

STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

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CIVIL DIVISION
DOCKET NO. 164-3-196JNCV

STATE OF VERMONT, AGENCY)
OF NATURAL RESOURCES,)
Plaintiff,)
)
v.)
)
GREEN CROW CORPORATION,)
and)
DWIGHT HILL FOREST,)
LLC,)
Defendants.)

CONSENT ORDER

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

I. Definitions.

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

a. "ANR" shall mean the Vermont Agency of Natural Resources.

For purposes of this Settlement Agreement, ANR shall include the Vermont Department of Environmental Conservation (DEC) and any successor departments, agencies or instrumentalities of the State of

Vermont (State).

b. "Borrow Material" shall mean earthen material, including rock and/or soil encompassing overburden material such as topsoil, sand, silt, clay, gravel, cobbles and boulders, that is obtained from a location for the sole purpose of providing material to perform any of the response actions at the Site and that meets the specifications included in EPA-approved design and planning documents, construction specifications and work plans for any response actions. Borrow Material does not include "Spoils" as defined herein.

c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601-9675.

d. "Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. "Defendant" or "Defendants," as the context requires, shall mean Green Crow Corporation (Green Crow) and Dwight Hill Forest, LLC (Dwight Hill).

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

g. "Ely Property" shall mean the approximately 300.5 acre

portion of the property conveyed by Warranty Deed from Frederick J. Pearson to Ely Mine Forest, Inc., dated August 12, 1983 and recorded at Book 31, Page 321 of the Town of Vershire Land Records, and more particularly described as the portion of the property reserved to Ely Mine Forest, Inc. under that certain Warranty Deed dated March 25, 1997 from Ely Mine Forest, Inc. to Green Crow Corporation and recorded at Book 40, Page 293 of the Town of Vershire Land Records; which said Ely Property was subsequently conveyed to Dwight Hill from Ely Mine Forest, Inc. by Warranty Deed dated September 16, 2016 and recorded on September 22, 2016 at Book 61, Pages 575-576 of the Vershire Land Records. The Ely Property is depicted within the survey attached as **Appendix B1** and is generally shown on the map attached as **Appendix B**. The Ely Property is further described in the deeds attached as **Appendix D**.

h. “Existing Contamination” shall mean any hazardous substances, pollutants or contaminants, present or existing on or under the Site as of the effective date of this Settlement Agreement.

i. “Former Green Crow OU3 Parcel” shall mean a parcel of land consisting of approximately 202.6 acres depicted within the survey attached as **Appendix C1** and identified as the “OU3 Area” on the map attached as **Appendix A**. The Former Green Crow OU3 Parcel as further depicted in the attached **Appendix C** includes areas adjacent to the Underground Mine Workings where EPA has already determined that Institutional Controls are necessary.

j. "Green Crow Borrow Pit Area" or "GCBP Area" shall mean the approximately 44.5 acres depicted within the survey attached as Appendix B2 and is generally shown within the map attached as Appendix B located immediately northwest of the Ely Property and northeast of Beanville Road.

k. "Green Crow Property" shall mean the portion of the property located in the Town of Vershire, Vermont conveyed by Warranty Deed from Frederick J. Pearson to Ely Mine Forest, Inc., dated August 12, 1983 and recorded at Book 31, Page 321 of the Town of Vershire Land Records, which was conveyed by Ely Mine Forest, Inc. to Green Crow Corporation under that certain Warranty Deed dated March 25, 1997 (which reserved the Ely Property), and recorded on March 25, 1997 in Book 40, Page 293 of the Town of Vershire Land Records, excluding those parcels sold by Settling Respondent after such conveyance. The Green Crow Property is further described in the deeds attached as Appendix D.

l. "Institutional Controls" shall mean those aspects of response actions relating to the Site involving legal and administrative measures, but not engineering controls, required to ensure the long-term effectiveness and protectiveness of response actions performed at the Site, including but not limited to the Institutional Controls required by section III.b. of this Consent Order.

m. "O&M Activities" shall mean all actions necessary for the operation and maintenance of EPA response actions at the Site, including

but not limited to: conducting environmental monitoring, including as appropriate long-term sampling, and testing of contaminated ground water (collectively, "O&M Monitoring Activities"); mowing or maintaining vegetated covers; removing woody plants; repairing eroded areas; keeping storm water controls free of debris; inspecting any response action put in place at the Site; and monitoring compliance with Institutional Controls (collectively, "O&M Maintenance Activities"). The O&M Activities, O&M Monitoring Activities, and O&M Maintenance Activities are more particularly and specifically described in the Statement of Work Responsibilities Applicable to Green Crow Corporation as Settling Respondent attached as **Appendix E**.

n. "Parties" shall mean the State of Vermont, Dwight Hill, and Green Crow.

o. "Property" shall mean the properties subject to the terms of this Consent Order, including the Ely Property (see **Appendixes B, B1, and D**), Former Green Crow OU3 Property (see **Appendixes A, C, and C1**), and the Green Crow Borrow Pit Area (see **Appendixes B and B2**). The properties subject to the terms of this Consent Order are further described within the deeds attached as **Appendix D**.

p. "EPA Settlement Agreement" shall mean the Settlement Agreement and Covenant Not to Sue entered into by Defendant Green Crow Corporation as Settling Respondent, Defendant Dwight Hill, and EPA on July 21, 2016 and attached hereto as **Appendix F**. In the event of

conflict between this Consent Order and the EPA Settlement Agreement and any appendix thereto, the EPA Settlement Agreement shall control.

q. "Site" shall mean the Ely Copper Mine Site located in Vershire, Orange County, Vermont, and depicted generally on the map attached as **Appendix A**. The Site includes the Ely Property and the Former Green Crow OU3 Parcel overlying the Underground Mine Workings, and all areas to which hazardous substances, pollutants or contaminants have come to be located.

r. "Spoils" shall mean any material, excluding Borrow Material, generated, removed, excavated, or otherwise obtained as a result of the implementation of any response action at the Site. Any trees that must be removed to implement the response actions at the Site, including trees removed for activities relating to the excavation of Borrow Material, shall be managed as Spoils.

s. "State" shall mean the State of Vermont.

t. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the O&M Activities at the Site attached as **Appendix E**.

u. "Transfer" shall mean to sell, assign, convey, lease, mortgage or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

v. "Underground Mine Workings" shall mean the tunnels,

shafts, adits, and other mine-related features located beneath the ground surface.

w. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

II. Performance of Operation, Maintenance, and Monitoring Activities.

Upon the completion of the Transfer of the Ely Property to Dwight Hill, the following Operation, Maintenance (O&M), and Monitoring Activities for the Site shall be performed as further specified in the Statement of Work attached as **Appendix E**:

a. *O&M Activities*: mowing or maintaining vegetated covers; removing woody plants; repairing eroded areas; keeping storm water controls free of debris; and inspecting and maintaining access roads for a period of thirty (30) years from the date EPA issues its determination that the remedy is Operational and Functional.

b. *Monitoring Activities*: conducting environmental monitoring, including as appropriate long-term sampling and testing of contaminated surface water, groundwater and soils for a period of seven (7) years from the date EPA issues its determination that the remedy is Operational and Functional.

III. Access and Institutional Controls.

With respect to the Property:

a. *Site Access*. Defendants shall, commencing on the effective date of this Consent Order irrevocably provide the State, and its

representatives, contractors, and subcontractors, with access to the Property at all reasonable times for the purpose of conducting any activity relating to response action at the Site, including, but not limited to, the following activities:

1. Performing monitoring, investigation, corrective action or other activities at the Site;
2. Conducting activities associated with the design, implementation, monitoring, operation, or maintenance of any corrective actions at the Site;
3. Verifying any data or information submitted to the State;
4. Conducting investigations relating to contamination at or near the Site;
5. Obtaining samples, documenting sample locations, or mapping the Site;
6. Assessing the need for, planning, or implementing corrective actions at or near the Site;
7. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Settlement Agreement;
8. Assessing Defendants' compliance with this Consent Order;
9. Implementing, monitoring, maintaining, reporting on

and enforcing any Institutional Controls.

b. *Institutional Controls.* Commencing upon the effective date of this Consent Order, Defendants shall not use the Site in any manner that the State determines will pose an unacceptable risk to human health or to the environment or interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures at the Site. Such restrictions shall include, but are not limited to:

1. Allowing no public access during any monitoring or O&M Activities;
2. Refraining from accessing any areas where EPA or the State is implementing a corrective action, including monitoring or O&M Activities, unless notice is provided to EPA and the State in advance and EPA and the State agree in advance that the Defendants' presence is acceptable; and
3. Refraining from any activities that would interfere with or compromise the integrity of the land that is subject to response actions, including monitoring and O&M Activities relating to any response actions, including but not limited to: construction of any buildings or facilities; subdivision; drilling well(s) for drinking water; and any use or disturbance of the groundwater system. Construction and drilling are completely prohibited on the waste piles located on the Site without prior approval of EPA and the State.

IV. Grant of Access and Environmental Use Restrictions.

a. Within thirty (30) days of receiving notice from the State to record the land use restrictions, Defendants shall execute and record in the appropriate land records a Grant of Environmental Restriction, Right of Access, Land Use Restrictions, and Easement (Grant), running with the land, that (i) grants a right of access for the purpose of conducting any response activity related to the Site, including but not limited to, those activities listed in section II. and Appendix E of this Consent Order, and (ii) grants the right to enforce the Use Restrictions described in section III.b. of this Consent Order, or other restrictions that the State determines are required to implement, ensure non-interference with, or ensure the protectiveness of the response activities to be performed at the Site. Defendants shall grant the access rights and the rights to enforce the Use Restrictions to (i) the State and its representatives, or (ii) other appropriate grantees subject to prior approval by the State. The State shall provide Defendants with a form of such Grant. Within thirty (30) days of receipt of the form of Grant, the Defendants shall prepare a draft easement, subject to approval by the State, that is enforceable under the laws of the State of Vermont, and shall obtain a current title insurance commitment or some other evidence of title acceptable to the State, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by the State or when, despite best efforts, Defendants are

unable to obtain release or subordination of such prior liens or encumbrances). Within fifteen (15) days of the State's approval and acceptance of the Grant and such title evidence, Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the Grant approved by the State in the appropriate land records. Within thirty (30) days of recording the Grant, Defendants shall provide the State with a final title insurance policy, or other final evidence of title acceptable to the State, and a certified copy of the original recorded Grant showing the clerk's recording stamps.

b. If Defendants are unable to obtain an agreement pursuant to section IV.a. from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the Grant, Defendants shall promptly notify the State in writing, and shall include in that notification a summary of the steps that Defendants have taken to attempt to obtain such agreement.

c. If the State determines that additional Use Restrictions in the form of restrictive covenants, state or local laws, regulations, ordinances, or other governmental controls are needed to implement any response action determinations, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Defendants shall cooperate with the State's efforts to secure such controls.

V. Subsequent Transfers and Assignments.

Defendants shall ensure that assignees, successors-in-interest, lessees, and sublessees of the Property shall provide the same access and cooperation to the State as Defendants, including obtaining or complying with any Institutional Controls. Defendants shall ensure that a copy of this Settlement Agreement is provided to any current lessee or sublessee of the Property, as of the effective date of this Settlement Agreement, and shall ensure that any subsequent leases, subleases, assignments or Transfers of the Property or an interest in the Property are consistent with this consent order.

VI. Disclosure of Information.

Each Defendant hereby certifies that it has fully and accurately disclosed to the State all information known to it, and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any release of a hazardous material or any past or potential future release of hazardous materials at or from the Site, and to its qualification for this Consent Order. Defendants each also certify that they have not caused or contributed to a release or threat of release of hazardous materials or pollutants or contaminants at the Site. If the information provided by Defendants is not accurate and complete, this Consent Order shall be voidable at the State's sole option and discretion as to Defendants, and the State of Vermont reserves all rights it may have under 10 V.S.A. § 6615 and any other applicable statutes or

rules.

VII. State's Covenant Not to Sue.

Subject to sections VI. and VIII., the State covenants not to sue or take any other civil or administrative action against Defendants for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to 10 V.S.A. §§ 6615 or 6615b, with respect to releases of hazardous materials existing on or under the Site as of the effective date of this Consent Order.

VIII. Limitations on State's Covenant Not to Sue.

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

a. liability for failure by Defendants to meet a requirement of this Consent Order, including but not limited to section II. (Performance of Operation, Maintenance, and Monitoring Activities), section III. (Access and Institutional Controls), section IV. (Grant of Access and Environmental Use Restrictions), and section XIV. (Payment of Costs, Including Attorney's Fees);

b. any liability resulting from past or future releases of hazardous materials at or from the Site caused or contributed to by Defendants, their successors, assignees, lessees or sublessees;

- c. any liability resulting from exacerbation of Existing Contamination by Defendants, their successors, assignees, lessees or sublessees;
- d. any liability resulting from the release or threat of release of hazardous materials at the Site after the effective date of this Consent Order;
- e. criminal liability; and
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage.

IX. Burden of Proof; Hazardous Materials.

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

X. Consent Order Limited to Named Parties.

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

XI. Non-limitation of EPA and State's Rights.

Nor shall this Consent Order be construed to limit the rights of EPA and the State to seek or compel parties other than Defendants to perform or pay for response actions at the Site. Defendants acknowledge that response actions are or may be required on the Property.

XII. Effective Dates.

a. *Consent Order.* This Consent Order shall become effective only after it is entered as an order of the Court. On the date it is entered by the Court (Effective Date), this Consent Order shall become a judicial order and have all the force and effect of such an order.

b. *Covenant Not to Sue.* This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Defendants of all obligations under this Consent Order.

XIII. Retention of Records.

Defendants agree to retain and make available to the State all business and operating records, contracts, Site studies and investigations, and documents relating to operations at the Property, for at least ten (10) years following the effective date of this Consent Order unless otherwise agreed to in writing by the Parties. At the end of ten (10) years, Defendants shall notify the State of the location of such documents and shall provide the State with an opportunity to copy any documents at the expense of the State.

XIV. Payment of Costs, Including Attorney's Fees.

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

XV. Notices.

Whenever, under the terms of this Consent Order, written notice is required to be given, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices shall be considered effective upon receipt, unless otherwise expressly agreed otherwise.

As to the State: Linda Elliott, Environmental Analyst
Waste Management & Prevention Division
One National Life Drive – Davis 1
Montpelier, VT 05620-3704

As to EPA: Edward Hathaway, Remedial Project Manager
U.S. Environmental Protection Agency
Region 1, New England
5 Post Office Square, Suite 100
Boston, MA 02109

As to Green Crow: Nicholas C. Brunet, Vice President
Green Crow Corporation
58 Priscilla Lane
Auburn, NH 03032

Trey Martin, Esq.
Downs Rachlin Martin PLLC
52 State Street
Montpelier, VT 05602-3176

As to Dwight Hill: Christopher J. Loomis
518 Spring Hill Road
Waitsfield, VT 05673-7384

XVI. Appeal of Requirements of Consent Order.

Defendants hereby waive: 1) all rights to contest or appeal this Consent Order; and 2) all rights to contest the obligations imposed upon Defendants under this Consent Order in this or any other

administrative or judicial proceeding involving the State of Vermont.

XVII. Enforcement.

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

XVIII. Continuing Jurisdiction.

a. The State of Vermont and the Court reserve continuing jurisdiction to ensure future compliance with this Consent Order and all statutes, rules, and regulations applicable to the facts and circumstances set forth herein.

b. Nothing in this Consent Order shall be construed as having relieved, modified, or in any manner affected Defendants' obligations to comply with all federal, state, or local statutes, regulations, permits and directives applicable to Defendants. The State reserves all rights, claims, and interests not expressly waived herein.

XIX. Amendment.

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

XX. Negotiation in Good Faith.

The Parties agree that they have negotiated this Consent Order in good faith, that implementation of this Consent Order will avoid prolonged and complicated litigation between the parties, and that this Consent

Order is fair, reasonable, and in the State's interest.

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

IT IS SO ORDERED.

DATED at Montpelier, Vermont, this 2nd day of May, 2019.

Mary Miles Teachout
Superior Court Judge
Mary Miles Teachout