IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 50 Original

STATE OF VERMONT, a sovereign state,
Montpelier, Vermont,

Plaintiff,

v.

STATE OF NEW YORK, a sovereign state,
Albany, New York,

and

INTERNATIONAL PAPER COMPANY, a corporation existing under the laws of the State of New York, located at New York, New York,

Defendants.

UNITED STATES OF AMERICA,

Intervenor.

REPORT OF SPECIAL MASTER, STIPULATION, AND PROPOSED CONSENT DECREE

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Intervenor.

REPORT OF SPECIAL MASTER WITH RESPECT TO A PROPOSED SETTLEMENT OF THIS LITIGATION (April 24, 1974)

Summary of this Report

This case deals with alleged air and water pollution of the South Lake part of Lake Champlain and the adjacent areas. This pollution, so Vermont asserts, originates in New York State, and largely comes from the mills of International Paper Company (the Company) at or near Ticonderoga. After proceedings described below and the receipt (before the Special Master), on seventy-five days, of sub-

stantial documentary and oral evidence, the parties have agreed upon a proposed settlement. The Special Master considers (1) that the settlement is reasonable and in the public interest, (2) that it is feasible, and (3) that it can be reasonably carried out without any significant supervisory burden on this Court. He recommends that it be approved. The background of the case, certain details of the proposed settlement, and the Special Master's reasons for recommending approval are discussed below.

History of the Case

1. Vermont, on December 29, 1970, requested leave to file a complaint against New York and the Company, alleging *inter alia* that Vermont had been injured by operations of the Company's former pulp and paper mill (the Old Mill) at Ticonderoga, New York, conducted with at least the acquiescence of the State of New York. It was asserted (1) that waste, discharged through Ticonderoga Creek into the southern part (the South Lake) of Lake Champlain, had formed sediment accumulations (sometimes referred to as "sludge beds") in Ticonderoga Bay (see Map C) and injured water quality, and (2) that the consequences had been felt in Vermont and its waters. The complaint also alleged that odors from the Old Mill had adversely affected the health, safety, and comfort of the citizens of Vermont. Injunctive relief (by removal of the accumulations and otherwise) and damages were sought. This Court on April 24, 1972, allowed Vermont to file its complaint. See 406 U. S. 186.[1]

[1] Various locations mentioned are shown on Map A (a map of the *whole* of Lake Champlain) and on Map B (a map of the principal area of the South Lake involved in this case). Map C shows in larger scale the area of Ticonderoga Bay (which includes waters in both New York and Vermont) and adjacent New York and Vermont shore areas. For maps, see pp. 14-16, *infra*.

2. Answers were filed by New York and the Company on or prior to June 19, 1972. On June 26, 1972, the Court appointed me as Special Master (see 408 U. S. 917) to conduct further proceedings. The pleadings, as originally filed, are on file with the Clerk of this Court. Amended pleadings appear in Appendix A (p. 17, *infra*).

3. In April, 1971, the Company closed its Old Mill. About the same time, it opened (on the west shore of the South Lake, some three to four miles north of its Old Mill) a modern pulp and paper mill (the New Mill) with modern waste treatment and emission control facilities (to prevent or reduce discharges of harmful or obnoxious effluents into the lake or objectionable emissions into the atmosphere). On November 1, 1972, I allowed (over the recorded objections of New York and the Company) Vermont's motion to file an amended and supplemental complaint (copy annexed Appendix A, p. 18, *infra*). This alleged that Vermont was injured also by the operation of the Company's New Mill. Amended answers were prepared and filed (Appendix A, pp. 27, 35, *infra*). See Order no. 1, p. 43, *infra*.

4. The original pleadings and the amended pleadings, viewed in the aggregate and broadly interpreted, put in issue whether Vermont had been, or was being, injured by any discharges and emissions from the Old Mill and from the New Mill, in respects, among others:

> (a) through the accumulation of sediment (in Ticonderoga Bay and near the mouth of Ticonderoga Creek) because of materials from the Old Mill and because of raw sewage from the village of Ticonderoga, New York;

(b) through objectionable emissions to the atmosphere from both mills, and from gas from the sediment accumulations;

(c) by obstructions to navigation in New York and Vermont waters;

(d) by deterioration in the South Lake's water quality, which might hurt fish and wild life and make Vermont waters less attractive for swimming, boating, and other recreational and domestic use; and

(e) by the addition of nutrients to the South Lake.

No substantial issues were raised (or discussed at trial) concerning the main portion of Lake Champlain north of the Champlain Bridge, which crosses to Vermont east of Crown Point, New York. This eventually drains (for the current in the lake runs to the north) into the Richelieu River near the boundary between the United States and Canada (see Map A).[2]

5. In December, 1972, the United States of America sought leave to intervene. This Court referred this matter to me on January 8, 1973. On January 9, 1973, after hearing, I granted leave (see p. 43, *infra*) to the United States to intervene. The petition for leave to intervene is on file with the Clerk of this Court. (See 409 U.S. 1103)

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[2] The pleadings (including the petition for leave to intervene) also presented issues concerning (a) the standards of water quality properly to be applied in an interstate controversy of this type; (b) the extent to which equitable relief might be barred by practices, resulting in pollution, said to be tolerated in Vermont; (c) the extent to which there might be preemption of State regulation and standards by Federal statutory regulation; (d) whether the sediment accumulations, the emissions, and the discharges constitute, or have constituted, a common law nuisance, and (e) other related legal matters. Because, in a case of this character, later amendments (to conform the pleadings to the facts actually proved) could be allowed reasonably, the range of evidence permitted has not been narrowly restricted by the language of the pleadings.

6. A description of certain aspects of subsequent proceedings is found in Appendix B (p. 51, *infra*). Through December 12, 1973, as has been indicated, testimony had been received on seventy-five days. The transcript (which includes only minor parts of discussions at pretrial and midtrial conferences of several days duration) now contains 15,813 pages. Over 275 exhibits have been introduced, many of them voluminous. Vermont's direct case has been substantially completed. New York has put in perhaps one half of its direct case. No evidence has been offered as yet by either the Company or the United States (as intervenor).

7. Suggestions were made by me, at pretrial conferences and at intervals thereafter, that the parties might adjust their differences less expensively [3] than by litigation. The United States, as intervenor, has succeeded in bringing about serious negotiations.[4] The settlement now proposed

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[3] The cost of preparing for trial and actual trial has been large. Each party has had several counsel and numerous expert consultants at work on the case for nearly two years. Parties have had their own expert consultants present during appropriate parts of the testimony of their adversaries' witnesses. Valuable and costly time of Federal, State, and the Company's officers and employees is being consumed. There is significant economic inducement to all concerned to avoid (by a proper settlement) further legal, expert, and other expense. To finish the case, including (a) remaining testimony of New York witnesses, (b) testimony of witnesses called by the Company and the United States, and (c) rebuttal testimony, in my opinion, will consume not less than thirty to forty further days of trial. Additional expense will be caused by the preparation of briefs and arguments before the Special Master, the preparation of his report, analysis of that report, and briefing and arguing the case before this Court.

[4] The attorneys from the Department of Justice and the Environmental Protection Agency (EPA), on many (if not most) issues, occupy a noncontroversial position. They tactfully and effectively have attempted to mediate among the other parties. They also have been cooperative, at my request, in arranging to have expert EPA employees prepare to testify on all major issues, including some on which the United States has not taken any affirmative position.

has been reached, subject to the approval of this Court, after (a) some six weeks of negotiations in May and June, 1973; (b) about five weeks of further talks in October and November, 1973; and (c) over three months of discussions, in a recess requested by all the parties in mid-December, 1973. The suggested settlement has been set out in (a) a proposed consent Decree (with various attached schedules and appendices) and (b) a stipulation that this Decree [5] may be entered by the Court without further argument or hearing.

8. Because of the very substantial exchanges of information and the expert reports of some of the parties and the evidence already received, the parties and I now have a firm basis for considering fairly (1) whether the proposed settlement is within limits acceptable in the public interest on the several issues and (2) whether any significant supervisory burden will be imposed upon this Court if it retains jurisdiction over issues not now determined.

The Proposed Settlement

9. The following summary does not purport to analyze in detail every provision of the proposed Decree. These provisions, which for the most part are self-explanatory, are set out in the body of the Decree (p. D-1, *infra*), and in four annexed Schedules (pp. D-21-D-36, *infra*) which constitute parts of the Decree. Appendices (pp. 1-a-9-a, *infra*)

[5] In prior cases under its original jurisdiction, an order of this Court, making final disposition of a case, has usually been entitled a "decree." See *New Jersey* v. *New York*, 283 U. S. 805 (1931); 347 U. S. 995 (1954); *Arizona* v. *California*, 376 U. S. 340 (1964), despite use of the term "Judgment" in Rule 54 of the Federal Rules of Civil Procedure.

contain, for the information of this Court, certain documents to be employed in connection with the settlement. These (see p. D-3, *infra*) do not constitute parts of the proposed Decree.

10. The settlement represents the result of informed, prolonged bargaining by the parties. Each has been represented by competent counsel, thoroughly familiar with the evidence thus far adduced. Each has employed experts of its own choice, including not only outside consultants (for certain parties) but also skilled governmental and Company officers and employees.

11. The settlement contemplates that no findings shall be made, and the proposed Decree provides that it shall not constitute an adjudication on any issue of fact or law, or evidence, or any admission by any party with respect to any such issue (see p. D-1, *infra;* see also, however, Article V(A) (2) of the proposed Decree, p. D-10, *infra*). In my opinion, no settlement would be possible if this report were to contain any findings. The parties all have requested that this report contain only my *general* conclusions (in the light of my knowledge of the evidence thus far) about the propriety of the settlement, so that no emphasis upon particular evidence will suggest that this report makes any specific findings. In Appendix B (p. 51, *infra*), however, the proceedings before me are summarized.

12. The fairness of the settlement must be determined by viewing the settlement in the aggregate. No provision in it can fairly be regarded as in consideration of the inclusion of any other provision. So viewed, in my opinion, it reaches a reasonable result, consistent with the public

interest, and acceptable on the basis of the evidence thus far presented.

The South Lake Master

13. The parties recognize that various questions of administration of the Decree may arise. This Court should not be troubled with these questions unless the parties cannot resolve them (a) after conference, and (b) if negotiations fail, after submitting the questions for determination by an officer designated by this Court, subject to this Court's review if necessary. Accordingly, the settlement agreement adopts somewhat the same course adopted by this Court's order in *New Jersey* v. *New York*, 347 U. S. 995, 1002 (1954), *supra*, where a "River Master" was appointed to supervise certain matters. In the present case, Article I of the Decree (p. D-2, *infra*) and Schedule 1 (p. D-21, *infra*) provide for a "South Lake Master" (whose actions and rulings are to be subject to review by this Court, if any party so requests) with broader responsibilities than those of the River Master in *New Jersey* v. *New York*. In accordance with Schedule 1, the parties may refer stated matters to him for action after resort to the appropriate Federal and New York regulatory authorities. Action by the South Lake Master may include arranging conferences, conducting hearings, receiving sworn evidence, and making reports and recommendations. The South Lake Master also would have power (p. D-23, *infra*) to extend the time allowed by the Decree for some actions by the parties (imposing reasonable terms if that be appropriate). Exhaustion (short of direct appellate review of the regulatory bodies concerned; see pp. D-19, D-21, *infra*) of the procedures described in Schedule 1 (and in related provisions of

the body of the proposed Decree) would be required in seeking supplemental and other relief at the foot of the Decree under Article VIII. The investigative, consultative, administrative, and adjudicatory action outlined by Schedule 1 is reasonably designed, in my opinion, to bring about agreed or acceptable solutions to most questions likely to arise under the proposed Decree, with minimal likelihood that this Court itself will be called upon for further action.

The Ticonderoga Bay Sediment Issue

14. Although Vermont originally sought (see the original bill of complaint on file) dredging of the alleged sediment deposits in and near Ticonderoga Bay, this course was opposed by New York and the Company and later by the United States as set forth in its intervention petition. These parties took in effect the position that dredging might do more harm than good and would be an uneconomic expenditure. Investigations of the water quality of Ticonderoga Bay by the parties have continued since the Old Mill closed in 1971. For various reasons, perhaps including these investigations, Vermont justifiably and wisely during the recent negotiations has placed emphasis on obtaining safeguards against possible environmental harm in the future (to South Lake water quality and to the Vermont atmosphere) from the New Mill operations.[6] The proposed Decree thus intentionally makes no provision for any present dredging of the alleged sediment deposits. Pursuant to Article V(A) of the proposed Decree and Appendix A,

[6] The form of the proposed settlement permits postponement of any determination whether there will be future harm caused by the alleged deposits.

attached thereto (pp. D-10, 1-a, *infra*), Vermont will drop all its claims against the Company based upon past, present, or future discharges or emissions from the Old Mill and any accumulations alleged to be caused thereby (although no such relief will be given by Vermont to New York) and for any alleged damages to Vermont caused by past air emissions from the New Mill. After five years (see p. D-15, *infra*), the United States is to take comparable action in specified circumstances. The Company and its successors in title will be enjoined by the proposed Decree (pp. D-4-D-5, *infra*) from future discharges and emissions from the Old Mill, except in accordance with appropriate governmental permits.[7]

15. Various aspects of the proposed Decree preserve opportunity for protecting the public interest if, in the future, significant adverse environmental effects (not now perceived) from the alleged deposits are established to exist. For example, subject to certain limited exceptions, the proposed Decree expressly disclaims any interference with (a) the exercise of the powers of the Federal and New York regulatory agencies (pp. D-16, D-21, *infra*), and (b) Federal control of navigation on the South Lake (p. D-15, *infra*).[8]

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[7] During the recent negotiations, counsel for the Company advised the Special Master and the other parties that the Company is now razing the Old Mill structures and plans to dedicate some of the land to park, playground, or other public purposes.

[8] Since the initiation of this case, additional statutory powers to protect the environment have been granted by the Congress to EPA. See Pub. Law 92-500, 86 Stat. 816, *et seq.* The provisions of the Federal permit governing discharges to the South Lake are soon to be determined by EPA. The EPA has maintained close contact with every phase of this litigation and with the settlement negotiations.

16. The proposed Decree (pp. D-8, D-15, *infra*) gives very substantial priority (in the matter of Federal funding) to proposals for the treatment of the raw sewage now discharged into Ticonderoga Creek (and thence to Ticonderoga Bay) by the Village of Ticonderoga. This priority rapidly should result in substantial removal in the public interest of an obviously undesirable discharge from a New York source.[9]

New Mill Operations

17. The New Mill, when opened in 1971, included many modern features intended to prevent pollution of the South Lake area by effluent discharges and by emissions to the atmosphere. Since the construction of the New Mill, improvements of these pollution control facilities (e.g. additional aeration devices in the waste treatment lagoon) have been provided. There has been continuing study by the Company of possibilities for further improvement in the light of a constantly developing technology. The pollution control operations of the New Mill have been intensively examined by experts for each of the parties.

18. The proposed Decree prescribes certain standards (see Art. III, pp. D-4-D-7, *infra;* Schedules 3 and 4, pp. D-28-D-36, *infra*) governing the control of New Mill emissions to the air, and its future waste discharges. These

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The results, indeed, have been reviewed not only in Washington (D.C.) but in two regional offices. The New York regulatory authorities also soon are to take action (with complete familiarity with this litigation and the negotiations) on permits regulating New Mill effluent discharges and air emissions.

[9] This matter, not very clearly presented by the pleadings, has been dealt with in constructive fashion in the proposed Decree through the cooperation of the United States and the State of New York.

have been developed after prolonged discussions by the parties, including representatives of the federal and New York regulatory authorities. On the evidence thus far, I am of opinion that these standards are reasonably designed to control the New Mill operations in a manner wholly consistent with the public interest. The proposed Decree permits application of other standards by appropriate regulatory authorities if later occasion for doing so becomes apparent. See e.g. pp. D-16, D-21, *infra*.

Contribution by the Company

19. The proposed Decree provides (p. D-6, *infra*) that the Company shall pay to Vermont the sum of $500,000, as a contribution by the Company to protect and preserve the environmental quality of the Lake area. This contribution (as is the case with respect to many other provisions of the proposed Decree) cannot be reasonably viewed as allocable to any particular claim or assertion made by Vermont. It should be regarded as representing merely one aspect of a general compromise and settlement of long, complex, and costly litigation. The Parties (subject to the approval of this Court) have made a separate stipulation concerning the payment by the Company and Vermont, respectively, of certain expenses of this litigation.

Retention of Jurisdiction

20. The provisions of Article VIII on retention of jurisdiction by this Court have been the subject of prolonged and careful discussions by the Parties. They recognize that, within its original equity jurisdiction, this Court inherently retains broad power to reconsider and modify any

equitable relief granted by it. The language chosen in Article VIII of this proposed Decree, however, is intended to declare a policy that future modification of the Decree shall be granted only in accordance with that Article for substantial reasons and only by compliance with the orderly procedure and provisions in Schedule 1. By the provisions of Article VIII and of Schedule 1, the Decree should afford (a) appropriate certainty (for the foreseeable future) concerning the standards and duties with which the Decree requires each of the Parties to comply, and (b) fair opportunity for any party to obtain further relief, including changes in the proposed Decree, if and as substantial occasion for such relief may become apparent in the future.

CONCLUSION

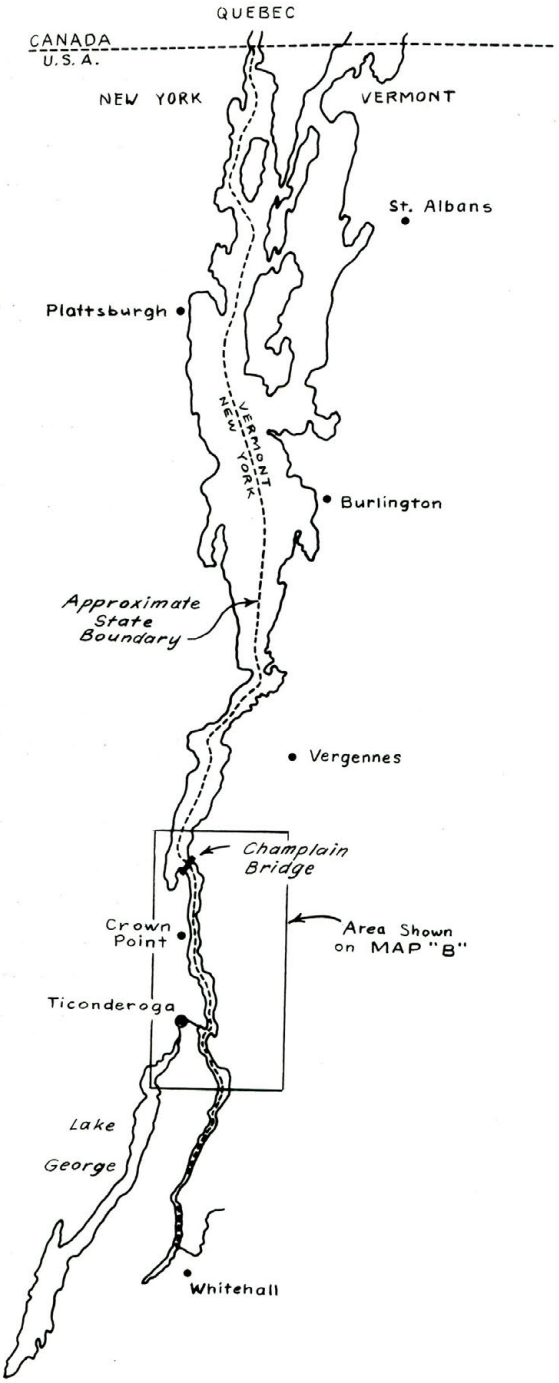
21. The proposed Decree embodies a negotiated settlement of litigation among sovereign States and a large private company, in which the United States has participated. The result reached, in my opinion, protects the public interest, and is sensible. Costly, uneconomic, and unnecessary further proceedings will be avoided if the proposed Decree is entered. A pattern is set for dealing with future problems in an orderly manner. It is recommended that the negotiated settlement be approved in the form to which the Parties have agreed.

Respectfully,

April 24, 1974

R. AMMI CUTTER
Special Master

[62 Sparks Street, Cambridge, Massachusetts 02138]

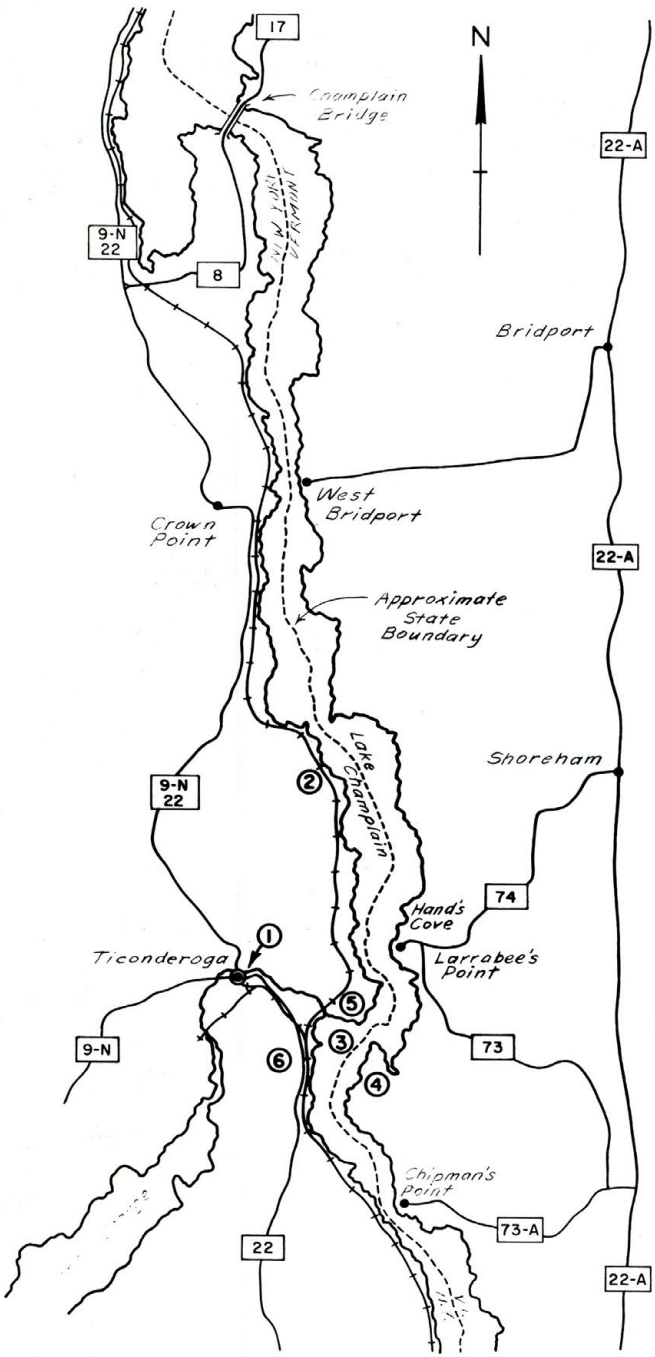


MAP "A"

SCALE OF MILES

0 10 20

DEC. 1972 E.F.B.-R.F.P.



SPECIAL POINTS

1. Former I.P.C. mill
2. New I.P.C. mill
3. Sediment Deposit
4. Mt. Independence
5. Fort Ticonderoga
6. Mt. Defiance

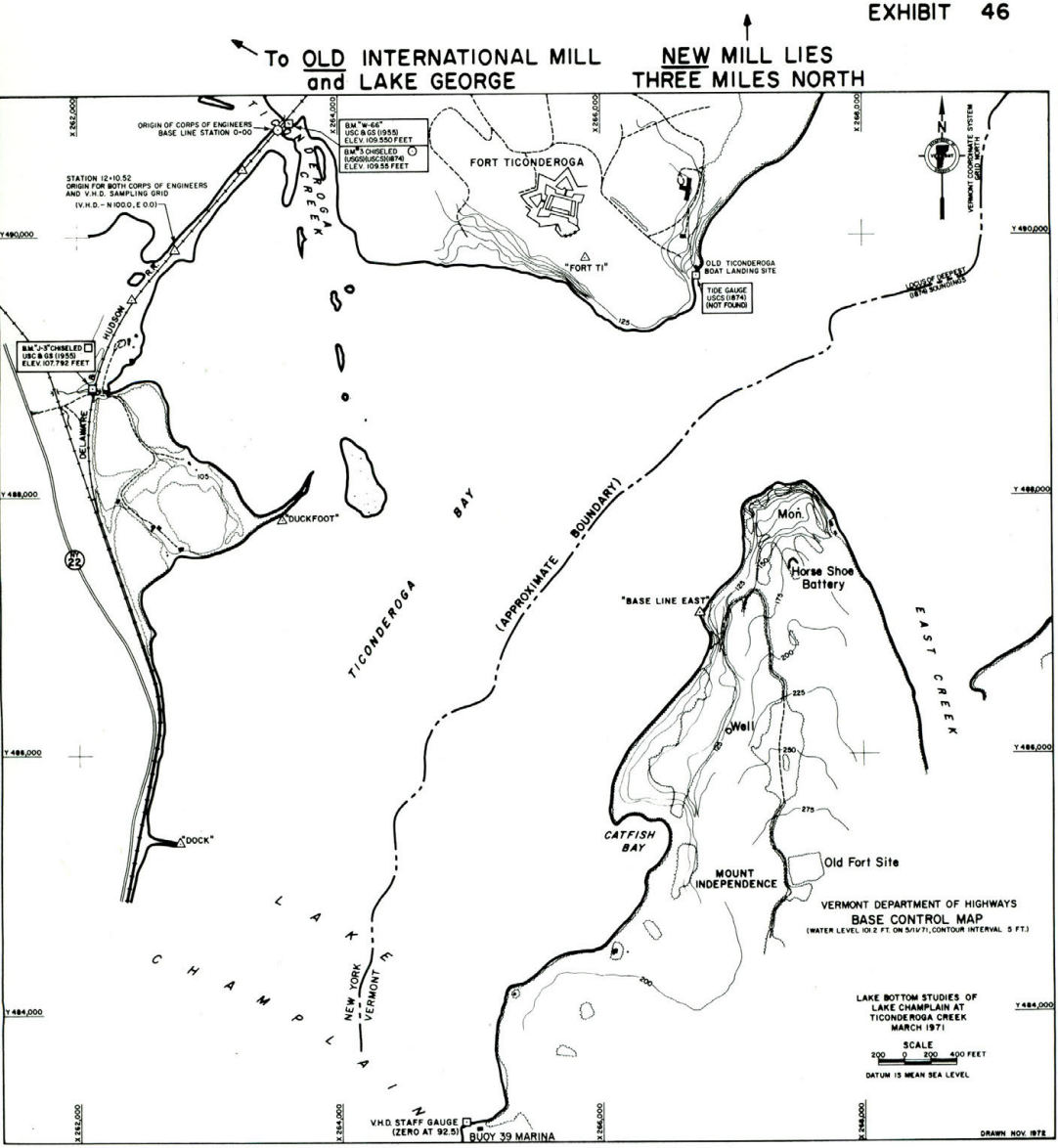
MAP "B"

SCALE OF MILES

0 1 2

DEC. 1972 E.F.B.-R.F.P.

EXHIBIT 46



MAP C

APPENDIX A (TO SPECIAL MASTER'S REPORT)

Introductory Statement

Vermont on September 6, 1972, filed a motion for leave to amend its bill of complaint. This motion was dealt with by order of the Special Master dated November 1, 1972, after the submission of briefs. Proposed answers had previously been filed October 26, 1972 by the State of New York and International Paper Company. Vermont's motion for leave to amend was allowed in part and certain portions of the amended bill were ordered to be struck. The amended pleadings (and the orders dealing with them) have not previously been printed and are set out below (with the exception of the exhibits thereto), beginning at page 18, *infra.*

The following pleadings have been printed previously and are on file with the Clerk of this Court. They are not reprinted herein:

1. Motion of Vermont for leave to file Complaint and Complaint filed December 30, 1970.

2. Answer of International Paper Company filed June 19, 1972.

3. Answer of State of New York filed June 19, 1972.

4. Motion of the United States for Leave to Intervene and Petition of Intervention filed in December, 1972.

A. *Vermont Motion to Amend Bill of Complaint and Proposed Amendment*

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

NO. 50 ORIGINAL

STATE OF VERMONT, a sovereign state,
Montpelier, Vermont,

Plaintiff,

v.

STATE OF NEW YORK, a sovereign state,
Albany, New York,

and

INTERNATIONAL PAPER COMPANY, a corporation existing under the laws of the State of New York, located at New York, N. Y.,

Defendants.

Plaintiff moves the Court, pursuant to Rule 9.2 of the Rules of the Supreme Court and Rule 15 of the Federal Rules of Civil Procedure:

(a) For leave to file an amended and supplemental complaint herein, a copy of which is annexed hereto as Exhibit "A", on the ground that justice so requires in order that all issues between the parties of which this Court has jurisdic-

tion may be fully litigated in and determined by this action; and,

(b) For such other relief as this Court may deem just.

Dated: September 5, 1972.

/s/ DAVID SIVE
David Sive
Attorney for Plaintiff
425 Park Avenue
New York, New York 10022

To:

TAGGART WHIPPLE, ESQ.
DAVIS POLK & WARDWELL, ESQS.
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One Chase Manhattan Plaza
New York, New York 10005

HON. LOUIS J. LEFKOWITZ
Attorney General of the State of New York
80 Centre Street
New York, New York 10013

EXHIBIT "A"

PROPOSED AMENDED AND SUPPLEMENTAL COMPLAINT

The State of Vermont, Plaintiff herein, by its Attorney General, brings this civil action against the State of New York and International Paper Company, Defendants herein, and for its cause of action complains and alleges as follows:

AS AND FOR PLAINTIFF'S FIRST CLAIM

[Set forth paragraphs I through XXXV of present complaint]

AS AND FOR PLAINTIFF'S SECOND CLAIM

XXXVI

Plaintiff repeats and realleges each and every allegation of Paragraphs I through XXXV above with the same effect as though herein set forth and repeated.

XXXVII

The foregoing acts of defendants constitute breaches and violations of and have been and are unlawful under the provisions of §13 of the Rivers and Harbors Act of 1899, 33 U.S.C. §407.

AS AND FOR PLAINTIFF'S THIRD CLAIM

XXXVIII

Plaintiff repeats and realleges each and every allegation of Paragraphs I through XI with the same effect as though fully set forth herein.

XXXIX

For approximately 45 years, commencing in or about 1925, Defendant International Paper Company operated a pulp and paper making plant in the Village of Ticonderoga, New York adjacent to Ticonderoga Creek, a navigable water, which flows from Lake George in the State of New York into Lake Champlain.

XL

During the said period of approximately forty-five years, Defendant International Paper Company discharged pulp and paper making waste and untreated domestic or sanitary sewage into Ticonderoga Creek about two miles above its confluence with Lake Champlain.

XLI

Upon information and belief, in or about December 1970 Defendant International Paper Company shut down the pulp and paper making plant described above and moved the operations thereof to a new plant located on the western shore of Lake Champlain, at a point approximately three miles north of the Village of Ticonderoga.

XLII

Upon information and belief, at all times since December 1970, or thereabouts, Defendant International Paper Company has operated and is operating the new plant and has been and is discharging all of the wastes and effluents thereof into Lake Champlain near the new plant.

XLIII

Upon information and belief, the rate of discharge of the effluents from the new plant into Lake Champlain is approximately thirty million gallons daily.

XLIV

Upon information and belief, large proportions of the said wastes and effluents are deposited by Defendant International Paper Company, through a diffuser pipe or pipes located in New York State waters and extending to or close to the middle of the deepest channel of Lake Champlain, constituting the interstate boundary between the States of New York and Vermont.

XLV

Upon information and belief, large amounts of said wastes and effluents, amounting to several million gallons per day, are projected or carried by the currents of the Lake and otherwise beyond the said interstate boundary into the waters of the State of Vermont.

XLVI

Upon information and belief, at all times herein material, Defendant State of New York has had and has knowledge of the said discharges of wastes and effluents from the new plant into the waters of the State of Vermont and has specifically and by action of its governmental agencies authorized and directed such discharges.

XLVII

Upon information and belief, the said wastes and effluents contain large amounts of chemicals, bacteria, suspended matter and other impurities which seriously pollute, degrade and discolor the waters of Lake Champlain, including waters of the State of Vermont.

XLVIII

The foregoing acts of defendants constitute breaches and violations of and have been and are unlawful under the provisions of §13 of the Rivers and Harbors Act of 1899, 33 U.S.C. §407.

XLIX

Upon information and belief, Defendant International Paper Company has applied to the U.S. Army Corps of Engineers for a permit to discharge the wastes and effluents described above into Lake Champlain but has not been granted such a permit.

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During all or most of the time or times that it has been in operation, gaseous emissions from the new plant containing noxious and nauseous odors have been carried by the prevailing westerly winds to pervade the air over the waters and lands of and in the State of Vermont, thus adversely affecting the health, safety and comfort of the citizens and inhabitants of Vermont.

LI

The aforesaid actions by defendants constitute an unlawful and continuing trespass upon the lands and waters of the State of Vermont and of its citizens and inhabitants and the air above such lands and waters, and constitute an unlawful public nuisance.

LII

Plaintiff repeats and realleges each and every allegation of Paragraphs XXVI through XXX with the same effect as though fully set forth herein.

LIII

Plaintiff repeats and realleges each and every allegation of Paragraphs XXXII through XXXV with the same effect as though fully set forth herein.

WHEREFORE, Plaintiff State of Vermont prays:

1. That a decree be entered adjudging that the conduct of Defendant International Paper Company in discharging pulp and paper plant waste and sanitary sewage into Lake Champlain through its tributary, Ticonderoga Creek, in such volumes and of such a degrading nature constitutes a public nuisance and ordering that such nuisance be abated.

2. That a decree be entered adjudging that the conduct of Defendant State of New York in permitting Defendant International Paper Company to discharge pulp and paper plant waste and sanitary sewage into Lake Champlain and in maintaining and failing to remove or confine the sludge

bed on its property and in its waters of Lake Champlain constitutes a public nuisance and ordering that such a nuisance be abated.

3. That a decree be entered adjudging that the Defendant State of New York and Defendant International Paper Company have caused a continuing trespass to be committed upon lands and waters of the State of Vermont and ordering the Defendants, and each of them, to cease and desist from such trespass, and to abate the same by removing the sludge bed.

4. That a decree be entered perpetually enjoining the Defendant International Paper Company from discharging or otherwise introducing pulp and paper plant waste and sanitary sewage from its plant in the Village of Ticonderoga, New York into the waters of Lake Champlain or its tributary Ticonderoga Creek.

5. That a decree be entered requiring Defendants State of New York and International Paper Company and each of them to remove from Lake Champlain and its tributary Ticonderoga Creek the sludge bed that has accumulated therein and to take such other necessary and proper steps as determined by the Court to restore the navigability and the quality of waters in Lake Champlain.

6. That a decree be entered adjudging that the acts of Defendants State of New York and International Paper Company alleged in plaintiff's Third Claim above, constitute an unlawful trespass and public nuisance and violations of the provisions of § 13 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 407, and ordering each of said defendants to cease and desist therefrom.

7. That a decree be entered adjudging that the Plaintiff recover from Defendants and each of them compensatory damages in an amount not yet ascertained but to be determined in this action for the wrongs and injuries done to the Plaintiff State of Vermont as set forth herein.

8. That a decree be entered adjudging that the Plaintiff State of Vermont recover from Defendants and each of them punitive damages in an amount to be determined by the Court for the wilful, intentional, reckless and wanton conduct of such Defendants.

9. That Plaintiff State of Vermont be awarded its costs of suit and such other and further relief as the Court may deem proper and necessary.

STATE OF VERMONT

By: .....

JAMES M. JEFFORDS
Attorney General of Vermont
State Library Building
Montpelier, Vermont

B, 1. *Proposed Answer of Defendant International Paper Company to Amended and Supplemental Complaint*

Defendant International Paper Company, by its attorney Taggart Whipple, for its answer to the amended and supplemental complaint herein:

WITH RESPECT TO PLAINTIFF'S FIRST CLAIM

Repeats and realleges each and every averment of Paragraphs I through XXXV of its original answer, together with the affirmative defenses asserted therein, with the same force and effect as though set forth herein.

WITH RESPECT TO PLAINTIFF'S SECOND CLAIM

XXXVI. Repeats and realleges each and every averment of Paragraphs I through XXXV of its original answer with the same force and effect as though set forth herein.

XXXVII. Denies the averments of Paragraph XXXVII.

First Affirmative Defense

Plaintiff lacks the requisite standing to assert a claim under the Rivers and Harbors Act of 1899.

Second Affirmative Defense

Plaintiff fails to state a claim against defendant International Paper Company upon which relief can be granted.

Third Affirmative Defense

Plaintiff lacks standing to seek damages as *parens patriae.*

WITH RESPECT TO PLAINTIFF'S THIRD CLAIM

XXXVIII. Repeats and realleges each and every averment of Paragraphs I through XI of its original answer with the same force and effect as though set forth herein.

XXXIX. Denies the averments of Paragraph XXXIX except admits that in 1925 defendant International Paper Company acquired a pulp and paper making plant (the "Ticonderoga mill") in the Village of Ticonderoga, New York, adjacent to Ticonderoga Creek, which flows from Lake George in the State of New York into Lake Champlain, from a firm which had operated the Ticonderoga mill since 1882. Defendant International Paper Company operated the Ticonderoga mill from 1925 until on or about December 1, 1970 when it shut down the pulp mill and one large paper machine. The remaining paper machines were permanently shut down on or about April 17, 1971 when the Ticonderoga mill was permanently closed. For ecological and other reasons, defendant International Paper Company decided in 1967 to construct a new mill near Crown Point, New York (the "New Mill"), a few miles north of the Village of Ticonderoga. The New Mill, which had a budgeted cost of approximately $76 million, opened on or about December 15, 1970 and will continue defendant International Paper Company's position as the principal economic support of the economy of the Ticonderoga area.

XL. Denies the averments of Paragraph XL except admits that while defendant International Paper Company's Ticonderoga mill operated during the period 1925 to on or about December 1, 1970, it discharged inert wood fibers, chips, bark and similar material, together with

waste water and various chemicals used in the pulp and paper making process, and domestic sewage into the area of Ticonderoga Creek adjacent to the Ticonderoga mill. When the pulp mill and one large paper machine were shut down on or about December 1, 1970 approximately 70% of the discharges from the Ticonderoga mill ceased, including all discharges of chips, bark and pulp-making chemicals, and discharges of paper-making chemicals were significantly reduced. All discharges were permanently discontinued when the Ticonderoga mill was permanently shut down on or about April 17, 1971.

XLI. Repeats and realleges each and every averment of Paragraphs XXXIX and XL above with the same force and effect as though set forth herein.

XLII. Denies the averments of Paragraph XLII and avers that on or about December 15, 1970 the New Mill commenced operations. The New Mill's budgeted cost was approximately $76,000,000, of which $4,303,000 was spent for water treatment facilities, which utilize the best available technology.

The New Mill's waste water treatment facility consists of primary and secondary treatment, together with a diffusion system, which is designed for 90% removal of the Biochemical Oxygen Demand ("BOD_5") and 90% removal of the Suspended Solids from 21 Million Gallons Per Day ("MGD") from the mill's effluent. The primary clarifiers remove settleable solids and a 14 acre, 67 million gallon lagoon provides secondary treatment through natural bacterial action. Eighteen floating aerators replenish the dissolved oxygen and provide mixing and cooling of the water.

The treated water then flows into two final clarifiers for removal of solids generated during the biological treatment. A foam trap separates foam and entrapped air prior to discharge through an 800 foot submerged diffuser which minimizes local effects of the treated water on Lake Champlain. The treated water discharge is in compliance with all applicable Federal, Vermont and New York water quality standards for Lake Champlain.

The New Mill is equipped with its own sanitary waste treatment plant, which provides primary and secondary treatment, as well as chlorination of waste prior to its discharge. The waste treatment plant is designed for 30,000 gallons per day with about 85% removal of the BOD_5 and 85% removal of the Suspended Solids and its discharge is in compliance with all applicable Federal, Vermont and New York water quality standards for Lake Champlain.

XLIII. Denies the averments of Paragraph XLIII and avers that the total rate of discharge of all effluents from the New Mill into Lake Champlain is approximately 21 million gallons daily during the summer months and approximately 18 million gallons daily during the winter months.

XLIV. Denies the averments of Paragraph XLIV and avers that the 800 foot diffuser ends more than 50 feet west of the deepest channel in Lake Champlain and further avers that the treated effluent from the New Mill's secondary waste treatment plant is discharged into Lake Champlain along the entire 800 feet of the diffuser.

XLV. Denies the averments of Paragraph XLV.

XLVI. Is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph XLVI.

XLVII. Denies the averments of Paragraph XLVII.

XLVIII. Denies the averments of Paragraph XLVIII.

XLIX. Denies the averments of Paragraph XLIX and avers that on September 29, 1970 defendant International Paper Company submitted an application to the United States Army Corps of Engineers for a discharge permit pursuant to the Rivers and Harbors Act of 1899 and the regulations issued thereunder. By letter dated November 23, 1970, defendant International Paper Company was informed by Robert E. Jordan, III, General Counsel and Special Assistant to the Secretary of the Army (Civil Functions) that it had "taken all the steps which could reasonably be expected of it with respect to seeking a permit under the Refuse Act" and "[t]he Department of the Army will not consider the initiation of operations at the new plant on December 1 [1970] as an improper act by the company. . . ." The letter noted that defendant "International Paper Company has constructed a new plant, incorporating the most modern pollution control devices" and expressed appreciation for its "effort[s] to cooperate with the Department of the Army and the other concerned Federal agencies in efforts to reduce water pollution." Copies of the foregoing documents are annexed hereto as Exhibits A and B respectively.

L. Denies the averments of Paragraph L and avers that the New Mill's air treatment facilities, which cost approximately $847,000, incorporate the best available

technology and all emissions into the atmosphere from the New Mill are in compliance with all applicable ambient air quality standards. Particulate discharges are controlled by high energy scrubbers, dust collectors and a high efficiency (99.6%) electrostatic precipitator which is on the recovery boiler. The kraft recovery furnace and pulping waste liquor evaporators utilize a Scandinavian design previously untried in the United States which has virtually eliminated all discharges of odorous gases from the New Mill's liquor burning area. Odor control is also effected by collection of odorous non-condensable gases from the pulp digester, blow tank and black liquor evaporators for incineration in a lime kiln. After start-up of the New Mill an additional system was installed to collect odorous gases from the salt cake mix tank and weak and strong black liquor storage tank for disposal in the smelt dissolving tank scrubber.

Odor emanating from the New Mill's waste treatment lagoon very recently has been reduced significantly by installation of an experimental stripper system. Completion of the stripper system to include incineration of the off gas that it generates is now underway.

LI. Denies the allegations of Paragraph LI.

LII. Repeats and realleges each and every averment of Paragraphs XXVI through XXX of its original answer with the same force and effect as though set forth herein.

LIII. Repeats and realleges each and every averment of Paragraphs XXXII through XXXV of its original answer with the same force and effect as though set forth herein.

First Affirmative Defense

Plaintiff lacks the requisite standing to assert a claim under the Rivers and Harbors Act of 1899.

Second Affirmative Defense

All discharges of effluents from defendant International Paper Company's New Mill are in compliance with all applicable Federal, Vermont and New York water quality standards for Lake Champlain.

Third Affirmative Defense

All emissions into the atmosphere from defendant International Paper Company's New Mill are in compliance with all applicable Federal, New York and Vermont ambient air quality standards.

Fourth Affirmative Defense

Plaintiff fails to state a claim against defendant International Paper Company upon which relief can be granted.

Fifth Affirmative Defense

Plaintiff lacks standing to seek damages as *parens patriae.*

WHEREFORE, defendant International Paper Company demands judgment dismissing the Amended and Supplemental Complaint herein, together with the costs and disbursements of this action.

Dated: New York, New York
October 2, 1972

TAGGART WHIPPLE
Attorney for Defendant
International Paper Company
One Chase Manhattan Plaza
New York, New York 10005
Telephone: 212-422-3400

DAVIS POLK & WARDWELL
Of Counsel

B, 2. *Proposed Answer of Defendant New York to Amended and Supplemental Complaint*

The State of New York by its Attorney General, Louis J. Lefkowitz, answering the complaint herein, alleges as follows:

FIRST: Admits each and every allegation contained in paragraphs "I" through "VII" of the complaint herein.

SECOND: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "VIII" of the complaint.

THIRD: Denies each and every allegation in paragraph "IX" of the complaint except admits that the State of New York was and now is the legal owner, in trust for its citizens and inhabitants, of the lands lying under Lake Champlain from the New York shoreline to the middle of the deepest channel of Lake Champlain.

FOURTH: Denies each and every allegation contained in paragraphs "X" and "XI" of the complaint.

FIFTH: Admits each and every allegation contained in paragraph "XII" of the complaint, except denies that such plant is presently operating, and that Ticonderoga Creek is a navigable body of water.

SIXTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs "XIII" and "XIV" of the complaint, except admits that defendant International Paper Company discharged some wastes into Ticonderoga Creek while its plant was in operation.

SEVENTH: Denies each and every allegation contained in paragraphs "XV" and "XVI" of the complaint.

EIGHTH: Denies each and every allegation contained in paragraph "XVII" of the complaint, except denies knowledge or information sufficient to form a belief as to what defendant International Paper Company "knew, or should have known."

NINTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs "XVIII" and "XIX" of the complaint, except denies that the State of New York took any action which resulted in the formation of a sludge bed on the bottom of Lake Champlain.

TENTH: Denies each and every allegation contained in paragraphs "XX" through "XXXV" of the complaint.

ELEVENTH: Denies each and every allegation contained in paragraph "XXXVII" of the amended and supplemental complaint.

TWELFTH: Admits each and every allegation contained in paragraph "XXXIX" of the amended and supplemental complaint, except denies that Ticonderoga Creek is a navigable body of water.

THIRTEENTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "XL" of the amended and supplemental complaint, except admits that defendant International Paper Company discharged some wastes into Ticonderoga Creek while its plant was in operation.

FOURTEENTH: Admits each and every allegation contained in paragraph "XLI" of the amended and supplemental complaint.

FIFTEENTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "XLII" of the amended and supplemental complaint, except admits that defendant International Paper Company has operated and is operating the new plant.

SIXTEENTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs "XLIII" through "XLV" of the amended and supplemental complaint.

SEVENTEENTH: Denies each and every allegation contained in paragraphs "XLVI" through "XLVIII" of the amended and supplemental complaint.

EIGHTEENTH: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "XLIX" of the amended and supplemental complaint.

NINETEENTH: Denies each and every allegation contained in paragraph "L" and "LI" of the amended and supplemental complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE, DEFENDANT STATE OF NEW YORK ALLEGES:

TWENTIETH: The State of New York did not acquiesce in the discharge of wastes into Ticonderoga Creek by de-

fendant International Paper Company. In 1965 the State of New York commenced proceedings through its Department of Health, charging International Paper with violating applicable stream standards and seeking an order requiring removal of the sludge. In December, 1966 International Paper consented to an order containing an abatement schedule which required it to end its pollution of the creek by December 1, 1970. In May, 1968, International Paper, pursuant to this order of New York's Health Department, submitted its plans for waste treatment facilities, a permit for which was issued the following year by New York. In August, 1970, New York commenced an action against International Paper in its courts, demanding that it cease its pollution in accordance with the administrative order. This suit was prompted by evidence received by New York that International Paper had fallen behind its schedule and therefore would not terminate its pollution of the creek on the agreed date. This suit was terminated by consent judgment entered March 12, 1971, directing International Paper to terminate its pollution on or before April 24, 1971. A copy of this consent judgment is marked Exhibit "A" annexed hereto. On April 12, 1971, International Paper Company ceased all operations at its Ticonderoga plant, and is no longer causing any pollution of the creek or of Lake Champlain or discharging any untreated effluent into the creek or lake.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE, DEFENDANT STATE OF NEW YORK ALLEGES:

TWENTY-FIRST: The sludge bed in the area of Ticonderoga Bay contains only inert, non-toxic matter which is

not polluting the lake, emitting offensive odors or otherwise causing a public nuisance. In order to determine the most appropriate method of coping with the sludge bed from the environmental viewpoint, the State of New York and the International Paper Company entered into a contract with the highly respected engineering and consulting firm of Quirk, Lawler & Matusky of Tappan, New York, on or about March 26, 1971. This study was conducted in the area surrounding Ticonderoga Creek in the summer of 1971. A copy of the "Summary of Findings, Conclusions and Recommendations" of the Quirk, Lawler & Matusky report is set forth in Appendix "B" of the Answer of defendant International Paper.

TWENTY-SECOND: The study found that the sludge did not interfere with maintenance of dissolved oxygen in the area, and that the dissolved oxygen concentration in and around Ticonderoga Bay was at all times substantially above the established water quality standards for dissolved oxygen of both Vermont and New York. The Department of Environmental Conservation of the State of New York also conducted a study of the area which resulted in the Report of the New York State Department of Environmental Conservation on Ticonderoga sludge area surveillance, a copy of which is annexed as Appendix "D" to the Answer of defendant International Paper. The Surveillance study found that the dissolved oxygen concentration was 5.0 mg/l or higher at the New York-Vermont State line, well above the 4.0 mg/l standard of both Vermont and New York. During the summer of 1971 neither the New York Department of Environmental Conservation nor Quirk, Lawler & Matusky observed any floating mats of sludge in the area.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE, DEFENDANT STATE OF NEW YORK ALLEGES:

TWENTY-THIRD: Defendant International Paper Company is not discharging any wastes into Ticonderoga Creek, and has not done so since April 17, 1971. Plaintiff's demand for an injunction against further discharge is therefore moot.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE, DEFENDANT STATE OF NEW YORK ALLEGES:

TWENTY-FOURTH: The sludge bed has not created an impediment to navigation.

TWENTY-FIFTH: The State of New York has never received any complaint or other notice from plaintiff as to any asserted impediment to navigation.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE, DEFENDANT STATE OF NEW YORK ALLEGES:

TWENTY-SIXTH: There has not been any alteration of the interstate boundary.

TWENTY-SEVENTH: The State of New York has never received any complaint or other notice from plaintiff as to any alteration of such boundary.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, DEFENDANT STATE OF NEW YORK ALLEGES:

TWENTY-EIGHTH: The cause of action alleged against defendant State of New York is barred, in whole or in part, by the applicable statute of limitations.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE, DEFENDANT STATE OF NEW YORK ALLEGES:

TWENTY-NINTH: The cause of action alleged against defendant State of New York is barred, in whole or in part, by plaintiff's laches. During the entire period of operation of defendant International Paper Company's plant, except for the last year or two, plaintiff was never heard to complain of the allegations it has now presented to this Court. Having acquiesced in the acts of defendant International Paper Company, plaintiff cannot now be heard to complain of the consequences.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE, DEFENDANT STATE OF NEW YORK ALLEGES:

THIRTIETH: As to Vermont's claim for money damages, defendant State of New York, as a sovereign State, is immune from any such claim.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE, DEFENDANT STATE OF NEW YORK ALLEGES:

THIRTY-FIRST: The State of New York has not thrown, discharged or deposited any refuse matter into the waters of Lake Champlain or any tributaries thereof, nor has it caused, suffered or procured such matter to be thrown, discharged or deposited into said Lake or tributaries.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE, DEFENDANT STATE OF NEW YORK ALLEGES:

THIRTY-SECOND: The provisions of § 13 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 407, may not be enforced by a private action brought by a State.

WHEREFORE, defendant State of New York demands judgment dismissing plaintiff's complaint, together with the costs and disbursements of this action.

Dated: New York, New York,
October 2, 1972

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for the State of New York
Office & P.O. Address
80 Centre Street
New York, New York 10013
Tel. (212) 488-7560

C. *Order no. 1 of Special Master, dated November 1, 1972.*

(Vermont's motion to amend and supplement its complaint.)

1. The State of Vermont (Vermont) on September 6, 1972, sought leave to amend or to supplement its complaint, filed December 29, 1970.

2. That complaint (par. XII et seq.) alleged, in general terms, that International Paper Company (International), with at least the acquiescence of the State of New York (New York), has caused, over a long period, pollution of Lake Champlain in the area near the outlet of Ticonderoga Creek, resulting in damage by the formation of sludge beds, which (when decaying) injure the water and air quality and cause damage to Vermont and its inhabitants in various respects, including the creation of a public nuisance.

3. The supplemental complaint adds allegations (a) that (par. XXXVII) the acts complained of constitute a violation of § 13 of the Rivers and Harbors Act of 1899 (the 1899 statute); (b) that International (see pars. XLI et seq.) has shut down its former plant in Ticonderoga (as of December, 1970) and has built, and is operating, a new plant north of the Village of Ticonderoga from which effluents in large quantities are discharged into Lake Champlain and pass into Vermont waters and from which, also, gaseous emissions are released which pass into the atmosphere within or over Vermont. These discharges and emissions are alleged to constitute a public nuisance and a continuing trespass which cause injury and damage to Vermont and its citizens and inhabitants.

4. So far as the supplemental complaint purports to attempt direct enforcement of the 1899 statute, Vermont is without separate standing to seek such direct relief. See *Connecticut Action Now, Inc.* v. *Roberts Plating Co. Inc.* 457 F. 2d 81 (2d Cir.), and cases cited. Accordingly (subject to review and revision of this order by the Supreme Court), leave to amend is denied to the extent that references to the 1899 act constitute more than a mere allegation that the discharges and emissions, as matter of fact, are of a type which could be held to constitute a violation of that statute in a proceeding properly raising that issue. Paragraphs XXXVII, XLVIII, XLIX of the complaint and par. 6 of the prayer for relief, so far as they may be construed as seeking directly relief under the 1899 statute, are struck from the supplemental complaint, without prejudice (a) to proof by Vermont of the nature, extent, and character of any emissions or discharges from the new plant which reach or affect Vermont, its territory, air, and waters; (b) to renewal of the request to insert these provisions, if in this proceeding such claims are asserted by any party having standing to seek enforcement of the 1899 statute directly; and (c) to any appropriate assertion that the 1899 statute may provide in some degree a standard of water quality to which the court and the special master may appropriately give suitable consideration.

5. Subject to review and revision of this order by the Supreme Court, and except as the motion to amend and supplement the complaint is denied in par. 4 of this order, it is allowed. Apart from references to the 1899 statute, the supplemental complaint does not constitute assertion of a significantly new and different claim of pollution of

the area now seriously in controversy; viz. the waters in and the air over Lake Champlain and its Vermont shores lying south of the Champlain bridge and in general east of the area near Ticonderoga. In a sense, the emissions and discharges from the new plant constitute a substitute for (or addition to) those from the old plant mentioned in the original complaint. Consideration of their consequences in this proceeding will probably tend to more effective and prompt termination of the present litigation and avoid further litigation, at least partly duplicating the present litigation.

6. The answers to Vermont's amended and supplemental complaint filed by New York and International may be filed.

November 1, 1972

R. AMMI CUTTER
Special Master

D. *Order No. 2 of Special Master, dated November 1, 1972.*

(Various matters related to International Paper Company's Ninth Affirmative Defense).

1. International Paper Company (International) by its answer filed with the clerk on June 19, 1972, . . . asserts in its Ninth Affirmative Defense that Vermont "has failed to join as parties defendant persons needed for the just adjudication of this action." Discussion of this asserted defense (Defense No. 9) at conferences of the Special Master with counsel and in memoranda of law indicates that International intends by Defense No. 9 to present the issue whether it (International) can be held liable (if any liability in fact is established) for pollution and lake sludge for which other persons are responsible. In particular, it has been suggested that Joseph Dixon Pencil Company (Dixon) and the Village of Ticonderoga (the Village) may have contributed in the past to the formation of sludge in the lake, that the Village continues to do so, and that residual detrimental pollution may still be caused by Dixon's former operations now abandoned. Vermont has not sought to join either the Village or Dixon as a party defendant, and neither the Village nor Dixon has sought leave for either complete or limited intervention in this proceeding.

2. Until further development of the facts in this proceeding it is not apparent precisely what interests, if any, of Village and Dixon are or may be affected by the proceeding (or to what extent, if any). It would be premature at this time either to allow or to strike Defense No. 9. It seems likely that the Village and Dixon need not be parties

in order to permit a just adjudication of at least some issues of this essentially interstate proceeding under the court's original jurisdiction. Defense No. 9, although in form expressed as asserting an absolute barrier to the proceeding, may be read as asserting at least a reason for (a) not exercising equitable jurisdiction, or (b) for limiting equitable relief. Action on Defense No. 9, and on Vermont's motion to strike it, will be postponed until after further development of the facts.

3. The possibility exists that interests of the Village and of Dixon will be affected or discussed in this proceeding. They (as matter of fairness and administrative policy) should at least be put on notice (a) of the proceeding and (b) that issues have been asserted which may affect each of them eventually.[1] They may wish to seek leave to intervene or to participate in a more limited way. If so, they should do so promptly, in order that their requests, if any, may be considered prior to any substantial taking of testimony. Of course, such notice does not imply that there will be favorable action on any such request. If any request is made, it should be made to the Special Master, 62 Sparks Street, Cambridge, Massachusetts 02138, in writing (on usual letter size paper) on or before November 20, 1972.

4. Counsel for International, which has asserted Defense No. 9, are to serve on or before November 7, 1972, a copy of this order upon the appropriate officers and the general (or village) counsel of the Village and Dixon, re-

[1] Unless they are joined or admitted as parties, it is not suggested by this order that they can be directly subjected to liability in this proceeding.

spectively, by registered mail, return receipt requested, and to make a written return of such service to the Special Master.

R. AMMI CUTTER
Special Master

November 1, 1972

Service of Notice Directed by Order No. 2

A return of the service directed by paragraph 4 of Order No. 2 was duly made on November 2, 1972. [copy omitted in printing.] No action (as a consequence of it) by Joseph Dixon Pencil Company appears ever to have been taken. Mr. James R. Murdock, Village Attorney of the Village of Ticonderoga, made, under date of November 10, 1972, certain inquiries of the Special Master concerning the proceedings and was sent a comprehensive reply by the Special Master, dated November 20, 1972. The Village was not thereafter represented at any hearing. No attempt was made by it (or on its behalf) to intervene in this case or to participate in some less formal manner. Accordingly, by memorandum on January 23, 1973 (with a copy to Mr. Murdock), counsel in this proceeding were relieved by the Special Master of any requirement (earlier imposed) that Mr. Murdock be furnished copies of papers filed by them respectively.

E. *Order on Petition of the United States for Leave to Intervene*

On January 8, 1973, the Supreme Court of the United States by order (409 U. S. 1103) referred to the Special Master the petition of the United States for leave to intervene. On January 9, 1973, at 9:30 A.M. at the opening of the hearing before the Special Master, the following proceedings took place (transcript, pp. 1471-1472).

[1471] "The Court: Before the stenographer arrived, there was discussion in open court, with all parties represented, on the reference made by the Supreme Court to me

of the question presented by the petition of the United States to intervene in this proceeding.

"Mr. Sive, in behalf of the State of Vermont, took the position that it would be desirable to require the United States to make a more explicit statement than that contained in its petition for leave to intervene with regard to the various positions which it proposes to take on the several issues involved in this case.

"Mr. Whipple and Mr. Sachs, in behalf of International Paper and the State of New York, respectively indicated that they saw no occasion for that.

"In consideration of the discussion, I rule as follows: The United States may intervene generally as a party in this proceeding. This allowance is subject to the following conditions: One, the United States is to be bound by all evidence and stipulations [1472] heretofore entered in this case, but may move to strike any evidence for reasons of substance affecting the evidence in the same manner in which that right is reserved to other parties.

"Two: The Master reserves the power to request the United States to make a more explicit statement of its position on any issue in the course of these proceedings, if it seems necessary to do so to afford the parties information about the position of the United States."

APPENDIX B

Summary of Proceedings Before Special Master Through March, 1974

B-1. Pretrial conferences[a] with counsel took place on July 25, August 15-16, September 12, November 1, and December 1, 1972. On August 15-16, 1972, I took an extensive view (with counsel for all parties) of the South Lake and adjacent areas of Vermont and New York (including the site of the Old Mill). On November 16, 1972, and on September 27-28, 1973, similar views were taken of the New Mill and, on the latter occasion, of the South Lake and its eastern shore. See Map B.

B-2. After the pretrial conferences, comprehensive voluntary exchanges were made of information, documents, data, scientific studies, and other material. Experts' reports and the accumulation of data were ordered to be completed by specified dates. No oral discovery in fact has been employed. Pursuant to stipulations, or by consent at trial, many documents, much historical material, and the results of scientific observations, water quality analyses, and experts' reports have been received in evidence subject to cross-examination and to later motions to strike, if appropriate. The New Mill was visited on various occasions by experts for other parties.

B-3. Testimony of witnesses called by Vermont was taken at various dates between November 13, 1972, and November 27, 1973, when Vermont completed its direct case (with

[a] There have also been extended midtrial conferences in an effort to expedite and condense further proceedings and numerous conferences concerning the proposed settlement.

possible minor exceptions). These witnesses were subjected to intensive and helpful cross-examination.

(a) Vermont first presented lay testimony concerning the effects observed by individuals, mostly from Vermont, concerning discharges of waste materials to the South Lake, and emissions to the atmosphere, from both the Old Mill and the New Mill, the effect of the deposits in Ticonderoga Bay, and the existence of some improvement, as observed by some witnesses, after the closing of the Old Mill.

(b) Vermont later called various State employees, with expert qualifications, to testify concerning (i) water quality observations made by them for several years from 1965 to and including 1973; (ii) observations and borings to ascertain lake bottom conditions during parts of the same period; (iii) observations of the South Lake surface; (iv) examination of so-called benthic organisms (having some tendency to reflect water and pollution conditions) in various parts of the disputed area; and (v) studies claimed to reveal changes in the lake bottom caused by deposits since 1874, the date of a comprehensive study of the area by the United States Coast and Geodetic Survey.

(c) Vermont presented testimony by engineering and scientific consultants (largely members of the staff of a Canadian firm)[b] on the several issues.

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[b] This expert testimony (subjected to vigorous cross-examination) included detailed discussion of Vermont's contentions with respect to: (1) aerial surveys of the whole South Lake, and maps of the Vermont and New York areas near Ticonderoga; (2) the effects of the effluent discharges and atmospheric emissions from the Old and New Mills and sewage from the Village of Ticonderoga; (3) alleged "ageing" of the South Lake (eutrophication) because of the discharge to it of

(d) Vermont called, as adverse witnesses, seven present or former officers or employees of the Company, or of the State of New York, to discuss principally the nature and extent of past efforts to regulate or prevent allegedly harmful discharges or emissions by the Company.

B-4. New York has presented expert testimony through several former or present State officers or employees. As indicated already, New York had not yet completed its principal case when the last recess began.

B-5. Although thus far, no witnesses called by the Company, or by the United States, as intervenor, have testified, certain reports prepared by such witnesses have been presented to adverse parties and by stipulation have been received in evidence or marked for identification.

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nutrients; (4) alleged possibly unpleasant atmospheric emissions from the New Mill which might become perceptible in Vermont areas; (5) the clay bottom of the South Lake and its brown color (turbidity), the subject of comment as long ago as the Revolutionary period; (6) possible additional precautions to prevent harm from the New Mill effluents (and other discharges to the Lake) and atmospheric emissions; and (7) the effects of water quality on fish life, wild life, and the general environment. As already noted, the experts for the Company and the United States were not reached prior to the conclusion of settlement discussions.

Counsel Participating in Proceedings
Before the Special Master

For the State of Vermont

Martin K. Miller, Deputy Attorney General; John A. Calhoun, Assistant Attorney General; James L. Morse, Assistant Attorney General;

Also, Kimberly B. Cheney, Attorney General (from January, 1973); James M. Jeffords, Attorney General (until January, 1973); John D. Hansen, Assistant Attorney General (until August, 1973); Fred I. Parker, Deputy Attorney General (until November, 1972); David Sive (until April, 1973).

For the State of New York

Joel H. Sachs, Assistant Attorney General; Paul S. Shemin, Assistant Attorney General;

Also, Louis J. Lefkowitz, Attorney General; Philip Weinberg, Assistant Attorney General.

For International Paper Company

Taggart Whipple; Richard E. Nolan; James W. B. Benkard; Charles R. Morgan; Charles G. Burr III (*pro hac vice*);

Also, George A. Bermann (until July, 1973).

For the United States of America

Robert H. Bork, Solicitor General; James R. Moore, Attorney, Department of Justice; Patrick A. Mulloy, Attorney, Department of Justice; Allyn W. Hemenway, Environmental Protection Agency (Boston Office).

Errata, Page 54

For the United States of America

Robert H. Bork, Solicitor General; Wallace H. Johnson, Assistant Attorney General, Land and Natural Resources Division, Department of Justice; James R. Moore, Attorney, Department of Justice; Patrick A. Mulloy, Attorney, Department of Justice; Allyn W. Hemenway, Environmental Protection Agency (Boston Office).

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 50 ORIGINAL

STATE OF VERMONT, a sovereign state,
Montpelier, Vermont,

Plaintiff,

v.

STATE OF NEW YORK, a sovereign state,
Albany, New York,

and

INTERNATIONAL PAPER COMPANY, a corporation existing under the laws of the State of New York, located at New York, New York,

Defendants.

UNITED STATES OF AMERICA,

Intervenor.

STIPULATION

It is hereby stipulated by and between the undersigned parties, that:

1. A Decree in the form annexed hereto shall be submitted to the Special Master, Honorable R. Ammi Cutter, so that he may determine whether he should recommend it for approval by the Court.

2. The parties consent that a Decree in the form annexed hereto may be filed and entered by the Court at any time after the submission to the Court of recommendations by the Special Master without further notice to any party or upon the Court's own motion.

3. The parties acknowledge that they have examined the "REPORT OF SPECIAL MASTER WITH RESPECT TO A PROPOSED SETTLEMENT OF THIS LITIGATION (APRIL 24, 1974)," and they respectively waive all rights to file exceptions or objections to such report.

4. In the event that the Court shall not approve the Decree in the form annexed hereto, this Stipulation and the annexed Decree and appendices thereto, and any documents executed by any of the parties in connection with the annexed Decree shall be of no effect whatsoever in this or any other litigation, proceeding, or otherwise and the making of this Stipulation and the annexed Decree and appendices thereto and accompanying documents shall not in any manner prejudice any consenting signatory in this or any other litigation, proceeding, or otherwise.

5. The persons signing this Stipulation and consenting to the annexed Decree severally represent that they are duly authorized to do so.

Dated: April 24, 1974

STATE OF VERMONT

KIMBERLY B. CHENEY,
Attorney General

By: /s/ MARTIN K. MILLER
Deputy Attorney General

STATE OF NEW YORK

By: /s/ LOUIS J. LEFKOWITZ
Attorney General

INTERNATIONAL PAPER COMPANY

By: /s/ TAGGART WHIPPLE

UNITED STATES OF AMERICA

By: /s/ ROBERT H. BORK
Solicitor General

IN THE

Supreme Court of the United States

October Term, 1973

No. 50 ORIGINAL

STATE OF VERMONT, a sovereign state,
Montpelier, Vermont,

Plaintiff,

v.

STATE OF NEW YORK, a sovereign state,
Albany, New York,

and

INTERNATIONAL PAPER COMPANY, a corporation existing under the laws of the State of New York, located at New York, New York,

Defendants.

UNITED STATES OF AMERICA,

Intervenor.

DECREE

The State of Vermont, the State of New York, International Paper Company, and the United States of America (hereinafter collectively referred to as the "parties") have consented to the entry of this Decree. This Decree shall not constitute an adjudication or finding on any issue of fact or law or evidence or admission by any party with respect to any such issue. The Special Master appointed by the Court has recommended to the Court that it approve this

Decree as in the public interest and as a fair and equitable adjustment of the controversies presented herein by way of consent and reasonable compromise.

NOW, THEREFORE, without any such adjudication or finding, and on consent of the parties, it is

ORDERED, ADJUDGED, AND DECREED:

I. The South Lake Master

Until further order of the Court, an individual to be appointed by the Court by separate order shall serve as "South Lake Master." The duties of the South Lake Master shall be those described in Schedule 1. In performing these duties, the South Lake Master shall have the authority heretofore given to the Special Master appointed in this proceeding, including the power to summon witnesses, issue subpoenas, administer oaths, receive evidence, and make recommendations, and also the authority to take such other actions as are set forth in Schedule 1.

II. Definitions

Whenever used or referred to in this Decree, unless a different meaning appears clearly from the context:

(A) "The Company" means International Paper Company, a New York corporation, having its principal office at 220 East 42nd Street, New York, New York, and its successors and assigns, including any person, corporation, or other entity that succeeds to the business of International Paper Company;

(B) "BOD_5" means the five-day biochemical oxygen demand of the process waste water effluent, as mea-

sured by method No. 219 set forth at pages 489, et seq., of *Standard Methods for the Examination of Water and Wastewater* (13th ed.), or any other method agreed upon by the parties;

(C) "Daily arithmetic average" means the result obtained by (1) calculating the area under the curve generated by an automatic recording device for a period of twenty-four hours and dividing that area by the time span considered, or (2) any other equally accurate method of computation;

(D) "Decree" means this Decree consented to by the parties, including the Schedules and any amendments made from time to time, but does not include those documents annexed and marked as appendices;

(E) "Federal Water Pollution Control Act" means Public Law No. 92-500, 86 Stat. 816, as heretofore amended;

(F) "New Mill" means the land, buildings, equipment, and materials, including any additions or modifications thereto, at the manufacturing and waste treatment system sites owned and used by the Company and located approximately four miles north of the Village of Ticonderoga, New York;

(G) "Old Mill" means the land, buildings, equipment, and materials, including any additions or modifications thereto, located in the Village of Ticonderoga, New York, owned and formerly operated as a kraft pulp and paper mill by the Company, but does not include the dam and certain contig-

uous property specified in Chapter 675 of the Laws of 1973 of the State of New York;

(H) "Process waste water effluent" means any water that comes into direct contact with, or results from the production or use of, any raw material, intermediate product, finished product, byproduct, or waste product during manufacturing or processing, as discharged to South Lake Champlain from the New Mill;

(I) "South Lake Champlain" means that portion of Lake Champlain extending from Whitehall, New York, to the Lake Champlain Bridge near Crown Point, New York;

(J) "Thermal oxidation" means the combustion of air emissions at a temperature of 1500°F. or more, with a residence time of one-half a second or more;

(K) "Total phosphorus (as P)" means all of the phosphorus present in the process waste water effluent; and

(L) "Twenty-four hour composite sample" means a sample collected over a continuous 24-hour period, consisting of not less than twelve individual samples of equal volume taken at two-hour intervals during the 24 hours of sampling.

III. The Company

The Company shall comply with all provisions of this Decree relating to it, including the following:

(A) With respect to the Old Mill, the Company, and any person, corporation, or other entity that ac-

quires ownership or control of, or a recordable interest in, the Old Mill, shall continue hereafter to refrain and desist from all discharges of process and sanitary waste water and air emissions originating from the Old Mill, except discharges and emissions receiving the necessary approvals from federal, State of New York, and local authorities. The Company shall not be liable, however, for any actions in which it has not participated and which are taken in contravention of the terms of this paragraph if the person, corporation, or other entity taking such actions has actual or constructive notice of this paragraph. This paragraph shall be set forth or incorporated by reference in any deed, lease, or other recordable instrument of conveyance of the Old Mill, and in any agreement whereby there is a change of ownership or control of the Old Mill, and shall be cast as a restrictive covenant running with the land.

(B) It shall take such actions with respect to the bark pile (located on the north shore of Ticonderoga Creek approximately one-half mile northeast of the Old Mill) as are provided in Schedule 2.

(C) It shall take such actions with respect to New Mill air emissions as are provided in Schedule 3.

(D) It shall take such actions with respect to New Mill water discharge as are provided in Schedule 4.

(E) With respect to the New Mill, the Company, and any person, corporation, or other entity that acquires ownership or control of, or a recordable

interest in, the New Mill, shall set forth or incorporate by reference the provisions of this Decree applicable to the New Mill in any deed, lease, or other recordable instrument of conveyance of the New Mill, and in any agreement whereby there is a change of ownership or control of the New Mill, and such provisions shall be cast as restrictive covenants running with the land. The Company shall not be liable, however, for any actions which contravene the provisions of this Decree applicable to the New Mill and in which it has not participated if the person, corporation, or other entity taking such actions has actual or constructive notice of this paragraph.

(F) Within 60 days after approval of this Decree by the Court, the Company shall pay to the State of Vermont the sum of $500,000. This money shall be paid by the Company and received by the State of Vermont as a contribution by the Company to the State of Vermont, to be used in the future solely for the purpose of protecting and preserving the natural environment of the Lake Champlain basin, and shall be maintained by the State of Vermont in a segregated account for this express purpose; provided, however, that the State of Vermont shall have sole discretion as to the manner in which the contribution is to be used for the foregoing purpose. This contribution shall not create a trust.

(G) It shall:

(1) permit official representatives of the State of Vermont, at reasonable times, on reasonable no-

tice, and in a reasonable manner, to inspect and take samples from the pollution control facilities at the New Mill and to inspect and copy records related thereto that are not privileged, and to interview the person or persons responsible therefor, in order to determine the effectiveness of operation of such facilities;

(2) take appropriate steps to inform its directors and responsible officers of the contents of this Decree and the appendices annexed hereto;

(3) provide expanded technical training and instructional courses (including refresher courses where appropriate) for all personnel engaged in the operation of the pollution control facilities at the New Mill, and provide instructional memoranda and bulletins with respect to the proper operation of such facilities; and

(4) provide to the State of Vermont: (a) a copy of each report with respect to process waste water effluent and air emissions from the New Mill that the Company regularly submits to the State of New York or to the United States at the same time that it submits such reports to the State of New York or the United States, and (b) a monthly summary of process waste water effluent data, in the same format and containing the same information that has been supplied to the parties during this litigation, by the last day of the month following that month for which the summary has been compiled.

IV. The State of New York

The State of New York shall comply with all provisions of this Decree relating to it, including the following:

(A) It shall:

(1) continue its program of studies of, and make recommendations with respect to, control of septic tank, sewer, agricultural, and other discharges to the South Lake Champlain basin;

(2) submit annually to each of the parties a written report of its activities taken pursuant to subparagraph (1) of this paragraph; and

(3) make available to each of the parties, upon request, for inspection and copying, any such studies and recommendations, and any data or other information relating thereto.

(B) It shall:

(1) denominate, pursuant to the Federal Water Pollution Control Act, the Village of Ticonderoga, New York, as the municipality in the State of New York having the highest priority in the allocation of federal funding for the development and construction of municipal waste treatment works; and

(2) abate the discharge of all raw sewage into South Lake Champlain pursuant to the applicable provisions of the Federal Water Pollution Control Act and the New York State Environmental Conservation Law (hereinafter referred to as the "NYECL").

(C) It shall give priority to the processing of, and promptly consider and respond to, any applications

by the Company for permits to construct, modify, or operate pollution control facilities at the New Mill.

(D) It shall take such steps as are necessary to inform the appropriate members of the New York State Government (including, without limitation, the appropriate officials of the New York Department of Environmental Conservation) of the contents of this Decree and the appendices annexed hereto.

(E) It shall not oppose the inclusion of process waste water effluent limitations which conform to those set forth in Schedule 4 in the first National Pollutant Discharge Elimination System (hereinafter referred to as the "NPDES") permit to be issued to the Company with respect to the New Mill pursuant to Section 402 of the Federal Water Pollution Control Act; provided, however, that in the event that the State of New York succeeds to the administration of the NPDES prior to the issuance of such permit, this paragraph shall not be applicable with respect to the responsibilities of the State of New York as the permit-issuing agency.

(F) It shall give priority to the processing of, and promptly consider and resolve or adjudicate, any matter brought to its attention and for which application has been made pursuant to Sections 1.1 and 1.2 of Schedule 1.

V. The State of Vermont

The State of Vermont shall comply with all provisions of this Decree relating to it, including the following:

(A) (1) Concurrently with the execution of the Stipulation annexed hereto, it shall deliver to the Com-

pany a separate, executed copy of the document annexed hereto as Appendix A. Appendix A shall be construed and take effect as a covenant not to sue at common law in that: (a) it shall prevent the State of Vermont from proceeding against the Company in any manner or respect specified in Appendix A, and (b) it shall not have the effect of barring, diminishing, or affecting in any way any legal or equitable rights or claims, actions, suits, causes of action, or demands that the State of Vermont may have against the State of New York or any person other than the Company, except as the enforcement of the same may be precluded by subparagraph (2) of this paragraph. Each of the parties is enjoined by this Decree from asserting in any litigation or proceeding that Appendix A has any effect other than as stated in this subparagraph.

(2) This Decree, notwithstanding any provision of Appendix A or any reservation by the State of Vermont made therein, shall preclude any action or application or attempt by the State of Vermont to recover from any party damages for harm to the South Lake, its waters, shores, adjacent areas, and the atmosphere above and near it, allegedly suffered on or prior to the date of approval of this Decree, for which the State of Vermont could have sought recovery in this proceeding.

(B) It shall:

(1) submit to each of the parties by April 15 of each year, a written report describing the activities

and studies relating to the natural environment of the South Lake Champlain basin that are contemplated to be undertaken by or for its Department of Water Resources during the following period of May 1-November 30;

(2) submit to each of the parties by February 15 of each following year, a written report describing all the activities and studies relating to the natural environment of the South Lake Champlain basin actually undertaken by or for its Department of Water Resources during the preceding period of May 1-November 30; and

(3) make available to each of the parties, upon request, for inspection and copying, any documents, not privileged, relating in whole or in part to the activities and studies referred to in subparagraphs (1) and (2) of this paragraph.

(C) It shall:

(1) study and recommend control of septic tank, sewer, agricultural, and other discharges within the Vermont portion of the South Lake Champlain basin;

(2) study and recommend the enactment of legislation or the promulgation of regulations concerning the use of detergents in Vermont;

(3) submit annually to each of the parties a written report describing its activities pursuant to subparagraphs (1) and (2) of this paragraph; and

(4) make available to each of the parties, upon request, for inspection and copying, any documents,

not privileged, relating in whole or in part to its activities taken pursuant to subparagraphs (1) and (2) of this paragraph.

(D) It shall take such steps as are necessary to inform the appropriate members of the Vermont State Government (including, without limitation, the appropriate officials of the Vermont Agency of Environmental Conservation) of the contents of this Decree and the appendices annexed hereto.

(E) Subject to the relief available pursuant to Section 1.5(b) of Schedule 1 of this Decree and only with respect to the specific limitations in Sections 3.3 and 3.4 of Schedule 3 and Section 4.1 of Schedule 4:

(1) prior to January 1, 1983, it shall not propose or support any proposal that more stringent limitations than those set forth in Sections 3.3 and 3.4 of Schedule 3 and Section 4.1(b) of Schedule 4 be included in any permit issued or to be issued to the Company with respect to the New Mill; provided, however, that in the event that the Company at any time prior to January 1, 1983, proposes or supports any proposal that any limitation referred to in this subparagraph be made less stringent, the State of Vermont's obligations under this subparagraph shall not apply with respect to that limitation only; and

(2) prior to June 1, 1979, or the commencement of any administrative action with respect to the second NPDES permit to be issued to the Company with respect to the New Mill, whichever is earlier,

it shall not propose or support any proposal that a more stringent limitation than that set forth in Section 4.1(a) of Schedule 4 be included in any permit issued or to be issued to the Company with respect to the New Mill; provided, however, that in the event that the Company at any time prior to June 1, 1979, proposes or supports any proposal that the limitation referred to in this subparagraph be made less stringent, the State of Vermont's obligation under this subparagraph shall not apply.

(F) It shall monitor on a regular basis and in a scientifically acceptable manner, the water quality in that part of Lake Champlain from Chipman Point to the Lake Champlain Bridge near Crown Point, New York, and shall make the results of such monitoring available to the parties for inspection and copying upon reasonable request.

VI. The United States of America

The United States, by consenting to this Decree, shall be taken to have recognized the several bases upon which the Company has consented to this Decree stated in paragraph (A) below, and shall comply with all provisions of this Decree relating to it, including the following:

(A) (1) The United States recognizes that the Company contends that the control technology required to comply with the effluent and emission limitations in this Decree goes beyond the best practicable control technology currently available and the best available technology economically achievable;

(2) The United States further recognizes that the phosphorus limitation of 0.5 mg/l set forth in Schedule 4 is agreed to by reason of the special characteristics of South Lake Champlain and recognizes that this phosphorus limitation was accepted by the Company in an effort to achieve settlement of a long, costly, and complicated court controversy; and

(3) The United States agrees that the inclusion of limitations in this Decree shall not be used by it as a basis or justification for the United States Environmental Protection Agency effluent guidelines or emission regulations with respect to the bleached kraft pulp and paper industry. This in no way limits the United States from using technical information or studies related to pollution control at the New Mill in the future development of guidelines or standards for the regulation of effluents and emissions with respect to the bleached kraft pulp and paper industry. In establishing any such guidelines, the United States shall give appropriate consideration to: (a) the circumstances mentioned in subparagraph (2) of this paragraph, including the fact that such technical information or studies may exist only because certain special facilities will have been devised to meet the special problems of the receiving water here involved, and (b) any other available and relevant technical information or studies derived from the bleached kraft pulp and paper industry.

(B) The United States Environmental Protection Agency, upon approval of this Decree by the Court,

shall deliver to the Company the signed original of a letter concerning the accumulation of sediment in Ticonderoga Creek and the Ticonderoga Bay area of Lake Champlain, a copy of which is annexed hereto as Appendix B.

(C) If, after five years from the date of approval of this Decree by the Court, the United States has not initiated action either in this Court or any other court seeking to impose liability upon the Company for environmental harm resulting from the accumulation of sediment in Ticonderoga Creek and the Ticonderoga Bay area of Lake Champlain because of past waste discharges, the United States shall then execute and deliver to the Company a copy of the document annexed hereto as Appendix C, which document forever bars the United States from seeking to impose liability upon the Company for such accumulation of sediment, except to the following extent: The United States shall not be precluded from seeking to establish at any time that the Company may be liable to meet any part of the costs arising out of remedial action taken as a consequence of the needs of anchorage or navigation. The document annexed hereto as Appendix C shall be construed as, and have the effect of, a covenant not to sue at common law.

(D) The United States Environmental Protection Agency shall give priority to, and promptly consider and take action regarding, the NPDES permit application presently on file with that agency

relating to process waste water effluent from the New Mill.

(E) The United States Environmental Protection Agency shall approve the denomination made by the State of New York, pursuant to subparagraph IV(B)(1) of this Decree, of the Village of Ticonderoga, New York, as the municipality in the State of New York having the highest priority in the allocation of federal funding for the development and construction of municipal waste treatment works.

(F) It shall take such steps as are necessary to inform the appropriate members of the United States Government (including, without limitation, the appropriate officials of the United States Environmental Protection Agency) of the contents of this Decree and the appendices annexed hereto.

(G) It shall promptly consider, and resolve or adjudicate within a reasonable time, any matter brought to its attention and for which application has been made pursuant to Sections 1.1 and 1.2 of Schedule 1.

VII. General Provisions

(A) Subject to the provisions of paragraph VI(A) of this Decree, the terms and provisions of this Decree are applicable and limited to the activities of the Company at the Old and New Mills and are not to be construed as applicable to, or in any way providing a precedent with respect to, any other mill, installation, facility, or location.

(B) Subject to the provisions of paragraphs IV(E) and V(E) of this Decree, nothing herein (including, but not limited to, the emission and effluent limitations prescribed in Schedule 3 and Schedule 4 of this Decree) shall be construed to affect the authority, if any, of any regulatory or law enforcement authority with lawful jurisdiction:

(1) to regulate waste water discharges or air emissions from the Old Mill and the New Mill;

(2) to seek to abate the effects of such discharges or emissions; or

(3) to take such actions as are authorized by law to accomplish these ends (including, but not limited to, sampling at, or inspection of, the New Mill and the Old Mill).

(C) The terms and provisions of this Decree shall not be construed as, nor shall they operate as, a finding that the Company or the State of New York has or has not violated any law or regulation or otherwise committed a breach of duty at any time, and shall not constitute, in this or any other litigation or proceeding or otherwise, evidence or any implication of any such violation or breach of duty.

(D) Any testimony taken or any exhibit received in evidence in this proceeding prior to the date of approval of this Decree by the Court shall be received in evidence, if otherwise relevant and admissible, in any administrative or judicial hearing or proceeding between or among the parties or any of

them, and no party shall object to the introduction of such testimony or exhibit on the ground that the offering party has failed to produce the witness to testify with respect to such testimony or to authenticate such exhibit. The parties, however, reserve their rights, if any, to move to strike all or any portion of any testimony taken and all or any portion of any exhibit received in evidence in this proceeding prior to the date of approval of this Decree by the Court.

(E) Any party may file this Decree for recording in the appropriate land records pertaining to the Old and New Mills, and the custodian of such land records is hereby ordered to receive it for recording and, upon payment of any necessary fee, forthwith to record and index it appropriately under the name of the Company.

(F) Nothing herein shall be construed as affecting any claims or rights of any citizens or residents of the State of Vermont or the State of New York that may exist against any party herein.

(G) The provisions of this Decree shall apply to the New Mill as long as it exists, regardless of who owns or operates the New Mill.

(H) This Decree does not expressly resolve certain issues or claims raised by the pleadings. This is so in part because such issues are likely to be dealt with by action of regulatory or executive agencies of the United States or the State of New York in the performance of their constitutional or statutory duties. This Decree shall not be construed as de-

terminative of any such unresolved issues or claims (including, among others, those arising in the future based upon the alleged accumulation of sediment in Ticonderoga Creek and the Ticonderoga Bay area of Lake Champlain). Such issues or claims not specifically resolved by this Decree may be asserted under Article VIII of this Decree. Claims against the Company disposed of in Appendix A and Appendix C annexed hereto and those covered by subparagraph V (A) (2) of this Decree shall be regarded as resolved by this Decree.

(I) One copy of the transcript of the testimony in this proceeding shall be filed by the court stenographer with the Clerk of the Court, together with a compilation of all requests made prior to June 1, 1974, to the court stenographer for transcript corrections. The parties shall file with the Clerk of the Court prior to October 1, 1974, a stipulation listing the exhibits received in evidence in this proceeding and stating which party will maintain custody of each such exhibit.

VIII. Retention of Jurisdiction

Any of the parties may apply at the foot of this Decree for other or further action or relief, and the Court retains jurisdiction of this proceeding for all purposes of affording such action or relief, including any order or direction that it may deem proper in relation to the subject matter in controversy (as framed by the pleadings as amended) or any modification of this Decree; provided, however, (except as otherwise expressly set forth in Section 1.5 of Schedule 1) that any such application by any party for other or further

action or relief may be granted only upon a clear showing that it is supported by: (a) conditions substantially changed from those existing on the date of the approval of this Decree by the Court, or (b) conditions not reasonably detectable on that date, or (c) strong equitable considerations arising thereafter. Exhaustion of the procedures set forth in Schedule 1 of this Decree shall be required with respect to any application to the Court pursuant to this Article VIII. The fact that the parties to this proceeding have not filed exceptions to the Report of the Special Master recommending approval of this Decree shall not estop such parties at any time in the future from applying for any other or further action or relief or for modification of this Decree pursuant to this Article VIII.

It is so ordered.

Consented to this 24th day of April, 1974:

STATE OF VERMONT

KIMBERLY B. CHENEY,
Attorney General

By: /s/ MARTIN K. MILLER
Deputy Attorney General

STATE OF NEW YORK

By: /s/ LOUIS J. LEFKOWITZ
Attorney General

INTERNATIONAL PAPER COMPANY

By: /s/ TAGGART WHIPPLE

UNITED STATES OF AMERICA

By: /s/ ROBERT H. BORK
Solicitor General

Schedule 1

The South Lake Master

SECTION 1.1

(a) If any one or more of the parties desires to raise a matter pursuant to the provisions of Article VIII of this Decree, the parties or their representatives shall confer promptly among themselves and, if appropriate, with regulatory officials or boards, or other persons, in an effort to resolve the matter.

(b) Nothing in this Schedule shall be construed to affect or limit the authority, if any, of any regulatory or law enforcement authority with lawful jurisdiction independently to carry out or enforce applicable law and regulations.

SECTION 1.2

(a) In the event that the parties are unable to resolve by conference any matter under this Decree that is also subject to the lawful jurisdiction of the United States Environmental Protection Agency or the New York State Department of Environmental Conservation, or both, the party or parties seeking relief shall, upon notice to all parties, make application to, and exhaust its or their administrative remedies (excluding appellate review) before, such regulatory agency or agencies in accordance with the requirements of applicable law and regulations.

(b) Any such application shall set forth the nature of the matter, the specific action requested and the reasons alleged why the application should be granted.

(c) As part of any such administrative review, a transcript shall be made of the proceeding, all witnesses shall be sworn and subject to cross-examination, and all parties shall have the right to submit evidence, including testimony and exhibits.

SECTION 1.3

In the event that the parties are unable to resolve any matter under this Decree after exhaustion of the procedures set forth in Sections 1.1 and 1.2 of this Schedule, within 30 days thereafter any one or more of the parties may make written application to the South Lake Master pursuant to Article VIII for the purpose of resolving the matter. The application shall be served by certified mail upon all parties and shall set forth the nature of the matter, the specific action requested, and the reasons alleged why the application should be granted. Upon receipt of the application, the party or parties in opposition to the application shall serve responding papers within 30 days. Thereafter, the South Lake Master may require a conference between the parties, or, if he deems it necessary, a hearing on the matter. Such conference or hearing shall be held at any reasonable time and place specified by the South Lake Master.

SECTION 1.4

If a hearing is held pursuant to Section 1.3 of this Schedule, any party may file with the South Lake Master any portion or portions of the record of any proceeding held pursuant to Section 1.2 of this Schedule and such portion or portions shall be received in evidence, if otherwise

relevant and admissible, without the need for the production of any witnesses or the authentication of any exhibits therein. Any party, subject to evidentiary rulings by the South Lake Master, may introduce additional testimony or exhibits. All witnesses shall be sworn and subject to cross-examination. At the request of any party, a transcript shall be made of the hearing. At the conclusion of the hearing, the South Lake Master may require any party or parties to prepare and submit to him briefs or memoranda.

SECTION 1.5

Subject to review by the Court, the South Lake Master (when acting upon any application pursuant to Article VIII or this Section 1.5) may take the following types of actions:

(a) He may grant, for good cause shown, reasonable temporary exemptions from, and reasonable extensions of time (not exceeding six months on any one occasion) for, the performance of any act or the compliance with any standard required by this Decree. In granting any such temporary exemptions or extensions, he may impose appropriate terms and conditions.

(b) Notwithstanding compliance by the Company with the provisions of Schedule 3 of this Decree, if, after November 1, 1975, objectionable odors attributable to the New Mill are detected in the State of Vermont during a significant period of time, he may recommend other or further action or relief.

(c) If there has been a change by the appropriate regulatory agency in the Consent Order referred to in Section

3.7 of Schedule 3 or in the permit referred to in Section 4.1 of Schedule 4, he may recommend modification of the Decree as appropriate in light of the change in the Consent Order or the Permit, pursuant to the standards set forth in Article VIII of this Decree.

(d) In acting under paragraph (a) of this Section 1.5, he shall take into account (among other relevant matters) whether there has existed or occurred:

(1) timely receipt by the applicant of all federal, state, and local permits required for all actions necessary to comply with this Decree;

(2) reasonable availability from others of the services, materials, equipment, or supplies required for the construction, modification, or operation of facilities necessary to comply with this Decree;

(3) the passage of a reasonable period of time required for the construction, modification, and operation of such facilities; or

(4) any event, such as an act of God, war, strike, flood, riot, catastrophe, or any other similar event beyond the control of the applicant which has affected the ability of the applicant to comply with this Decree.

(e) After nine years from the date of approval of this Decree by the Court, with respect to an application for relief under Article VIII for a determination that one or more of the provisions of this Decree should be terminated, he may proceed, in his discretion, directly to consider and make recommendations to the Court concerning any such application without requiring prior exhaustion of adminis-

trative remedies before the federal and New York State regulatory authorities, or he may require such exhaustion of remedies.

(f) If it is alleged in an application to the South Lake Master that there has been a violation of any provision of this Decree, he may order a hearing on such application and may make a recommendation to the Court regarding what action, if any, should be taken.

SECTION 1.6

As promptly as practicable after the conclusion of any hearing and the submission of briefs and memoranda, the South Lake Master shall inform the parties in writing of his recommendation and file it with the Clerk of the Court. Unless any party aggrieved by a recommendation of the South Lake Master files exceptions thereto with the Court within 30 days after such recommendation has been filed, it shall become a decision of the Court, unless disapproved by the Court. The right to file exceptions under this Section 1.6 may be waived in writing by any party.

SECTION 1.7

In addition to the State of Vermont's rights under subparagraph III (G) (1) of this Decree, the State of Vermont may apply to the South Lake Master for an order permitting its official representatives to inspect the Old Mill or the New Mill, and the South Lake Master may order the Company to permit inspection of the Old Mill or the New Mill, with or without notice to the Company, if, after hearing, reasonable notice of which has been given to all parties, the

South Lake Master determines that good cause has been shown for such an inspection.

SECTION 1.8

The parties to each matter shall pay, in equal shares, the fees and expenses with respect thereto to which the South Lake Master may be entitled unless for just cause the Court or the South Lake Master shall direct that payment thereof be borne in different proportions. Such fees and expenses may be paid directly to the South Lake Master without approval by the Court if agreed to by such parties and the South Lake Master.

Schedule 2

The Bark Pile

The Company shall take the following measures by September 1, 1975, to reduce discharges into Ticonderoga Creek from or through the bark pile (located on the north shore of Ticonderoga Creek approximately one-half mile northeast of the Old Mill) in the Village of Ticonderoga, New York:

(a) Appropriate grading and covering of the bark pile for the purpose of reducing, to the maximum extent feasible, seepage from the bark pile into Ticonderoga Creek or any watercourse flowing into Ticonderoga Creek; and

(b) The lowering of the water level in the pond adjacent to the bark pile to at least the approximate elevation of the abandoned roadbed which constitutes a part of the dike around the bark pile and the pond for the purpose of reducing, to the maximum extent feasible, drainage from the pond through the bark pile to Ticonderoga Creek or any watercourse flowing into Ticonderoga Creek.

Schedule 3

New Mill Air Emissions

SECTION 3.1

The Company shall endeavor in good faith to minimize malodorous air emissions from the New Mill.

SECTION 3.2

(a) The Company shall purchase by June 1, 1974, and maintain for readily available use, a spare Barton Titrator.

(b) The Company by November 1, 1975, shall treat by thermal oxidation:

(1) the miscellaneous TRS (total reduced sulfur) gases currently vented through the smelt tank scrubber;

(2) the gases from the condensate air stripper;

(3) the non-condensible gases currently burned in the lime kiln;

(4) the TRS gases from the seal tank (under) vents of the brown stock washers; and

(5) the TRS gases from the brown stock washers' exhaust system, including the hood vents.

(c) (1) The Company shall submit to the State of New York within 30 days after the approval of this Decree by the Court an engineering report for a conceptual plan to modify the air emission control facilities as required by paragraph (b) of this Section 3.2.

(2) The State of New York shall approve or disapprove the conceptual plan referred to in subparagraph (1) of this paragraph within two weeks.

(3) Within 90 days of the receipt of the approval referred to in subparagraph (2) of this paragraph, the Company shall submit to the State of New York final plans and specifications for the construction of the facilities specified in the approved conceptual plan. During this period, the Company shall place orders for non-specialized equipment and materials for such facilities.

(4) The State of New York shall approve or disapprove the final plans referred to in subparagraph (3) of this paragraph within 30 days.

(5) The Company, within 30 days after receiving the approval referred to in subparagraph (4) of this paragraph, shall place orders for the necessary specialized equipment and materials for the facilities.

(6) Within one week after complying with the provisions of subparagraph (5) of this paragraph, the Company shall submit a schedule of delivery dates to the State of New York with a schedule of planned construction based on such delivery dates.

(7) The facilities required for compliance with paragraph (b) of this Section 3.2 shall be completed and in operation six months after receipt of the necessary specialized equipment and materials for the facilities, but not later than November 1, 1975.

SECTION 3.3

Upon approval of this Decree by the Court, the Company shall operate the recovery boiler in such a manner that the TRS emissions from that source shall not exceed:

(a) 5 ppm (parts per million) or 2.8 pounds per hour, whichever is more restrictive, as a daily arithmetic average; and

(b) 10 ppm or 5.6 pounds per hour, whichever is more restrictive, for more than 60 cumulative minutes per day.

The standards of performance referred to in this Section 3.3 shall not be applicable during a period of 24 hours immediately before shutdown or during a period of 24 hours immediately following the commencement of startup operations of the recovery boiler.

SECTION 3.4

Within 90 days after the approval of this Decree by the Court, the Company shall:

(a) Operate the lime kiln in such a manner that the TRS emissions from that source shall not exceed 10 ppm or 0.7 pounds per hour, whichever is more restrictive; provided, however, that this standard of performance shall not be applicable during a period of 24 hours immediately following the commencement of startup operations of the lime kiln;

(b) Before any commencement of startup of the lime kiln and during any 24-hour startup period, maintain a sufficient amount of caustic (sodium hydroxide) in the

scrubbing solution in the lime kiln scrubber for optimum removal of TRS; and

(c) When such caustic is used, continuously monitor and record the rate of flow of the caustic solution of known concentration, and periodically (at least once a shift) measure and record the pH of the scrubbing solution.

SECTION 3.5

The Company shall monitor continuously, in a reasonably accurate and reliable manner, the TRS emissions from the recovery boiler and the lime kiln and shall record continuously the results for each such source on a reasonably accurate and reliable automatic recording device.

SECTION 3.6

Emissions in excess of the limitations set forth in Sections 3.3 or 3.4 of this Schedule shall not constitute a failure to comply with this Decree in the absence of a finding by the South Lake Master that objectionable odors attributable to the New Mill have been detected in the State of Vermont during a significant period of time.

SECTION 3.7

The Company and the State of Vermont shall not oppose the incorporation of Sections 3.2, 3.3, and 3.4 of this Schedule in the Consent Order in the proceeding now pending before the New York State Department of Environmental Conservation against the Company pursuant to Article 19 of the NYECL. Such Consent Order shall also contain, in substance, the following provisions:

(a) The Company shall operate the lime kiln in such a manner that the TRS emissions from that source shall not exceed 10 ppm or 0.7 pounds per hour, whichever is more restrictive; provided, however, that this standard of performance shall not be applicable during a period of 24 hours immediately following commencement of startup operations of the lime kiln; and provided, further, that this standard shall not be applicable for a period of time not to exceed 60 cumulative minutes per month; and

(b) The Company shall evaluate, for six months, the operation of the lime kiln scrubber by adding continuously and otherwise, a sufficient amount of caustic (sodium hydroxide) to its scrubbing solution for optimum removal of TRS. After the conclusion of such evaluation, continuous addition of caustic shall be required; provided, however, that if, after such evaluation, the Company demonstrates to the satisfaction of the New York State Department of Environmental Conservation that continuous addition is not feasible, such addition shall be required whenever the TRS emissions from the lime kiln exceed 5 ppm for more than 5 minutes.

Schedule 4

New Mill Water Discharge

SECTION 4.1

The Company and the State of Vermont shall not oppose the incorporation of the following effluent limitations in the first NPDES permit to be issued to the Company with respect to the New Mill pursuant to Section 402 of the Federal Water Pollution Control Act:

(a) The amount of BOD_5 in the process waste water effluent shall not exceed 4400 pounds per day as a monthly average; and

(b) The amount of total phosphorus (as P) in the process waste water effluent shall not exceed a concentration of 0.5 mg/l as a monthly average or 88 pounds per day as a monthly average, whichever is more restrictive.

Until such time as the Company can demonstrate that it has installed an effluent flow-measuring system that can reliably measure the process waste water effluent on a continuous basis, the flow to be used in computing the loadings in number of pounds per day shall be the measured intake of water to the New Mill.

SECTION 4.2

The Company shall test the process waste water effluent twice a year during 1974 and 1975 to determine whether it is toxic to fish. To the extent feasible, one test per year shall be conducted during normal operations when black

liquor is present in the process waste water effluent as a result of its being released from the spill pond to the waste treatment system and one test per year shall be conducted during normal operations when no black liquor is present in the process waste water effluent. The effluent shall be considered to be toxic if, over a 96-hour period, 20 per cent of the test fish fail to survive in a solution composed of 65 per cent process waste water effluent and 35 per cent water taken from Lake Champlain. The test fish to be used shall be yellow perch no greater than four inches in length taken from Lake Champlain at a point or points more than five miles distant from the point of discharge of the process waste water effluent. The procedures used and the results of these tests shall be reported in writing to the parties within 60 days after the tests have been completed.

SECTION 4.3

During the period from May 1 to November 30 in each calendar year, the Company shall:

(a) minimize, to the extent practicable, discharges of any type of black liquor through the waste water treatment system; and

(b) not discharge the contents of its spill pond through the waste water treatment system; provided, however, that it may discharge up to 15,000 pounds of BOD_5 per day from the spill pond for the purpose of maintaining the treatment system when the pulp and paper manufacturing processes are not in operation. An analysis for BOD_5 in the spill pond shall be conducted prior to discharge pursuant to the provisions of this paragraph.

SECTION 4.4

The Company and the State of Vermont shall not oppose the incorporation of the following requirements in the first NPDES permit to be issued to the Company with respect to the New Mill pursuant to Section 402 of the Federal Water Pollution Control Act:

(a) the Company shall sample and test its process waste water effluent as follows: color—daily; BOD_5 and total phosphorus (as P)—three days per week, none of which shall be consecutive to each other; settleable solids and suspended solids—five days per week; flow, temperature, and pH—continuous;

(b) the test for BOD_5 shall be performed on a 24-hour composite sample that has been refrigerated during collection and prior to analysis, and the analysis shall begin no more than two hours after collection of the composite;

(c) the test for total phosphorus (as P) shall be performed on the same sample as that referred to in paragraph (b) of this Section within 24 hours after collection of the composite, and such sample shall be preserved within two hours of collection;

(d) the suspended solids shall be determined on the composite referred to in paragraph (b) of this Section, or on a minimum of four grab samples collected at four separate times at not less than four-hour intervals over a 16-hour period, at the option of the Company; and

(e) with respect to paragraphs (a), (b), (c), and (d) of this Section, such measures shall not be required during shutdowns or total closures of the New Mill.

SECTION 4.5

(a) The effluent limitations and requirements set forth in Sections 4.1 and 4.4 of this Schedule, except for total phosphorus (as P), shall be in force as a result of this Decree, effective upon approval of this Decree by the Court, even if such limitations and requirements are not incorporated in the NPDES permit.

(b) The limitation for total phosphorus (as P) set forth in Section 4.1(b) of this Schedule shall become effective and in force as a result of this Decree on July 1, 1977, even if such limitation is not incorporated in the NPDES permit.

APPENDIX A

1. This Document is delivered pursuant to the command of the Supreme Court of the United States set forth in subparagraph V(A)(1) of a Decree executed by the parties contemporaneously herewith. The provisions of paragraph V(A) of such Decree are incorporated herein by reference.

2. THE STATE OF VERMONT, a sovereign state, and all of its officers, agents, employees, and representatives, for and in consideration of the execution of a Stipulation and Decree, the consent to which is dated this same date among the parties to the civil action, *State of Vermont v. State of New York and International Paper Company*, United States Supreme Court, Original No. 50, and the agreement of INTERNATIONAL PAPER COMPANY, a corporation existing under the laws of the State of New York, located at New York, New York (hereinafter referred to as "the Company"), to comply with the provisions of such Stipulation and Decree, as amended or modified from time to time, does hereby release and forever discharge the Company, and any and all of its past, present or future directors, officers, employees, and corporate affiliates (including any and all past, present and future directors, officers, and employees of such corporate affiliates) from any and all claims, actions, suits, or demands whatsoever, including, without limitation, any matters which were or might have been alleged in the original or amended complaints in the aforementioned civil action, that the State of Vermont has or may hereafter have against the Company with respect to: (a) alleged past, present, and future harm caused by or arising from the accumulation of sediment in Ticonderoga Creek and the Ticonderoga Bay area of Lake Champlain, (b) alleged past, present, and future harm caused by or

arising from discharges to the water from the Company's Old Mill (located in the Village of Ticonderoga, New York) prior to the date of entry of the aforementioned Decree, (c) alleged past, present, and future harm caused by or arising from emissions to the air from the Company's Old Mill prior to the date of entry of the aforementioned Decree, and (d) alleged harm caused by or arising from emissions to the air from the Company's New Mill (located approximately four miles north of the Village of Ticonderoga, New York) prior to the date of entry of the aforementioned Decree.

3. This Document shall enure only to the benefit of the Company and any and all of its past, present, or future officials, directors, officers, employees, and corporate affiliates (including any and all past, present, and future directors, officers, and employees of such corporate affiliates) referred to in paragraph 2 of this Document and their respective successors, assigns, heirs, executors, and administrators, but it shall not enure to the benefit of the State of New York or to any other person, government, or entity (including, but not limited to, any alleged joint tortfeasor) who may be liable, primarily or secondarily or otherwise, at law or in equity, with respect to the alleged harm dealt with in subparagraphs (a)-(d) of paragraph 2 of this Document, or the abatement thereof.

4. This Document shall become effective and binding on the parties hereto only in the event that the Supreme Court of the United States shall approve the aforementioned Decree in the form in which it has been submitted to

the Court. In the event that such Decree is not so approved, this Document shall be of no effect whatsoever.

5. The State of Vermont expressly reserves all rights, claims, actions, suits, demands, and causes of action that it has or may have against any person, government, or entity other than the Company to recover damages for all harm, if any, arising after the date of this Document, and to obtain any legal, equitable or other relief to which it hereafter may be entitled and which is related to or arises out of the matters dealt with in paragraph 2 of this Document.

6. It is understood and agreed by the parties hereto, and it is their intention, that this Document shall be construed as, and shall have the effect of: (a) a covenant not to sue at common law, and (b) not barring, diminishing, or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action, or demands whatsoever that the State of Vermont may have against anyone other than the Company, except as the same are precluded by subparagraph V(A)(2) of the aforementioned Decree.

7. It is understood and agreed that this Document contains the entire agreement with respect to the matters referred to herein, and there are no representations or warranties with respect to such matters except as expressly stated herein.

IN WITNESS WHEREOF, I, Kimberly B. Cheney, acting with lawful authority for and on behalf of the State of Vermont, have executed this Document and affixed the Seal of the State of Vermont this 24th day of April, 1974.

THE STATE OF VERMONT

Kimberly B. Cheney,
Attorney General of Vermont

By: /s/ MARTIN K. MILLER
Deputy Attorney General

[SEAL]

APPENDIX B

[Emblem]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D. C. 20460
OFFICE OF
ENFORCEMENT AND GENERAL COUNSEL

Paul B. Carroll, Esquire
Vice-President and General Counsel
International Paper Company
220 East 42nd Street
New York, New York 10017

April 24, 1974

Dear Mr. Carroll:

The position of the United States in *State of Vermont* v. *State of New York and International Paper Company*, Original No. 50, was stated in the Petition of Intervention of the United States of America filed in December 1972, namely, that removal of the sludge deposits in Ticonderoga Creek and the nearby waters of Lake Champlain at that time would not be in the public interest.

At the present time it is still the opinion of the Federal Government that water quality conditions and environmental factors do not justify dredging the sludge deposits in Ticonderoga Creek and the nearby waters of Lake Champlain. This conclusion is based upon the evalution of data collected by all parties through the summer of 1973. It is apparent that since the 1970 Lake Champlain Enforcement Conference, the waters of Ticonderoga Creek and the nearby waters of Lake Champlain have improved appreciably in quality, *e.g.*, dissolved oxygen levels in the waters

of Ticonderoga Creek and the nearby waters of Lake Champlain have been essentially meeting water quality standards. The environmental effects of removal must be balanced against the observed water quality improvement.

The factors which may be contributing to such improved conditions are the cessation of discharges from the old IPC mill on Ticonderoga Creek, the high water levels in Lake Champlain during recent years, and measurable reduction in the effect of the sludge deposits upon overlying waters.

Although we are not able to predict, at this time, what the future of the sludge deposits will be, we are able to reaffirm our position that the quality of the aquatic environment on and around those deposits has improved and is continuing to improve.

Sincerely yours,

/s/ ALAN G. KIRK II

Assistant Administrator for
Enforcement and General Counsel
(EG-329)

cc:
Mr. Keith Fry
Director, Corporate Air
& Water Management
International Paper Company

APPENDIX C

WHEREAS, the position of the United States in *State of Vermont* v. *State of New York and International Paper Company*, Original No. 50, was stated in the Petition of Intervention of the United States filed in December 1972, namely, that removal of the accumulation of sediment in Ticonderoga Creek and the Ticonderoga Bay area of Lake Champlain at that time would not be in the public interest; and

WHEREAS, the United States entered into a joint Stipulation and Consent Decree with the other parties to the aforementioned civil action, which Consent Decree was approved by the Supreme Court of the United States on , 1974; and

WHEREAS, the position of the United States Environmental Protection Agency was stated by it in a letter (attached to the aforementioned Consent Degree as Appendix B) dated April 24, 1974, to International Paper Company, a corporation existing under the laws of the State of New York, located at New York, New York (hereinafter "the Company"); and

WHEREAS, in Article VI(C) of the aforementioned Consent Decree the United States agreed to execute and deliver to the Company a document forever barring the United States from seeking to impose liability upon the Company for the accumulation of sediment in Ticonderoga Creek and the Ticonderoga Bay area of Lake Champlain because of past waste discharges (except for any part of the costs, for which the Company at any time may be established to be

liable, arising out of remedial action taken as a consequence of the needs of anchorage or navigation) if the United States did not initiate action in the Supreme Court of the United States or in any other court within five years from the date of approval of the aforementioned Consent Decree by the Court, seeking to impose liability upon the Company for environmental harm resulting from such accumulation of sediment; and

WHEREAS, the United States has not initiated any such action against the Company within such time;

NOW, THEREFORE, in view of the foregoing and in consideration of the execution of the aforementioned Stipulation and Consent Decree, the United States does hereby release and forever discharge the Company, and any and all of its past, present, and future directors, officers, employees, and corporate affiliates (including any and all past, present, and future directors, officers and employees of such affiliates) from all liability for the accumulation of sediment in Ticonderoga Creek and the Ticonderoga Bay area of Lake Champlain because of past waste discharges, except to the following extent:

The United States shall not be precluded from seeking to establish at any time that the Company may be liable to meet any part of the costs arising out of remedial action taken as a consequence of the needs of anchorage or navigation.

This document shall be construed as, and have the effect of, a covenant not to sue at common law.

This document contains the entire agreement between the United States and the Company with respect to the matters referred to herein and there are no representations or warranties with respect to such matters except as expressly stated herein.

This document shall enure to, and only to, the benefit of each of the corporations and persons referred to above and their respective successors, assigns, heirs, executors, and administrators.

IN WITNESS WHEREOF I, acting with lawful authority and on behalf of the United States, have executed this document and affixed the Seal of the Department of Justice of the United States of America this day of , 1979.

UNITED STATES OF AMERICA

By: .....

[Title]

United States Department of Justice
Washington, D. C.

[SEAL]