

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD



204860

FINANCE DOCKET NO. 34052

GREEN MOUNTAIN RAILROAD CORPORATION –
PETITION FOR DECLARATORY ORDER

REPLY OF GREEN MOUNTAIN RAILROAD CORPORATION TO
STATE OF VERMONT'S OPPOSITION TO SUPPLEMENTAL
PETITION

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Dated: March 13, 2002

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I. Background

On February 12, 2002, Green Mountain Railroad Corporation ("GMRC" or "Petitioner") filed with the Board a Supplemental Petition requesting that the Board vacate its decision of October 18, 2001 ("October 18 Decision") and expeditiously resume its consideration of this case. The State of Vermont ("State"), acting through its Attorney General, has filed a pleading in opposition (the "Opposition") to the relief sought in the Supplemental Petition. Appended to and incorporated into the Opposition as a central part of its argument is a Motion for Clarification filed by the State on March

1, 2002 ("March 1 Motion") in the District Court Case.¹ GMRC has sought leave to file this Reply on account of the new matter thus raised by the State.

The history of this proceeding and the events leading to the filing of the Supplemental Petition are set forth in that document and will not be repeated here in detail. It is, however, appropriate to clarify certain aspects of the Supplemental Petition as a matter of background, since not all characterizations of the Supplemental Petition in the State's Opposition are accurate.

A. The State Has Not Accurately Described the Posture of this Proceeding

The State argues in its Opposition that it has taken no "official" action giving rise to a dispute or uncertainty regarding the application of Act 250, a Vermont environmental law, to GMRC's operations. This argument is utterly without merit.²

As recounted in the Supplemental Petition, this proceeding was commenced on June 5, 2001 when GMRC filed a petition seeking a declaratory order. Shortly thereafter, GMRC commenced the District Court Case, asking the Court for a jurisdictional declaration of rights and for the issuance of a preliminary injunction to halt threatened efforts by the State to take enforcement action under Act 250, including the assessment of

¹ Abbreviations used in this pleading have the same meaning as ascribed to them in the Supplemental Petition.

² The Supplemental Petition and the Petition refer the Board to Exhibit No. 5 to the Petition, a written notice from the State to GMRC asserting violations by GMRC of Act 250. The State contends that its notice does not constitute "official action" by the State against GMRC, but only a benign statement of the State's authority to enforce Act 250. Opposition at 10. However, the State has gone beyond a mere statement of Act 250 powers, as the State's notice to GMRC itself discloses. Additionally, in March 2001, it presented to counsel for GMRC the document attached hereto as Reply Exhibit No. 1, a draft Vermont Superior Court statement of agreed facts to which the State (unsuccessfully) sought GMRC's assent for use in an enforcement proceeding against GMRC. Short of actually commencing enforcement proceedings against GMRC (which, as noted, the State agreed to postpone as a matter of litigation strategy), the State has made it unequivocally clear that it intends to seek substantial fines against GMRC, as set forth in Reply Exhibit No. 1, for the use of its Riverside facility in a manner regarded by the State as in violation of Act 250. It is not necessary to await the institution of a civil enforcement action by the State before a controversy becomes ripe for resolution. A.E. Staley Mfg. Company v. United States, 310 F. Supp. 485, 488 (D. Minn., 1970).

finer. The State entered into a stipulation with GMRC in the District Court Case under which the State agreed to defer its threatened enforcement actions (i.e., those that the State now maintains do not represent its "official" position) pending disposition by the Court of any motions to dismiss if GMRC would drop its request for a preliminary injunction. As the Board knows from pleadings previously filed, the Court rendered a Ruling on Pending Motions and the stipulation between GMRC and the State no longer bars the State from pursuing enforcement action against GMRC, as threatened.

Contrary to the State's assertion (Opposition at 3), the Court's Ruling on Pending Motions did not "decide" the issues that the Supplemental Petition requests the Board to consider.³ The Court held that, "to the extent the [State] ask[s] the court to dismiss [GMRC's] claim that the ICCTA preempts Act 250 under all circumstances, the motion is granted" (emphasis added). The Court continued: "[W]hether the [State's] effort to enforce one or more conditions [in an Act 250 permit previously issued jointly to GMRC and one of its customers] violates the ICCTA in this particular case requires further development of the record, either by a properly supported motion for summary judgment or after an evidentiary hearing on the merits. Therefore, to the extent [the State] seek[s] dismissal of [GMRC's] claim that Act 250 and/or the [1997 Act 250 permit previously issued jointly to GMRC and one of its customers] requirements are preempted in this particular case, that motion is denied."

As a matter of background clarification, therefore, GMRC must here take issue with the State. GMRC's Supplemental Petition does not ask the Board to "find that Act 250 is preempted" universally, as stated in the Opposition at 2. The Supplemental Petition requests the Board to conclude that Act 250 is preempted "as a pre-construction

permitting process", whether applied to GMRC's proposed new transloading facilities, or to GMRC's proposed new spur track. Supplemental Petition at 11-12. The Supplemental Petition also requests the Board to conclude that the State's efforts to enforce conditions in an Act 250 permit previously issued to a non-railroad applicant and GMRC no longer restrict the use by GMRC of its railroad yard facilities at Riverside, because of changes in jurisdictional circumstances and as a current burden on interstate commerce. Supplemental Petition at 13-15. These issues clearly remain for resolution under the language in the Court's Ruling on Pending Motions quoted above. In any event, even had these issues been addressed by the Court's Ruling on Pending Motions, they have not yet been decided by the Court. The State thus is incorrect in suggesting that the Court has disposed of "identical issue[s]" to those raised in the Supplemental Petition. Opposition at 2. The Board, moreover, has independent jurisdiction to respond to the Supplemental Petition under the Administrative Procedure Act and the ICCTA (which the State does not deny), and that jurisdiction has not been rendered unavailable by any decision of the Court.

There are also other arguments in the State's Opposition that are incorrect or misleading. For example, the State's effort to saddle GMRC with all of the blame for the fact that the District Court Case has not proceeded is misplaced. GMRC, as the State is aware, has invested substantial effort in recent months to achieve a negotiated solution to its differences with the State through the Vermont legislative process. While those efforts remain ongoing, they have been overtaken by GMRC's loss of a key customer, as explained in the Supplemental Petition, and the further delay requested by the State in the Opposition would exacerbate GMRC's plight.

³ The Ruling on Pending Motions has previously been filed in this docket by the State.

Delays in the processing of civil litigation are not uncommon, and, insofar as the District Court Case is concerned, are not attributable solely to GMRC, as the State would have it. Opposition at 3-4. The District Court's Local Rule 26.1(b) provides that "counsel for the parties must ... file a single schedule providing for the completion of discovery" (emphasis text), so that the State is not without responsibility for the delays it seeks to blame entirely on GMRC. In the area of delay, the State has at every turn taken steps to deter a dispositive decision in this case, first seeking protracted postponements of filing dates in response to the Petition and now interposing the March 1 Motion, contrived solely to frustrate the Supplemental Petition.

The State claims that it is "incredible" for GMRC to point to delays inherent in the Act 250 process because, on one occasion, GMRC received an Act 250 permit "seven days after its permit application was submitted," citing to a permit attached as Exhibit B to the Opposition. As evident from that permit itself, the State has used as a permitting example a proceeding wherein a mere modification to a prior permit was sought and the modification was treated as a "minor application" for which no hearing was required. Railroad construction projects, on the other hand, reviewed under Act 250 in full for the first time, are likely to require both a pre-hearing conference and full merits hearing, and can be expected to take a minimum of four to six months just to clear the first phase of the permitting process, prior to any administrative or judicial review. See Supplemental Petition Exhibit No. 2, ¶ 8, Verified Statement of William W. Schroeder.⁴

⁴ The State maintains that the Schroeder Verified Statement is "inherently unreliable" because Mr. Schroeder is a partner in a law firm that is counsel to GMRC. Opposition at 7-8. Mr. Schroeder, an attorney, cannot and should not be presumed to be misrepresenting facts or opinions under oath.

Finally, the State argues that there will be no controversy before the Board ripe for declaratory determination until GMRC either seeks and is denied an Act 250 permit or the State actually commences enforcement action against GMRC. The Opposition relies for that proposition mainly on Soo Line Railroad Co. v. City of Minneapolis, 625 N.W. 2d 834 (Minn. Ct. App. 2001).⁵ However, the Soo Line case is unavailing, as would have been evident to the Board had the State not doctored the language from that decision set forth at page 9 of the Opposition. Although presented by the State as a complete paragraph, the language quoted at page 9 of the Opposition is from a paragraph that begins with the following sentence: "At the time of designation [of the railroad's roundhouse as a structure designated for heritage preservation, the railroad] returned the roundhouse to operating use and stated it had no 'plans to alter or demolish the roundhouse.'"

The quoted language from Soo Line offers a bright line factual distinction between that case and this proceeding, where GMRC has actual plans to construct new railroad facilities at its Riverside yard. In Soo Line, the Court expressly distinguished the facts in that case from other situations, like GMRC's, that "involved specific railroad plans for repair and improvement and the then-present assertion of local government 'permitting authority' that included the power to deny the railroad's authority to proceed with its repair and improvement proposals. Those circumstances call for an immediate determination of the conflict between railroad plans and local-law standards" (emphasis added), citing King County Petition for Declaratory Order, STB Finance Docket No. 32974 (September 25, 1996), *aff'd. sub. nom.*, City of Auburn v. United States, 154 F.3d

⁵ The State also continues to rely on Fletcher Granite Company, LLC -- Petition for Declaratory Order, STB Finance Docket No. 34020 (June 25, 2001), a decision which has been fully distinguished in

1025 (9th Cir. 1998), cert. denied, 527 U.S. 1022 (1999). GMRC has specific plans to institute two construction projects which the State actively asserts to be subject to its environmental permitting statute, and GMRC already is using its property in a manner claimed by the State to conflict with Vermont law. The State's authorities not only fail to support the State's position, but lead inexorably to the conclusion that there is a jurisdictional conflict or uncertainty sufficient to support Board action in this case.

**II. The State's March 1 Motion Should Not Deter or Delay Board Action
On the Supplemental Petition**

The State asks the Board "to wait until such time as the District Court rules on the State's [March 1 Motion] before taking any action" in this proceeding, claiming that "[t]o do otherwise would create the risk of confusion and inconsistent rulings and would not serve the goals of this Board or any party to this cause." Opposition at 3. This request by the State is nothing more than a continuation of the State's earlier efforts in this case to deter the Board from rendering an opinion. The obvious motive for the State's posture is delay, since the State knows full well that, under precedents recognized and followed by the Board (and many courts), Act 250 is preempted in the respects asserted by GMRC in the Supplemental Petition.

The March 1 Motion is a web of contradictions, is without merit or logical purpose, and was apparently constructed in the hope of further delaying Board action. The Board should reject the State's ploy and render a decision on the Supplemental Petition.

The patent contradictions in the March 1 Motion are the State's assertion that, on the one hand, the District Court "has already decided, in whole or in part, the issues that

the Supplemental Petition and which will not further be addressed here.

GMRC seeks to re-litigate before the Surface Transportation Board," and, on the other hand, the State's plea that the Court "clarify" whether its ruling on pending motions in fact answered the following four questions:

- (1) Does Act 250 retain viability even when it is interpreted and applied by the State of Vermont as a "pre-construction permitting process or requirement"?
- (2) Does Green Mountain Railroad Corporation need to apply for an Act 250 permit for its proposed cement storage silo before claiming that Act 250, as applied to the proposed cement storage silo, is preempted?
- (3) Does Green Mountain Railroad Corporation need to apply for an Act 250 permit for its proposed spur track before it may claim that Act 250 as applied to the proposed spur track is preempted?
- (4) Does Green Mountain Railroad Corporation need to apply for an amendment to its 1997 Act 250 permit, requesting modification to the 100-foot buffer condition, before it may claim that Act 250 as applied to GMRC's proposed use of the 100-foot buffer zone is preempted?

March 1 Motion at 4-5 (Exhibit A to Opposition). Some of the questions framed by the State do, indeed, reflect issues posed by the Supplemental Petition. However, a comparison of the Court's prior holding, as summarized above at page 3, with the four questions in the State's March 1 Motion reveals that it would take more than "clarification" of the prior decision for the Court to provide the requested answers. And if the Court had already decided those matters (which is plainly not the case), the State would not need to call upon the Court to "clarify" its decision. Since the March 1 Motion cannot be granted without further Court proceedings, if at all, the conclusion is inescapable that the State is engaged in dilatory tactics.

GMRC will, of course, respond vigorously to the March 1 Motion. For purposes of this case, however, GMRC suggests that the State's four questions to the Court are irrelevant. With respect to the first question, GMRC has not requested the Board to determine whether one aspect of Act 250 retains "viability" if some other part of Act 250 applies to pre-construction permitting;⁶ GMRC has asked the Board to determine simply whether Act 250, when applied as a pre-construction permitting process, is preempted.

The State's second and third questions plainly have not been resolved by the Court. Its Ruling on Pending Motions does not speak to the question of when preemption arises. And the State's fourth question, involving efforts by the State to enforce conditions in a prior Act 250 permit, was expressly held by the Court to require further development of the record.

The State implicitly acknowledges that, regardless of how the Court may respond to the March 1 Motion, the Board nevertheless can exercise its jurisdiction to issue a declaratory judgment in this proceeding, for the State nowhere challenges the existence of such authority. Instead, the State argues that it would be unwise for the Board to proceed because of the "risk of confusion and inconsistent rulings."

If there is any such risk, it is largely attributable to the State. This proceeding could well have been concluded by now had the State not sought lengthy and indefinite extensions of time for responding to GMRC's initial Petition. Indeed, were the State truly concerned with avoiding the possibility of inconsistent rulings, it could have asked the Court to defer its proceedings while the Petition moved forward at the Board.

⁶ In addition to requiring pre-construction permitting, Act 250 applies to non-construction endeavors such as the subdivision of land or drilling for oil and gas. See 10 V.S.A. 6081(a) and 6001(3).

GMRC submits that the State is not genuinely concerned with anything other than thwarting an exercise of the Board's jurisdiction because the State recognizes that Board precedent does not favor the State's position. The Board has provided its expert guidance in a lengthy series of cases involving preemption issues of the type presented here. To allow the Board to do so gives effect to the uniformity of interstate transportation policy desired by Congress. Far less confusion will be generated by allowing the Board to apply the same standards to all railroads in this country than by encouraging a single state to treat railroads within its borders differently from other railroads in the United States.

The State ends its Opposition with a request for an additional opportunity to brief the merits of this case for the Board's consideration in the event the Board determines to vacate the October 18 Decision. Opposition at 11, fn. 2.

The State has had many opportunities to brief the merits of this case, most recently upon the filing of GMRC's Supplemental Petition. The State has had no difficulty in marshalling briefing arguments for submission to the Court and has made selective arguments to the Board. It fails to explain why it has not availed itself of the opportunity to make more complete arguments on brief, if indeed there are any to be made.

GMRC does not wish to see the State involuntarily deprived of an opportunity to be fully heard before the Board. Nor, however, does GMRC wish to see the processing of this case manipulated by further State requests for continuances and deferred briefing opportunities. The State's attempt to interpose the March 1 Motion as an excuse for further delay in this case illustrates what is in store if the Board does not act now. There

is no telling how long it will be before the Court may dispose of the State's Motion or what the State's next delaying tactic will be.

GMRC thus respectfully calls to the Board's attention the procedures followed in STB Finance Docket No. 33466, Borough of Riverdale - Petition for Declaratory Order - the New York, Susquehanna & Western Railway Corporation, (decision served September 15, 1999), where the Board instituted a declaratory order proceeding based on a request for such action by the Borough of Riverdale, without any submission by the involved railroad. The Board's decision applied relevant precedent to the facts presented in the declaratory order petition, and provided an opportunity for the railroad and other parties to make subsequent filings in response to the Board's decision.⁷ GMRC believes that such a procedure would be appropriate in this proceeding, given the apparent

⁷ The dispute in that case ultimately was resolved privately and the proceeding was discontinued by Decision served February 27, 2001.

unwillingness of the State to make a timely and full merits response and GMRC's pressing need for a judgment addressing the issues presented.

Respectfully submitted,



Dated: March 13, 2002

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Attorneys for Petitioner
Green Mountain Railroad Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served by first-class mail, postage prepaid, this 13th day of March, 2002, on all persons, entities, and government agencies listed below.

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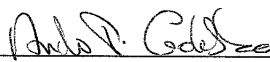
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MCD\GMRC Reply to Petition



Andrew P. Goldstein

STATE OF VERMONT
COUNTY OF WINDHAM, SS.

STATE OF VERMONT	)	
Plaintiff	)	Superior Court
	)	Civil Action
v.	)	Docket No.
	)	
GREEN MOUNTAIN RAILROAD CORP.,	)	
PMI LUMBER TRANSFER, INC.,	)	
and CARGILL INC.	)	
Defendants	)	

VIOLATIONS:

- i. 10 V.S.A. ch. 151, Act 250, failure to comply with Land Use Permit # 2W0038-2 condition # 14 (100-foot buffer between Connecticut River and any disturbed areas).
- ii. 10 V.S.A. § 6081(a), construction of a salt storage shed without an Act 250 permit.
- iii. 10 V.S.A. ch. 151, construction of a salt storage shed in violation of conditions 11, 13, 17, 19 and 21 of land use permit #2W0038-3.
- iv. 10 V.S.A. § 1259(a) failure to obtain an injection well discharge permit and unauthorized discharge of materials into the waters of Vermont.
- v. 10 V.S.A. § 6616, release of hazardous materials.

VRCP 8(g) PLEADINGS BY AGREEMENT

Now comes the plaintiff, State of Vermont, by and through its attorney, William H. Sorrell, Attorney General, and the defendants, Green Mountain Railroad Corporation, PMI Lumber Transfer, Inc. and Cargill, Inc., and, pursuant to Vermont Rule of Civil Procedure 8(g), file the following pleadings by agreement.

STATEMENT OF FACTS AND DESCRIPTION OF ALLEGED VIOLATIONS

1. Green Mountain Railroad Corporation was incorporated in the State of Vermont in 1964. The company's headquarters are located at One Railway Lane, Burlington, Vermont.

2. The corporate officers of Green Mountain Railroad are Jerome Hebda, president; David Wulfson, vice president; Samuel Bloomberg, secretary; Lisa Cota, treasurer; Gary Wulfson, director; Clyde Szuch, director; and Peter Szuch, director.
3. PMI Lumber Transfer, Inc was incorporated in the State of Vermont in 1981. The company's headquarters are located at 8 Birch Street, Bradford, Vermont.
4. The corporate officers of PMI Lumber Transfer, Inc are Robert Greenwood, President/Director, and Carol Greenwood, Secretary/Director.
5. Cargill Incorporated is a Delaware Corporation with headquarters in Wayzata, Minnesota. Its Vermont agent is CT Corporation System, 148 College Street, Burlington.
6. Green Mountain Railroad owns a $\pm$ 71-acre tract of land ("site") in Rockingham, Vermont. The tract of land is bordered on the east side by the Connecticut River and on the west side by railroad tracks.
7. Green Mountain Railroad's predecessors in interest include Ruth Blount, who owned the site from 1969 to 1971; the Steamtown Foundation, which owned the site from 1971 to 1986; and Anthony Cersosimo, who purchased the site in 1986.
8. On January 24, 1972, predecessor in interest Ruth Blount obtained land use permit #2W0038 under Act 250 to build a 60-foot by 200-foot building on the site for the repair and maintenance of locomotives belonging to the Steamtown Foundation. The building was not constructed and the permit expired January 24, 1973.
9. On October 28, 1993, predecessor in interest Anthony Cersosimo obtained land use permit #2W0038-1 ("dash 1 permit") to create a two-lot subdivision, comprised of a 3.83 acre parcel ("lot 1") and a 62-acre parcel. The 62-acre parcel was provisionally divided into a 18.3-acre parcel ("lot 2") and a 45.0-acre parcel ("lot 3").
10. On July 28, 1994, Green Mountain Railroad purchased the $\pm$ 3.83-acre lot, as recorded in book 228, page 591 of the land records of the Town of Rockingham.
11. On June 25, 1996, Green Mountain Railroad purchased the 62-acre parcel, as recorded in book 238, page 544 of the land records of the Town of Rockingham.
12. On August 5, 1997, Green Mountain Railroad, as "lessor," and PMI Lumber, as "lessee," obtained land use permit (LUP) #2W0038-2 ("dash 2 permit") to construct a 20-foot by 30-foot office building on the 62-acre parcel (in the area designated as lot 2) for the operation of a forest products distribution yard using rails and trucks.

13. Condition 14 of LUP #2W0038-2 required the maintenance of a 100-foot buffer between the project and the Connecticut River:

#14. The permittees shall maintain a 100-foot undisturbed, naturally vegetated buffer strip with no mowing or cutting of vegetation between the top of the bank of the Connecticut River and any disturbed areas.

14. On or around 1997, Green Mountain Railroad, its agents, or both, excavated a settling pond, approximately 35 x 65 feet and approximately 12 feet deep, within 25 feet of the top bank of the bank of the Connecticut River. The settling pond is located on the 62-acre parcel, in the area designated as lot 2.

15. The settling pond is an underground injection well.

16. Green Mountain Railroad does not have an underground injection well permit.

17. On January 13, 1999, Green Mountain Railroad obtained land use permit #2W0038-3 ("dash 3 permit") to construct a 100-foot by 300-foot salt storage shed, conveyor pit, rail siding and truck scale, on the 3.83-acre parcel, designated as lot 1, identified in book 228, page 591 of the Land Records of the Town of Rockingham.

18. Land Use Permit #2W0038-3 contains, among others, the following conditions:

#11. Starting at the commencement of construction a Professional Engineer shall inspect the site at least once per week and at critical times until the project is completed to ensure that the erosion control plans are being followed. He or she shall certify by weekly affidavit to the District Environmental Commission that all erosion controls as specified and approved herein, are in place and properly maintained.

#13. All work areas of the site shall be stabilized, seeded and mulched from October 1 to April 15. Work may continue through this period if the following winter erosion controls are added to the approved controls:

b. . . . Beginning October 2, a professional engineer shall inspect the erosion control measures daily

(Monday through Friday plus weekend days if moderate to heavy rain occurs on those days). Affidavits shall be completed by the engineer or architect and mailed to the District 2 Environmental Commission twice a week until all earthwork is stabilized;

- #17. The permittee shall, prior to commencement of operation, file an affidavit with the District 2 Environmental Commission that all seven items recommended by the Town of Rockingham as outlined in Findings of Fact #8 under Criterion 7 have been accomplished.

- #19. The building shall be either brown or dark green in color to mitigate the visual impact of its 300 [foot] length.

- #21. All conditions of Land Use Permit #2W0038 and amendments shall remain in effect except as amended herein.

19. Land Use Permit #2W0038-3, condition 21 incorporates the 100-foot buffer contained in LUP #2W0038-2, condition 14.

20. On February 17, 1999, the District 2 Environmental Commission issued land use permit #2W0038-3A ("dash 3A permit") to incorporate the conditions of Water Supply and Waste Water Disposal Permit #WW-2-0653-2R1.

21. On October 21, 1999, Green Mountain Railroad submitted permit application #2W0038-3B ("dash 3B permit") to modify the size, type and location of the previously permitted salt storage building.

22. On around November 1999, Green Mountain Railroad began construction of the salt storage shed without an approved dash 3B permit.

23. Green Mountain Railroad did not submit bi-weekly affidavits to the District Environmental Commission certifying that erosion controls were in place and properly maintained, as required by condition 13 of the dash 3 permit.

24. On or around January 2000, Green Mountain Railroad, its agents, or both, stored assorted materials within the 100-foot buffer zone. The assorted materials

included piles of brick, lumber, a truck trailer, and train parts. The materials were stored on the 62-acre parcel, in the area designated as lot 2.

25. The storage of materials within the 100-foot buffer zone violates condition 14 of the dash 2 permit.

26. On or around January 2000, continuing to the present, Green Mountain Railroad, its agents, or both, have used a road and driven vehicles within the 100-foot buffer zone. The road is located on the 62-acre parcel, in the area designated as lot 2.

27. Driving vehicles and using a road within the 100-foot buffer zone violates condition 14 of the dash 2 permit.

28. On January 24, 2000, Environmental Enforcement Officer Timothy McNamara issued a notice of alleged violation (NOAV #1) for storing assorted materials within the 100-feet of the Connecticut River in violation of LUP#2W0038-3, and discharging materials into an injection well without a permit, in violation of 10 V.S.A. 1259(a).

29. On February 8, 2000, Linda Matteson, the assistant coordinator for the District 2 Environmental Commission issued a notice of alleged violation (NOAV #2) for construction of the salt storage shed without an Act 250 permit.

30. The color of the as-built salt storage shed is beige with a bright green roof.

31. The color of the salt storage shed violates condition 19 of the dash 3 permit.

32. Environmental Enforcement Officer Tim McNamara visited the site on February 29, 2000, and observed that the settling pond and various materials were still within the 100-foot buffer zone.

33. Officer McNamara visited the site again on May 1, 2000 and May 16, 2000. The settling pond and various materials were still within the 100-foot buffer zone.

34. During his May 16, 2000, visit, Officer McNamara also observed a petroleum release within the 100-foot buffer zone.

35. On or around the summer of 2000, Green Mountain Railroad, its agents or both, installed utility poles within the 100-foot buffer zone.

36. On February 7, 2001, Officer McNamara visited the site and observed another petroleum release within the 100-foot buffer zone.

37. The release of hazardous materials, including petroleum products, onto the land of the state is prohibited by 10 V.S.A. § 6616.

**COUNT ONE:
FAILURE TO MAINTAIN A 100-FOOT BUFFER ZONE
IN VIOLATION OF LAND USE PERMIT SERIES #2W0038**

38. Paragraphs ___ to ___ are incorporated herein.

32. Defendants have violated condition 14 of land use permit #2W0038-2 by excavating a settling pond, storing materials, constructing utility poles, driving vehicles and using a road within the 100-foot buffer zone.

39. Pursuant to 10 V.S.A. § 8221(b)(6), the maximum civil penalty for each violation of 10 V.S.A. ch. 51, Act 250, is \$50,000 and \$25,000 for each day the violation continues.

**COUNT TWO:
CONSTRUCTION OF A SALT STORAGE SHED WITHOUT AN ACT 250 PERMIT
IN VIOLATION OF 10 V.S.A. § 6081(a)**

40. Paragraphs ___ to ___ are incorporated herein.

32. Defendant Green Mountain Railroad has violated 10 V.S.A. § 6081(a) by commencing construction of a salt shed without an approved Act 250 permit.

41. Pursuant to 10 V.S.A. § 8221(b)(6), the maximum civil penalty for each violation of 10 V.S.A. ch. 51, Act 250, is \$50,000 and \$25,000 for each day the violation continues.

**COUNT THREE:
CONSTRUCTION OF A SALT STORAGE SHED
IN VIOLATION OF LAND USE PERMIT #2W0038-3**

42. Paragraphs ___ to ___ are incorporated herein.

32. Defendant Green Mountain Railroad has violated 10 V.S.A. chapter 151 by construction of a salt shed in violation of the conditions 11, 13, 17, 19 and 21 of Act 250 Permit #2W0038-3.

43. Pursuant to 10 V.S.A. § 8221(b)(6), the maximum civil penalty for each violation of 10 V.S.A. ch. 51, Act 250, is \$50,000 and \$25,000 for each day the violation continues.

**COUNT FOUR:
EXCAVATING AND DISCHARGING MATERIALS INTO AN
UNDERGROUND INJECTION WELL WITHOUT A PERMIT
IN VIOLATION OF 10 V.S.A. § 1259(a)**

44. Paragraphs ___ to ___ are incorporated herein.

45. Defendants have violated 10 V.S.A. § 1259(a) by excavating and discharging materials into an underground injection well without a permit.

46. Pursuant to 10 V.S.A. § 8221(b)(6), the maximum civil penalty for each violation of 10 V.S.A. § 1259(a) is \$50,000 and \$25,000 for each day the violation continues.

**COUNT FIVE:
RELEASE OF HAZARDOUS MATERIALS
IN VIOLATION OF 10 V.S.A. § 6616.**

47. Paragraphs ___ to ___ are incorporated herein.

48. Defendants have violated 10 V.S.A. § 6616 by releasing hazardous materials onto the lands of the State.

49. Pursuant to 10 V.S.A. § 8221(b)(6), the maximum civil penalty for each violation of 10 V.S.A. § 6616 is \$50,000 and \$25,000 for each day the violation continues.

Dated March ____, 2001, at Montpelier, Vermont.

STATE OF VERMONT
WILLIAM H. SORRELL
ATTORNEY GENERAL

By: _____
Rebecca Ellis
Assistant Attorney General

Dated _____, 2001, at _____, Vermont.

by: _____
Green Mountain Railroad

Dated _____, 2001, at _____, Vermont.

by: _____
Robert Greenwood, President
P.M.I. Lumber

Dated _____, 2001, at _____, Vermont.

by: _____
Cargill Inc.