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Register of Deeds, Carroll County

STATE OF NEW HAMPSHIRE

CARROLL, SS. **SUPERIOR COURT**

CASE#212-2009-CV-00162

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES

v.

KEARSARGE METALLURGICAL CORP.

and

OCR, INC.

Order

Upon the Motion for the State of New Hampshire Department of Environmental Services ("State" or "DES"), for an order authorizing the State to enter onto certain land and improvements thereon located and owned by a defunct corporation formerly known as Kearsarge Metallurgical Corp. ("KMC") and land and improvements owned by another defunct entity known as OCR, Inc. ("OCR"), and restricting the use of soil and groundwater as may be necessary to protect the public health and the environment from hazardous wastes and materials disposed of in the soil and groundwater at the Properties, service being proper and there being no objections, the Court finds and rules as follows:

Findings of Fact

1. KMC was a New Hampshire corporation, which was dissolved on or about October 31, 1983. It owned property in Conway shown on Tax map 277, Lot 140 (the "KMC Property"). The KMC Property is contaminated by hazardous wastes. Further

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response activities by the State and the USEPA are necessary to protect human health and the environment from those wastes.

2. OCR was a Delaware corporation, which was dissolved and its assets distributed to its shareholder in 1998. OCR's owner was CML Group, Inc., a Delaware corporation that was liquidated in a chapter 11 bankruptcy proceeding in Massachusetts in 2002, *In re CML Group, Inc.*, c. 11 case no. 98-49286-HJB. OCR owned property in Conway shown on Tax Map 277 as Lot 139 (the "OCR Property"). The OCR Property is also contaminated by hazardous wastes that were released onto it from a pipe by KMC. Further response activities by the State and the USEPA are necessary to protect human health and the environment from those wastes on the OCR Property as well.

3. The Properties have been abandoned by their respective owners for many years. The Properties are not secured or insured. KMC has not paid property taxes since 1983 and OCR has not paid since 1999. Buildings on the KMC Property are in disrepair and open to the elements.

Rulings of Law

The State has met its burden for obtaining equitable relief. The State has shown a statutory enforcement right and a statutory right to equitable relief and thus need not demonstrate irreparable harm. Where the owners for the Properties are dissolved corporations and cannot respond with monetary relief, there is no adequate remedy at law. Notice to the owners of the abandoned Properties is sufficient and in accordance with due process of law.

Now therefore, it is Ordered that,

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1. The State and EPA may have access to and privilege to go upon and into all of the land and buildings at the Properties, in their sole discretion.

2. The State is permitted, privileged and authorized to excavate soils and remove or demolish any buildings, structures or paving at the Properties, in their discretion, and shall not be liable to make any compensation therefore.

3. The State and EPA may install any pipes, pumps, electrical lines, buildings and structures on the Properties as may be necessary and appropriate in their discretion to respond to hazardous wastes on the Properties and protect human health or the environment.

4. The State and EPA are authorized and directed to record such notices and deed restrictions at the registry of deeds within the chain of title to the Properties, to run with the land, restricting the use of the Properties, the soils thereon and the groundwater, as they may see fit.

5. The activity and use restrictions to be included in the notices and recorded may include the following:

(a) The following activities and uses are prohibited on the Properties:

(i) Extraction of groundwater for purposes other than carrying out the remedy specified by the State or EPA.

(ii) Any activity, including soil excavation and groundwater extraction, interfering with the remedy established by the State or EPA.

(iii)Use as a residence, school, nursery, recreational area (such as a park or athletic field) or any other use at which a child's presence is likely or intended.

6. The registry of deeds is ordered and directed to accept such notices and this Order for recordation.

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7. The State and EPA may take such other and further actions with respect to the Properties as may be reasonable and necessary to protect public health and the environment without further order of the Court.

So ordered.

3-12-10

Hon. Peter H. Fauver
Associate Justice

THE STATE OF NEW HAMPSHIRE
CARROLL COUNTY SUPERIOR COURT
A TRUE COPY ATTEST:
Lynda Dennis
Court Assistant

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