff or Settling Defendants may have against any other person or entity not a party to this Decree, including, but not limited to, claims for indemnity, or claims for contribution pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f)(2), are expressly reserved.

#### IX. RESPONSE AUTHORITY

23. Nothing in this Decree limits the authority and rights of the United States under Sections 104 and 106 of CERCLA, 42 U.S.C. §§ 9604 and 9606, or any other applicable law to take any and all response actions authorized by law.

X. DISMISSAL OF REMAINING CASE

24. Upon payment to the United States of the amount required under Section V. above, the Amended Complaint filed in this action by the United States will be dismissed with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1), as to the Settling Defendants solely as it pertains to Covered Matters. The remainder of the Amended Complaint, including but not limited to any claim by the United States for declaratory judgment and any claim other than Covered Matters, will be dismissed without prejudice, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure. The United States reserves the right to initiate a new civil action against any person, including the Settling Defendants, for that portion of this action that is dismissed without prejudice.

25. Settling Defendants agree that upon payment pursuant to Paragraph 5 and entry of this Decree, all Settling Defendants shall be and hereby are released from all claims (including claims for indemnity and contribution) by other Settling Defendants relating to the 1985 Maltex Pond removal action, and all such claims against each Settling Defendant are hereby dismissed with prejudice. The Settling Defendants agree that upon payment pursuant to Paragraph 5 and entry of this Decree, all claims asserted in this action against any Settling Defendant by any other Settling Defendant, other than claims described in the first sentence of this Paragraph, shall be and are hereby dismissed without prejudice.

26. All claims in this action against the Vermont Development Credit Corporation, Artell, Inc., Leverage Corp., and Arthur Morrill d/b/a Leverage Group are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a).

XI. WAIVER OF CLAIMS

27. Settling Defendants shall make no claim against the United States or the Hazardous Substances Superfund, under any provision of law, including any claim pursuant to Sections 111 and 112 of CERCLA, 42 U.S.C. §§ 9611 and 9612, or pursuant to any other statute, regulation, common law or legal theory for Covered Matters or for attorney fees related to this action. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.25(d).

XII. DOCUMENT PRESERVATION

28. Settling Defendants shall preserve and shall instruct their contractors and agents to preserve all documents, records and other information within their possession, custody or control or that of their contractors or agents relating to the Pine Street Canal Site.

29. The requirements of this Section shall not restrict efforts to obtain documents in any other administrative or judicial action.

XIII. RETENTION OF JURISDICTION AND TERMINATION

30. The Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Decree.

XII. NOTICE AND PUBLIC COMMENT

31. Final approval by the United States and entry of this Decree is subject to a 30-day public comment period pursuant to Section 122 of CERCLA, 42 U.S.C. § 9622, and 28 C.F.R. § 50.7. In accordance with Section 122 of CERCLA, 42 U.S.C. § 9622, the Attorney General may withdraw his consent to this Decree if comments received disclose facts or considerations indicating that this Decree is inappropriate, improper, or inadequate. Settling Defendants agree to entry of the Decree without further notice.

XIII. EXECUTION

32. This Decree may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

BY THEIR COUNSEL, THE PARTIES ENTER INTO THIS CONSENT DECREE AND SUBMIT IT TO THE COURT, THAT IT MAY BE APPROVED AND ENTERED.

For Plaintiff, the United States of America:

9.20.90

Date



RICHARD B. STEWART  
Assistant Attorney General  
Environment and Natural Resources  
Division  
United States Department of Justice



Consent Decree in Civil Action No. 88-397  
United States v. Green Mountain Power Corp. et al.

\_\_\_\_\_  
Date

\_\_\_\_\_  
GEORGE J. TERWILLIGER, III  
United States Attorney  
District of Vermont

June 22 1990  
Date

Julie Belaga  
JULIE BELAGA  
Regional Administrator  
United States Environmental  
Protection Agency, Region I  
JFK Federal Building  
Boston, Massachusetts 02203

\_\_\_\_\_  
Date

\_\_\_\_\_  
JOHN-CLAUDE CHARBONNEAU  
Assistant United States Attorney  
Federal Building, 3rd Floor  
151 West Street  
Rutland, Vermont 05701

6/22/90  
Date

Susan L. Schneider  
SUSAN L. SCHNEIDER  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
Benjamin Franklin Station  
P.O. Box 7611  
Washington, D.C. 20044

June 22, 1990  
Date

Margery L. Adams  
MARGERY L. ADAMS  
United States Environmental  
Protection Agency, Region I  
JFK Federal Building  
Boston, MA 02203



Consent Decree in Civil Action No. 88-397  
United States v. Green Mountain Power Corp. et al.

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Date

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GREEN MOUNTAIN POWER CORPORATION

5/14/90  
Date

John F. Keslow  
NEW ENGLAND ELECTRIC SYSTEM

5/14/90  
Date

GP Saurer  
NEW ENGLAND POWER SERVICE COMPANY

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Date

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VERMONT GAS SYSTEMS, INC.

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UGI CORPORATION

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SOUTHERN UNION COMPANY

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THE STATE OF VERMONT

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Date

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CHRISTINE FARRELL

Consent Decree in Civil Action No. 88-397  
United States v. Green Mountain Power Corp. et al.

_____ Date	_____ GREEN MOUNTAIN POWER CORPORATION
_____ Date	_____ NEW ENGLAND ELECTRIC SYSTEM
_____ Date	_____ NEW ENGLAND POWER SERVICE COMPANY
<u>5/16/90</u> Date	<u>Robert A Miller</u> VERMONT GAS SYSTEMS, INC.
_____ Date	_____ UGI CORPORATION
_____ Date	_____ SOUTHERN UNION COMPANY
_____ Date	_____ THE STATE OF VERMONT
_____ Date	_____ CHRISTINE FARRELL

Consent Decree in Civil Action No. 88-397  
United States v. Green Mountain Power Corp. et al.

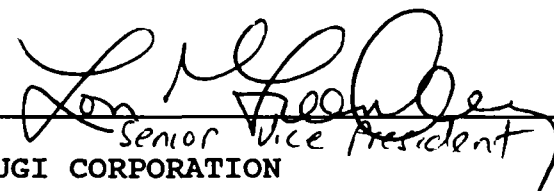

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Date NEW ENGLAND ELECTRIC SYSTEM

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Date NEW ENGLAND POWER SERVICE COMPANY

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Date VERMONT GAS SYSTEMS, INC.

MAY 10 1990  
Date

By:    
Senior Vice President  
UGI CORPORATION

\_\_\_\_\_  
Date SOUTHERN UNION COMPANY

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Date THE STATE OF VERMONT

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Date CHRISTINE FARRELL

Consent Decree in Civil Action No. 88-397  
United States v. Green Mountain Power Corp. et al.

_____ Date	_____ GREEN MOUNTAIN POWER CORPORATION
_____ Date	_____ NEW ENGLAND ELECTRIC SYSTEM
_____ Date	_____ NEW ENGLAND POWER SERVICE COMPANY
_____ Date	_____ VERMONT GAS SYSTEMS, INC.
_____ Date	_____ UGI CORPORATION
5/15/90 _____ Date	<i>R Bradford Fawley</i> _____ SOUTHERN UNION COMPANY By Its Counsel R. Bradford Fawley Murtha, Cullina, Richter and Pinney
_____ Date	_____ THE STATE OF VERMONT
_____ Date	_____ CHRISTINE FARRELL

Consent Decree in Civil Action No. 88-397  
United States v. Green Mountain Power Corp. et al.

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Date

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GREEN MOUNTAIN POWER CORPORATION

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NEW ENGLAND ELECTRIC SYSTEM

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NEW ENGLAND POWER SERVICE COMPANY

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VERMONT GAS SYSTEMS, INC.


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UGI CORPORATION

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SOUTHERN UNION COMPANY

8 May 1990  
Date

  
\_\_\_\_\_  
THE STATE OF VERMONT

\_\_\_\_\_  
Date

\_\_\_\_\_  
CHRISTINE FARRELL

Consent Decree in Civil Action No. 88-397  
United States v. Green Mountain Power Corp. et al.

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Date GREEN MOUNTAIN POWER CORPORATION

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Date SOUTHERN UNION COMPANY

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Date THE STATE OF VERMONT

5-11/90  
Date 1990

Christine Farrell  
CHRISTINE FARRELL



Consent Decree in Civil Action No. 88-397  
United States v. Green Mountain Power Corp. et al.

*Ronald J. Allison*

\_\_\_\_\_  
Date

E.B. & A.C. WHITING CO.

\_\_\_\_\_  
Date

\_\_\_\_\_  
HEUBLEIN, INC.

\_\_\_\_\_  
Date

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UHLMANN CO. f/k/a STANDARD MILLING  
CO.

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Consent Decree in Civil Action No. 88-397  
United States v. Green Mountain Power Corp. et al.

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Date  
  
5/15/90  
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Date

\_\_\_\_\_  
E. B. & A.C. WHITING CO.  
*John B. Uehlein, Attorney*  
\_\_\_\_\_  
HEUBLEIN, INC.

\_\_\_\_\_  
Date

\_\_\_\_\_  
UHLMANN CO. f/k/a STANDARD MILLING  
CO.

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Consent Decree in Civil Action No. 88-397  
United States v. Green Mountain Power Corp. et al.

\_\_\_\_\_  
Date

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E.B. & A.C. WHITING CO.

\_\_\_\_\_  
Date

\_\_\_\_\_  
HEUBLEIN, INC.

*May 15, 1990*  
\_\_\_\_\_  
Date

*Robert L. Diswell and  
Howard DeLong*  
\_\_\_\_\_  
UHLMANN CO. f/k/a STANDARD MILLING  
CO.

\_\_\_\_\_  
Date

\_\_\_\_\_  
ARTELL, INC.

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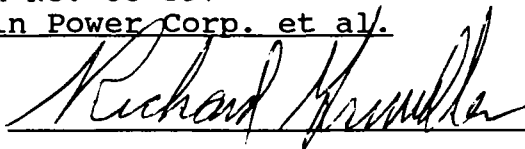
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Consent Decree in Civil Action No. 88-397  
United States v. Green Mountain Power Corp. et al.

5-8-90

Date



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\_\_\_\_\_  
RICHARD GRUNDLER  
ROBERT PERRIN  
CHARLES HADDEN  
RICHARD REED  
STANLEY SMITH  
STUART JACOBS  
ROBERT WATSON  
CHARLES SHEA  
and STEN FERSING d/b/a  
LEVERAGE GROUP

\_\_\_\_\_  
Date

\_\_\_\_\_  
CITY OF BURLINGTON

\_\_\_\_\_  
Date

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G.S. BLODGETT CO., INC.

Consent Decree in Civil Action No. 88-397  
United States v. Green Mountain Power Corp. et al.

\_\_\_\_\_  
Date

*5-8-70*

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Date

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Date

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RICHARD GRUNDLER  
ROBERT PERRIN  
CHARLES HADDEN  
RICHARD REED  
STANLEY SMITH  
STUART JACOBS  
ROBERT WATSON  
CHARLES SHEA  
and STEN FERSING d/b/a  
LEVERAGE GROUP

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Date

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CITY OF BURLINGTON

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Date

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G.S. BLODGETT CO., INC.

Consent Decree in Civil Action No. 88-397  
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5/8/90  
Date

Charles R. Hadden

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RICHARD GRUNDLER  
ROBERT PERRIN  
CHARLES HADDEN  
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G.S. BLODGETT CO., INC.

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5-9-90  
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Richard P. Reed

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RICHARD GRUNDLER  
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5/9/90  
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RICHARD GRUNDLER  
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Charles T. Shea  
Stuart E. Jacobs  
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RICHARD GRUNDLER  
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*Charles T Shea*

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RICHARD GRUNDLER  
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CITY OF BURLINGTON

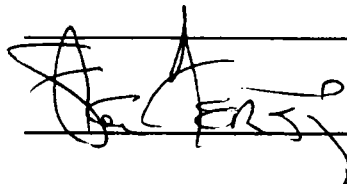
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CITY OF BURLINGTON

5-15-90

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G.S. BLODGETT CO., INC.

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ROBERT PERRIN  
CHARLES HADDEN  
RICHARD REED  
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STUART JACOBS  
ROBERT WATSON  
CHARLES SHEA  
and STEN FERSING d/b/a  
LEVERAGE GROUP

_____	_____
Date	CITY OF BURLINGTON
<u>May 16, 1990</u>	<u>Craig H. Campbell</u>
Date	

G.S. BLODGETT CO., INC.

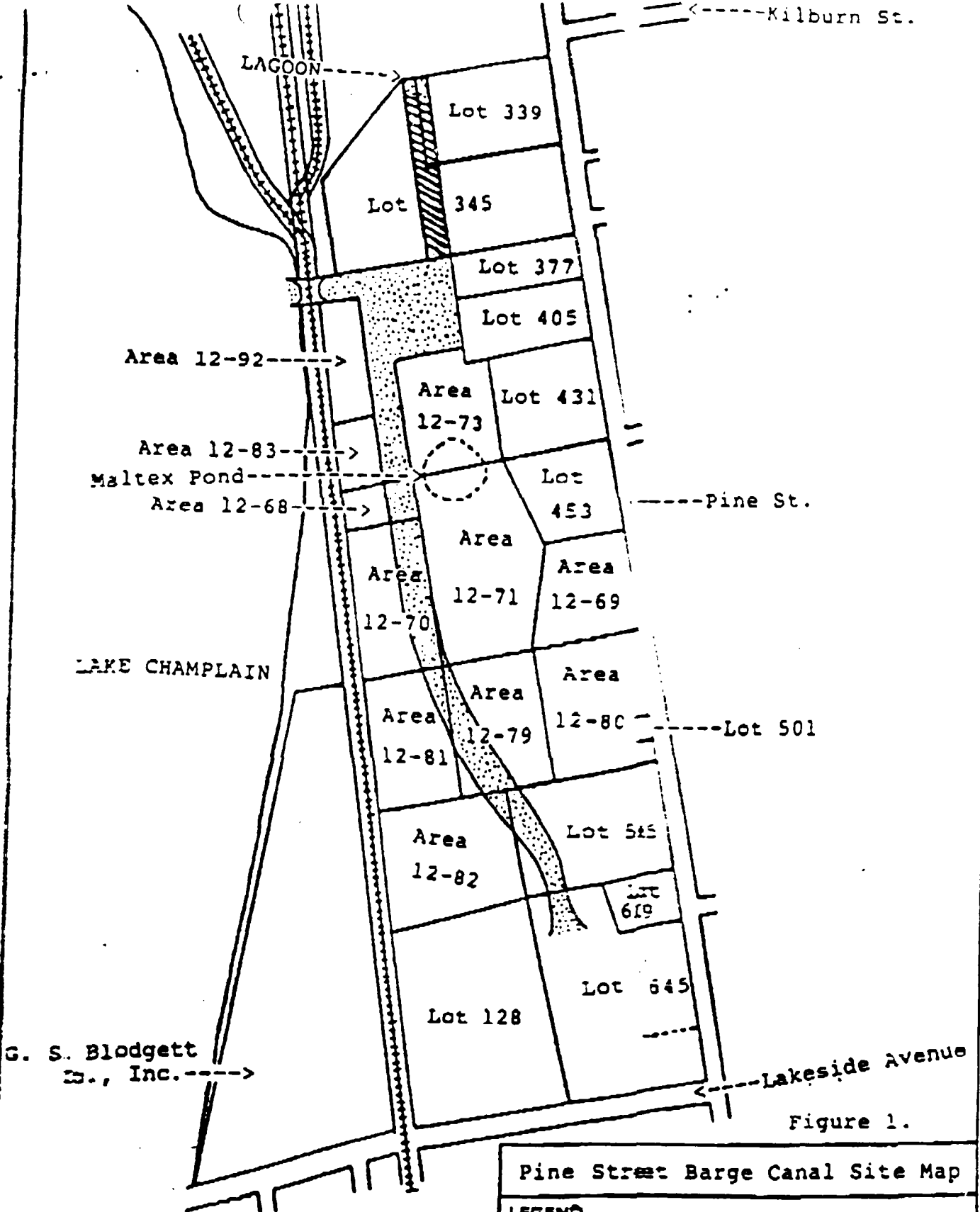


FIGURE 1  
PINE STREET BARGE CANAL SITE MAP



Pine Street Barge Canal Site Map	
<b>LEGEND</b>	
	Barge Canal and Turning Basin
	Area of fill
	Dotted lines show parcel subdivisions
	200 feet

EXHIBIT 2

1985 MALTEX POND REMOVAL COSTS

Direct Costs of Removal  
(through 12/5/85)

TAT Contract(Weston)	\$ 20,739.64
Removal Contract(OHM)	\$612,506.51
Payroll & Travel	\$ 27,463.65
<b>Total Direct Costs</b>	<b>\$660,709.80</b>
EPA Indirect Costs associated with removal action	\$ 92,313.00
Interest through 12/31/89	\$121,914.46
EPA Litigation Costs (through 9/30/89)	\$ 85,656.54



EXHIBIT 3

MALTEX POND ESCROW AGREEMENT

AGREEMENT made as of this 4th day of May, 1990 by and among the persons, corporations and other entities which are the settling defendants (the "Settling Defendants") under a consent decree (the "Consent Decree") to be filed in the United States District Court for the District of Vermont in the action captioned United States v. Green Mountain Power Corporation, et al., Civil Action No. 88-307 and The Howard Bank (the "Escrow Agent").

WHEREAS, the Settling Defendants, in order to comply with the terms of the Consent Decree, are required to make certain payments to the United States;

WHEREAS, the Consent Decree provides for a single payment to the United States to be comprised of contributions from each of the Settling Defendants;

WHEREAS, the Settling Defendants do not intend to be bound by the terms of the Consent Decree until all Settling Defendants have made contributions in the agreed amounts; and

WHEREAS, the Settling Defendants wish to establish an escrow agreement for purposes of making the payment to the United States required by the Consent Decree;

NOW, THEREFORE, for good and valuable consideration, the delivery and receipt of which is hereby acknowledged, the Settling Defendants and the Escrow Agent hereby agree as follows:

1. Contributions.

The Settling Defendants will deposit funds in the total amount of Nine Hundred Forty-Five Thousand Dollars (\$945,000) (the "Escrow Funds") with the Escrow Agent on or before May 9, 1990, and on or before May 16, 1990, each Settling Defendant either (a) shall provide to the Escrow Agent a signature page of the Consent Decree executed by it or (b) shall advise the Escrow Agent that it will not execute the Consent Decree; provided that, the City of Burlington shall have until May 18, 1990 to make its portion of such payment and to provide such signature page or advice. No Settling Defendant shall be entitled to withdraw any funds it has deposited with the Escrow Agent or to be repaid any of said funds except as provided in paragraph 7 hereof upon termination of this Escrow Agreement as provided in paragraph 6 hereof.

2. The Escrow Agent will hold the Escrow Funds and signature pages on behalf of the Settling Defendants in accordance with the terms and provisions of this Escrow Agreement.

3. Confidentiality and Disclosure.

In the event the Escrow Agent does not receive from the Settling Defendants contributions totalling \$945,000 on or before May 9, 1990, it shall advise Susan L. Schneider, Senior Attorney, Environmental Enforcement Section, Environment and Natural Resources Division, Ben Franklin Station, P. O. Box 7611, Washington, D.C. 20044 ("Government Counsel") of the amounts it has received from each of the Settling Defendants. The Escrow Agent shall also notify the Executive Committee of the Settling Defendant, which is comprised of Robert D. Rachlin and Donald J. Rendall, Jr., that contributions totalling \$945,000 have not been received. Except as expressly permitted in this paragraph and in paragraphs 8 and 9, the Escrow Agent shall keep confidential and make no disclosure of the amount of the contribution of any Settling Defendant. Any Settling Defendant that has not made its contribution to the Escrow Fund in the agreed amount hereby waives any right it may have to have the amount of such contribution kept confidential by the United States of America.

4. Upon receipt of executed signature pages of the Consent Decree from all of the Settling Defendants, the Escrow Agent shall provide said signature pages to the Executive Committee of the Settling Defendants, who shall provide copies to each of the Settling Defendants. In the event the Escrow Agent does not receive executed signature pages of the Consent Decree from all of the Settling Defendants on or before May 18, 1990, it shall identify to Government Counsel and to the Executive Committee of the Settling Defendants each Settling Defendant from which it has not received an executed signature page.

5. Investment of Escrow Fund.

Pending disposition under this Agreement, the Escrow Fund, if any, shall be invested in United States government securities or obligations secured by the United States in a manner designed to minimize fluctuations in the value of the investment and to achieve at least the average rate for United States treasury bills during the period in which the monies are on deposit in the Escrow Account. All interest or dividend income or gains realized ("Income") upon any such investment shall be made a part of the Escrow Fund. The Escrow Agent shall maintain accounts of all contributions and income, as provided in paragraph 9 hereof. The Escrow Agent may make such disclosures as it deems necessary to carry out any tax reporting duties it concludes it has, but otherwise it shall have no tax reporting duties with respect to the Escrow Fund, such duties being the responsibility of the party or parties hereto which receive, or have the right to receive, any taxable income with respect hereto.

6. Termination.

This Escrow Agreement will terminate upon the earlier to occur of (a) receipt by the Escrow Agent of written notice from Government Counsel that the Consent Decree has been approved and entered by the United States District Court for the District of Vermont, (b) June 15, 1990, in the event the Escrow Agent has not received contributions totalling \$945,000 and executed signature pages of the Consent Decree from all of the Settling Defendants by that date or (c) April 1, 1991.

7. Distribution of Funds.

(a) Upon termination of this Escrow Agreement as a result of the receipt of written notice from Government Counsel, in accordance with paragraph 6(a) hereof: the Escrow Agent shall disburse the Escrow Fund, including income thereon, by certified or cashier's check payable to the "EPA, Hazardous Substances Superfund" or by wire transfer and sent to the U.S. EPA-Region I, P. O. Box 360197M, Pittsburgh, Pennsylvania 15251 or to such account as shall be designated by the United States. The check or notice of wire transfer shall reference the Pine Street Canal Site, the names and addresses of the Settling Defendants, the name and address of the escrow agent making payment, the caption and civil action number of the action in which the Consent Decree was entered, the date of its entry and EPA Identification Number 0119. Notice of payment shall also be sent to:

Margery L. Adams  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region I  
JFK Federal Building, RCO-1903  
Boston, MA 02203

Merrill S. Hohman  
Director, Waste Management Division  
U.S. Environmental Protection Agency  
Region I  
JFK Federal Building, HAA-CAN2  
Boston, MA 02203

Assistant Attorney General  
United States Department of Justice  
Environment and Natural Resources Division  
Washington, D.C. 20530

The Escrow Agent shall be entitled to rely, and shall rely, on any notice received under paragraph 6(a), and its obligation to make the payment provided for in this paragraph 7(a)(1) shall be absolute and not subject to question or challenge on any ground

whatsoever by any Settling Defendant; nor shall any Settling Defendant have any right to bring any claim against the Escrow Agent on account of such payment.

(b) Upon termination in accordance with the provisions of paragraph 6(b) or (c) hereof, the Escrow Agent shall disburse the Escrow Fund, including income thereon, to each Settling Defendant in proportion to the contribution of each Settling Defendant.

8. Accounts.

The Escrow Agent shall maintain individual records of the contribution or contributions received from each Settling Defendant and shall allocate all income on the Escrow Fund among such accounts in proportion to the contributions made by each Settling Defendant. Upon termination of this Escrow Agreement, the Escrow Agent shall notify each Settling Defendant and, except as expressly provided herein, no one else of the amount of income attributable to it.

9. Disposition of Records.

Upon the distribution of funds as provided in paragraph 7 and the notification as provided in paragraph 8, the Escrow Agent shall, as directed by the Executive Committee, either destroy or file under seal in the United States District Court for the District of Vermont all documents showing the amounts contributed by each Settling Defendant.

10. Notices.

All notices, demands and requests given or required to be given hereunder shall be in writing, and shall be given by hand or by Federal Express or other reputable overnight courier, or shall be mailed by first class registered or certified mail, postage prepaid, return receipt requested, and shall be given as follows:

To the Executive Committee:

Robert D. Rachlin, Esquire  
Downs Rachlin & Martin  
Courthouse Plaza  
P. O. Box 190  
Burlington, Vermont 05402-0190

Donald J. Rendall, Jr., Esquire  
Sheehey Brue Gray & Furlong  
Post Office Box 66  
19 South Winooski Avenue  
Burlington, Vermont 05402

To the United States:

Office of Regional Counsel  
U. S. Environmental Protection Agency  
Region I  
JFK Federal Building, RCO-1903  
Boston, Massachusetts 02203

Merrill S. Hohman  
Director, Waste Management Division  
U. S. Environmental Protection Agency  
Region I  
JFK Federal Building, HAA-CAN2  
Boston, Massachusetts 02203

Assistant Attorney General  
United States Department of Justice  
Environment and Natural Resources Division  
Washington, D.C. 20530

To the Escrow Agent:

The Howard Bank, N. A.  
111 Main Street  
Post Office Box 409  
Burlington, Vermont 05402

Attention: Frank E. Ceynar, Senior Vice  
President and Senior Trust Officer

or to such other place or attention such other individual as a party may from time to time designate by written notice to all other parties given as herein required. Any notice required to be given by the Escrow Agent hereunder shall be given within five business days after occurrence of the event giving rise to the duty to provide the notice.

11. Responsibility of Escrow Agent.

The Escrow Agent shall be entitled to rely upon any notice, signature or writing which it shall in good faith believe to be genuine and to be signed or presented by a proper party or parties. The Escrow Agent may consult with its counsel and shall not be held liable for any action taken or omitted in good faith on advice of its counsel.

The Settling Defendants hereto jointly and severally agree to indemnify, protect and hold the Escrow Agent harmless from any and all loss, liability and expense for anything which is done or omitted by it in good faith and not contrary to the express provisions of this Escrow Agreement, and agree to reimburse the Escrow Agent for all its expenses, including reasonable counsel fees, incurred by it in the performance of its duties and responsibilities hereunder except those which may be occasioned

by the Escrow Agent's own gross negligence or willful misconduct. The Escrow Agent shall not be bound by any other agreement between the Settling Defendants even though reference thereto may be made herein or copies or provisions thereof may be annexed as exhibits hereto and whether or not it may have knowledge thereof; it being the intent of the parties hereto that the Escrow Agent's duties and responsibilities are only those as are expressly set forth herein. The Escrow Agent shall have no responsibility whatsoever with respect to the undertakings of any Settling Defendant or to any notice or undertakings of anyone not a party hereto.

12. Jurisdiction.

This Escrow Agreement shall be governed by and be construed in accordance with the laws of The State of Vermont.

13. Resignation, Removal, Successor.

(a) The Escrow Agent may resign from this Escrow Agreement, and thereby become discharged from the obligations hereby created, by notice in writing given to the Executive Committee not less than thirty (30) days before such resignation is to take effect.

(b) The Escrow Agent may be removed at any time by an instrument or concurrent instruments in writing delivered to the Escrow Agent and signed by the members of the Executive Committee.

(c) If at any time hereafter the Escrow Agent shall resign, be removed, be dissolved or otherwise become incapable of acting, or the position of the Escrow Agent shall become vacant for any of the foregoing reasons or for any other reason, the Executive Committee shall promptly appoint a successor to the Escrow Agent after giving notice to, and receiving approval to do so from, the United States. Upon such appointment, such successor shall execute, acknowledge and deliver to its predecessor, and also to the Executive Committee, an instrument in writing accepting such appointment hereunder, and thereupon such successor without any further act, shall become fully vested with all the rights, immunities, and powers, and shall be subject to all of the duties and obligations of its predecessor; and every predecessor Escrow Agent shall promptly deliver all property and monies held by it hereunder to such successor.

In the event that a successor has not been appointed within thirty (30) days of the date of such resignation, removal, dissolution, incapacity or vacancy, the Escrow Agent shall deposit the full amount of the Escrow Fund with the clerk of a court of competent jurisdiction in Burlington, Vermont, and shall interplead all of the parties hereto. Upon so depositing the Escrow Fund and filing its pleading, the Escrow Agent shall be released from all future liability under the terms hereof.

14. Headings.

The headings in this Escrow Agreement are merely for convenience and shall not be used in interpreting any of the provisions.

15. Binding Effect; Successors and Assigns.

This Escrow Agreement shall be binding upon, and inure to the benefit of, the respective parties hereto and their successors and assigns.

16. Counterparts.

This Escrow Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

17. Modification.

This Escrow Agreement may not be amended, altered or modified except by written instrument duly executed by all of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed as an agreement under seal as of the day and year first written above.

ESCROW AGENT



THE HOWARD BANK, N. A.

SETTLING DEFENDANTS

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GREEN MOUNTAIN POWER CORPORATION

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NEW ENGLAND ELECTRIC SYSTEM

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GREEN MOUNTAIN POWER CORPORATION

*John F. Karlow*

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NEW ENGLAND ELECTRIC SYSTEM

*QP Basing*

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NEW ENGLAND POWER SERVICE COMPANY

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VERMONT GAS SYSTEMS, INC.

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UGI CORPORATION

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SOUTHERN UNION COMPANY

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THE STATE OF VERMONT

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CHRISTINE FARRELL

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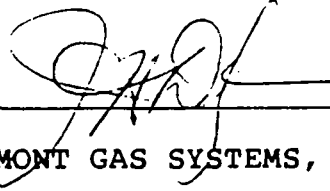
E.B. & A.C. WHITING CO.

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HEUBLEIN, INC.

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NEW ENGLAND POWER SERVICE COMPANY



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HEUBLEIN, INC.

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NEW ENGLAND POWER SERVICE COMPANY

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VERMONT GAS SYSTEMS, INC.

By: *Lee M. Fleener*  
*Senior Vice President*  
UGI CORPORATION

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SOUTHERN UNION COMPANY

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THE STATE OF VERMONT

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UGI CORPORATION

*R. Bradford Fawley*

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SOUTHERN UNION COMPANY

By Its Counsel

R. Bradford Fawley

Murtha, Cullina, Richter and Pinney

---

THE STATE OF VERMONT

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CHRISTINE FARRELL

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SOUTHERN UNION COMPANY

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*Thomas R. Veil*

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THE STATE OF VERMONT

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CHRISTINE FARRELL

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E.B. & A.C. WHITING CO.

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HEUBLEIN, INC.

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NEW ENGLAND POWER SERVICE COMPANY

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UGI CORPORATION

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SOUTHERN UNION COMPANY

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THE STATE OF VERMONT

*Christine E. Farrell*

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CHRISTINE FARRELL

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E.B. & A.C. WHITING CO.

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HEUBLEIN, INC.

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SOUTHERN UNION COMPANY

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THE STATE OF VERMONT

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CHRISTINE FARRELL

*Amald / Allison*

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E.B. & A.C. WHITING CO.

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HEUBLEIN, INC.



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NEW ENGLAND POWER SERVICE COMPANY

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VERMONT GAS SYSTEMS, INC.

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UGI CORPORATION

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E.B. & A.C. WHITING CO.



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HEUBLEIN, INC.

*Stanley Beckwith  
and Robert B. D. Call*

UHLMANN CO. f/k/a STANDARD  
MILLING CO.

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RICHARD GRUNDLER  
ROBERT PERRIN  
CHARLES HADDEN  
RICHARD REED  
STANLEY SMITH  
STUART JACOBS  
ROBERT WATSON  
CHARLES SHEA  
and STEIN FERSING d/b/a  
LEVERAGE GROUP

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UHLMANN CO. f/k/a STANDARD  
MILLING CO.

*Charles T Shea*

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**RICHARD GRUNDLER  
ROBERT PERRIN  
CHARLES HADDEN  
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*Charles T. Shea*

*Stuart E. Jacobs*

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*Robert Watson*

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RICHARD GRUNDLER  
ROBERT PERRIN  
CHARLES HADDEN  
RICHARD REED  
STANLEY SMITH  
STUART JACOBS  
ROBERT WATSON  
CHARLES SHEA  
and STEIN FERSING d/b/a  
LEVERAGE GROUP

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UHLMANN CO. f/k/a STANDARD  
MILLING CO.

*Richard Grundler*

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*Stanley Smith 5/9/90*

RICHARD GRUNDLER  
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UHLMANN CO. f/k/a STANDARD  
MILLING CO.

*Robert P. Reed*

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RICHARD GRUNDLER  
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UHLMANN CO. f/k/a STANDARD  
MILLING CO.

*Charles R. Hadden*

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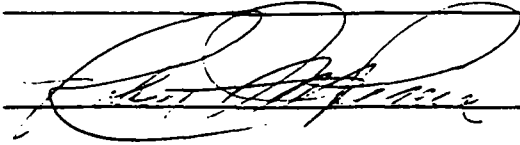
RICHARD GRUNDLER  
ROBERT PERRIN  
CHARLES HADDEN  
RICHARD REED  
STANLEY SMITH  
STUART JACOBS  
ROBERT WATSON  
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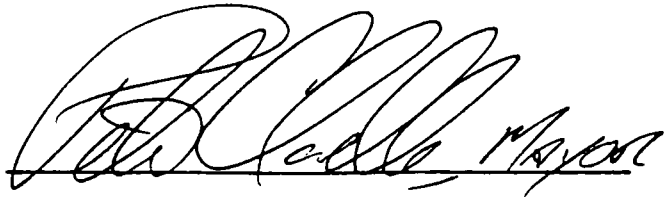
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RICHARD GRUNDLER  
ROBERT PERRIN ✓  
CHARLES HADDEN  
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CITY OF BURLINGTON

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G.S. BLODGETT CO., INC.

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CITY OF BURLINGTON

*Craig H. Campbell, Jr.*

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