

**EPA Superfund  
Explanation of Significant Differences:**

**O'CONNOR CO.  
EPA ID: MED980731475  
OU 01  
AUGUSTA, ME  
07/11/1994**

**DECLARATION FOR THE EXPLANATION OF  
SIGNIFICANT DIFFERENCES**

SITE NAME AND LOCATION

F. O'Connor Superfund Site  
Augusta, Maine

STATEMENT OF PURPOSE

This decision document sets forth the basis for the determination to issue the attached Explanation of Significant Differences (ESD) for the F. O'Connor Superfund Site in Augusta, Maine.

STATUTORY BASIS FOR ISSUANCE OF ESD

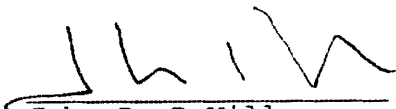
Section 117(c) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) requires that, if any remedial or enforcement action is taken under Section 106 of CERCLA after adoption of a final remedial action plan, and if such action differs in any significant respects from the final plan (i.e., scope, performance or cost), the United States Environmental Protection Agency (EPA) shall publish an explanation of the significant differences and the reasons such changes were made. Current EPA guidance (OSWER Directive 9355.3-02) further provides that issuance of an ESD is appropriate where the Agency determines the need for changes to the ROD which are significant but which do not fundamentally alter the overall remedy. In the present case, because the required adjustments to the ROD do not fundamentally alter the selected remedy for the Site, this ESD is being issued properly.

In accordance with Section 117(d) of CERCLA, this ESD will become part of the Administrative Record which is available for public review at both the EPA Region I Record Center in Boston, Massachusetts and the Lithgow Public Library in Augusta, Maine.

DECLARATION

For the foregoing reasons, by my signature below, I approve the issuance of an Explanation of Significant Differences for the F. O'Connor Superfund Site in Augusta, Maine and the changes stated therein.

7/11/94  
Date

  
\_\_\_\_\_  
John P. DeVillars  
Regional Administrator

**EXPLANATION OF SIGNIFICANT DIFFERENCES  
F. O'CONNOR SUPERFUND SITE  
AUGUSTA, MAINE**

**I. INTRODUCTION**

**A. Site Name and Location**

Site Name: F. O'Connor Superfund Site

Site Location: Augusta, Maine

**B. Lead and Support Agencies**

Lead Agency: United States Environmental Protection Agency

Support Agency: Maine Department of Environmental Protection

**C. Legal Authority**

Section 117 (c) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) requires that, if any remedial or enforcement action is taken under Section 106 of CERCLA after adoption of a final remedial action plan, and if such action differs in any significant respects from the final plan, the United States Environmental Protection Agency (EPA) shall publish an explanation of the significant differences and the reasons such changes were made. On September 27, 1989 EPA issued a Record of Decision (ROD) for the F. O'Connor Superfund Site. Since the issuance of the ROD, EPA has evaluated information that has been developed as a part of the remedial pre-design process, has re-evaluated information in the administrative record supporting the issuance of the ROD, and has determined that an adjustment to the remedy described in the ROD is necessary. Accordingly, EPA is issuing this Explanation of Significant Differences (ESD).

In accordance with Section 117 (d) of CERCLA, this ESD will become part of the Administrative Record which is available for public review at both the EPA Region I Record Center in Boston, Massachusetts and the Lithgow Public Library in Augusta, Maine.

## **II. SUMMARY OF SITE HISTORY, CONTAMINATION PROBLEMS AND SELECTED REMEDY**

### **A. Site History**

#### **Location**

The Site consists of approximately twenty-three acres of land located within a larger 65-acre parcel of property located along U.S. Route 17 near the eastern boundary of the urban compact zone of Augusta, Maine. On June 3, 1991, the City of Augusta adopted a land use ordinance which identifies the Site property as a "Planned Development District," which allows residential, industrial and commercial use. The Site was purchased by Central Maine Power Company (CMP) from the F. O'Connor Company on March 11, 1992.

#### **Remedial Investigation/Feasibility Study (RI/FS)**

An investigation into the nature and extent of contamination at the Site was conducted from 1986 to 1989. The Remedial Investigation was performed to characterize the geology, hydrogeology, and distribution of contaminants in soil, groundwater, surface water, and sediments at the Site. Surface waters and sediments are within two lagoons located on site. The Feasibility Study presented and evaluated various remedial alternatives relative to the criteria established under CERCLA, including the remedial alternatives selected in the 1989 ROD.

Based on the Feasibility Study, EPA proposed a remedy called the "preferred alternative" for the Site in a Proposed Plan dated July 1989. Following a public comment period, the preferred alternative was established by EPA as the final selected remedy for the Site in the 1989 ROD and agreed to by EPA and CMP in a Consent Decree entered in September 1991. Section II-B of this ESD provides a summary of the 1989 selected remedy (refer to the 1989 ROD for a full description).

#### **Remedial Pre-design Studies**

As required under the Consent Decree, remedial pre-design field studies have been conducted by CMP from June 1991 through January 1993. The management of migration component of the 1989 ROD has not changed, however, the source control remedial pre-design field studies have provided new Site information and are incorporated into this ESD. This new information includes:

- Collection and analysis of soil and sediment samples to refine the estimate of soil and sediment volumes requiring remediation;
- Additional treatability studies to examine the implementability and technical feasibility of solvent extraction technology to achieve the target cleanup goals established for PCBs and cPAHs;
- Additional information necessary to complete the design of the full-scale remediation plan;
- Collection and analysis of surface water samples to evaluate treatment options for water in the on-site lagoons; and
- Delineation mapping and functional analysis of on-site wetlands.

On-site pilot-scale treatability studies were designed as part of the required remedial pre-design studies to evaluate the ability of solvent extraction technology to achieve the 1989 target cleanup goals established for PCBs and cPAHs. From the results of the remedial pre-design studies, the EPA and the Maine Department of Environmental Protection (DEP) have concluded that the use of solvent extraction technology may not be feasible to treat PCB and cPAH contaminated soils found at much of this site to the target cleanup goals established in 1989. PCB and cPAH concentration levels of 1ppm may not be technically feasible and/or attainable in a cost-effective manner using solvent extraction for the soils and contaminant levels found at this site.

The results of additional soil and sediment sampling (conducted since the 1989 ROD) show a significant increase in contaminated soil and sediment volume over what was estimated in 1989. As a result, if using the 1989 target cleanup goals, it was estimated by Central Maine Power Company that the cost of the source control remedy would increase by an estimated 85 percent of the 1989 cost estimate. However, by using the adjusted target cleanup goals, established by this ESD, and accounting for the estimated increase of soils and sediment to be treated, the estimated cost of the source control remedy is now \$13.6 million. This revised cost estimate is comparable to the original 1989 cost estimate of \$13.3 million. The revised total cost estimate for the entire cleanup (including Management of Migration and Riggs Brook) is now \$16.5 million. The original 1989 cost estimate for the entire remedy was \$14.2 million.

**B. Summary of the 1989 Selected Remedy**

On September 27, 1989, EPA signed a Record of Decision (ROD) for the O'Connor Superfund Site. The selected cleanup approach for the Site includes two primary components: source control and management of migration. Only the source control component is affected by this ESD and is summarized below. Refer to the 1989 Record of Decision for a complete description of the source control and management of migration components.

The source control component of the 1989 ROD requires that all contaminated soil and sediment containing concentrations of polychlorinated biphenyls (PCBs), carcinogenic polycyclic aromatic hydrocarbons (cPAHs), and lead above target cleanup goals are to be excavated and treated on-site using solvent extraction technology. The 1989 ROD established that the soils would be cleaned to the following former target cleanup goals:

total PCBs	-	1 part per million (ppm)
total cPAHs	-	1 ppm
lead	-	248 ppm

Additionally, treated soil and sediment that have lead levels above the target cleanup goal will undergo further treatment using solidification/stabilization if, after undergoing the EPA toxicity characteristic leaching procedure (TCLP) test, they continue to exhibit the characteristics of a hazardous waste.

Treated soils and sediment achieving the cleanup standards will be backfilled on-site. Treated soils and sediment failing to achieve the cleanup goals will require off-site land disposal; this off-site disposal includes soils and sediments which exceed the cleanup target goal for lead irrespective of whether the material required solidification/stabilization. Contaminated liquids produced during solvent extraction treatment that contain extracted PCBs and cPAHs will be destroyed off-site at a licensed TSCA incinerator.

**III. DESCRIPTION OF SIGNIFICANT DIFFERENCES**

**Site Definition and Boundaries**

The Site boundary has been redefined to include a total approximately twenty-three acres in order to be more consistent with the State of Maine's designation of this uncontrolled hazardous substance site. See Figure 2. See Attachment 2 for a deed description of the Site.

## Adjusted Target Cleanup Goals

The target cleanup goals defined in the 1989 ROD were derived in the Feasibility Study, 1989 (Appendix B) to protect both human health and the environment. Protection of human health assumes a future use of the site by the public in a residential setting. Protection of the environment was developed by conducting food-chain exposure modeling. Exposure to two groups of organisms (birds and mammals) was quantitatively evaluated.

When the ROD was written in 1989, it was recognized that the target cleanup goals for PCBs and cPAHs may be difficult to achieve using solvent extraction technology. Performance of remedial pre-design studies was made a requirement of the 1989 ROD in order to provide additional information on the feasibility of this technology to achieve target cleanup goals when implemented at full-scale. Central Maine Power Company has completed the required remedial pre-design studies which included bench-scale and on-site pilot-scale treatability studies. These pre-design studies showed implementing the solvent extraction technology, as required in the 1989 ROD, would be difficult at this Site. The pilot-scale treatability studies allowed the EPA and the Maine DEP to conclude that currently the technology can not achieve the target cleanup goals established in the 1989 ROD. The assessment of implementability is based on the technical difficulties and unknowns associated with the construction and operation of the technology based on pilot-scale treatability testing performed on site.

Based on the assessment of implementability and the new information developed since the 1989 ROD, EPA is adjusting the soil target cleanup goals for all soils which are to be located more than 12 inches below grade and within a three to four acre "designated area" (see Figure 3). The target cleanup goals for the "designated area" are:

total PCBs	-	10 ppm
total cPAHs	-	10 ppm
lead	-	248 ppm (no change)

The target cleanup goals for all areas outside the "designated area" are:

PCBs	-	1 ppm
cPAHs	-	1 ppm
lead	-	248 ppm

In addition, the top 12 inches across the entire excavated area of the site will be replaced with clean fill from off-site sources. The clean fill will consist of topsoil and

will be revegetated. The clean fill/topsoil shall contain less than or equal to 1 ppm PCBs, 1 ppm cPAHs, and 248 ppm lead. This approach will ensure that even if those soils contaminated with between 1 and 10 ppm PCBs or cPAHs were ever disturbed by potential future activities at the site, the PCB and cPAH levels at the surface will likely be less than 1ppm due to the mixing with clean soil. This cleanup goal and approach is also consistent with the TSCA PCB Spill Cleanup Policy (40 CFR 761 Subpart G) for nonrestricted access areas. This approach is also consistent with EPA's OSWER Directive No. 9355.4-01 "Guidance on Remedial Actions for Superfund Sites with PCB Contamination," August 1990, for nonrestricted access area.

The target cleanup goals for both inside and outside of the "designated area" are within EPA's acceptable range of  $10^{-4}$  to  $10^{-6}$  risk for a residential setting.

The 12 inches of clean fill/topsoil with 1 ppm (or less) PCBs and cPAHs continues to meet the cleanup goals established in the 1989 ROD, as required by U.S. Fish & Wildlife Service and the Maine DEP for the protection of the environment.

From the remedial pre-design studies it can be concluded that the solvent extraction technology is capable of achieving the adjusted target cleanup goals, and is therefore implementable.

#### **Contingency Cleanup Plan**

The 1989 ROD requires treated soils which fail to meet the target cleanup goals be to taken off-site for proper disposal in accordance with federal and state laws. This ESD allows for off-site disposal in accordance with federal and state laws should EPA, after consultation with the Maine DEP, determine that full-scale implementation of solvent extraction is not feasible at this site. Solvent extraction is an innovative treatment technology which has not yet been proven operational at full-scale. The significant difference from the 1989 ROD and this ESD is that soils will not have to be treated prior to off-site disposal should the EPA make the determination that treatment is not feasible.

#### **IV. SUPPORT AGENCY COMMENTS**

The Maine DEP acknowledges that the Maine DEP has had an opportunity for review and comment and concurs with this ESD with conditions which are provided in a letter of concurrence (Attachment 1).



**V. STATUTORY DETERMINATIONS**

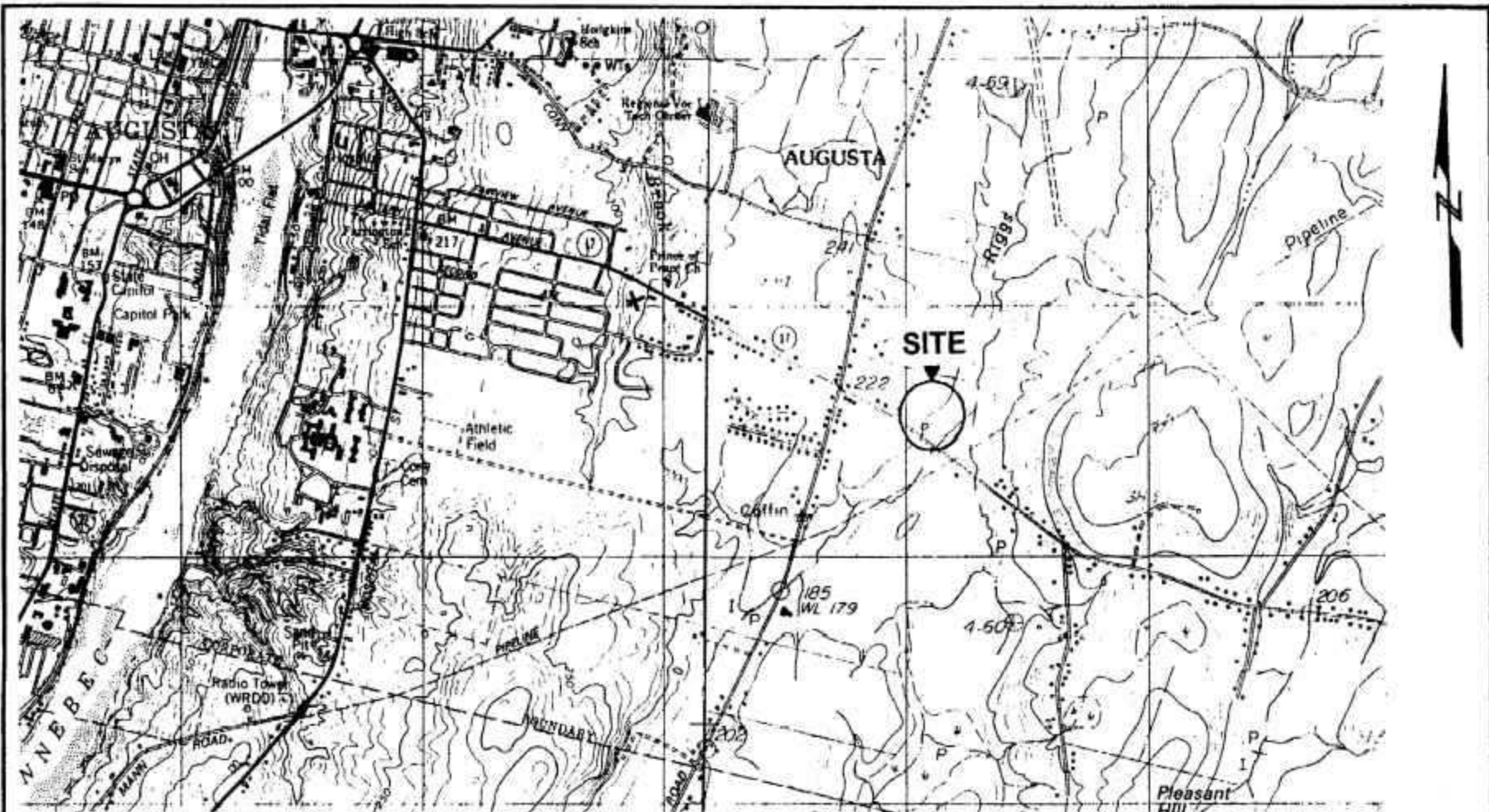
Considering the adjustment to the selected remedy set forth in the 1989 ROD and as described in this ESD, the EPA believes that the remedy remains protective of human health and the environment, complies with all Federal and State requirements that are applicable or relevant and appropriate to this remedial action and is cost effective. In addition, the revised remedy continues to utilize permanent solutions and alternative treatment technologies to the maximum extent practicable for this site.

**VI. PUBLIC PARTICIPATION**

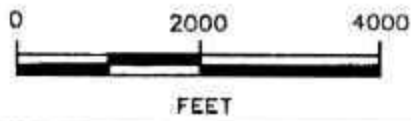
In accordance with Section 117(d) of CERCLA, this ESD will become part of the Administrative Record which is available for public review at both the EPA Region I Record Center in Boston, Massachusetts and the Lithgow Public Library in Augusta, Maine. In addition, a public comment period was held from April 13 through April 30, 1994.


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- FIGURE 1 - SITE LOCATION MAP
- FIGURE 2 - SITE BOUNDARY MAP
- FIGURE 3 - SITE FEATURES MAP
- ATTACHMENT 1 - STATE CONCURRENCE LETTER
- ATTACHMENT 2 - DEED DESCRIPTION OF SITE



AUGUSTA, ME AND TOGUS POND, ME  
 7.5 MINUTE TOPOGRAPHIC QUADRANGLE  
 UNITED STATES GEOLOGICAL SURVEY  
 1980 AND 1982  
 CONTOUR INTERVAL 10 FEET  
 1:24,000



Central Maine Power Company Augusta, Maine	O'Connor Site Augusta, Maine	SITE LOCATION MAP
 <b>GHI Consultants, Inc.</b>	Project 93366	April 1994 <span style="float: right;">Fig. 1</span>

**CONVEYOR'S REPORT**

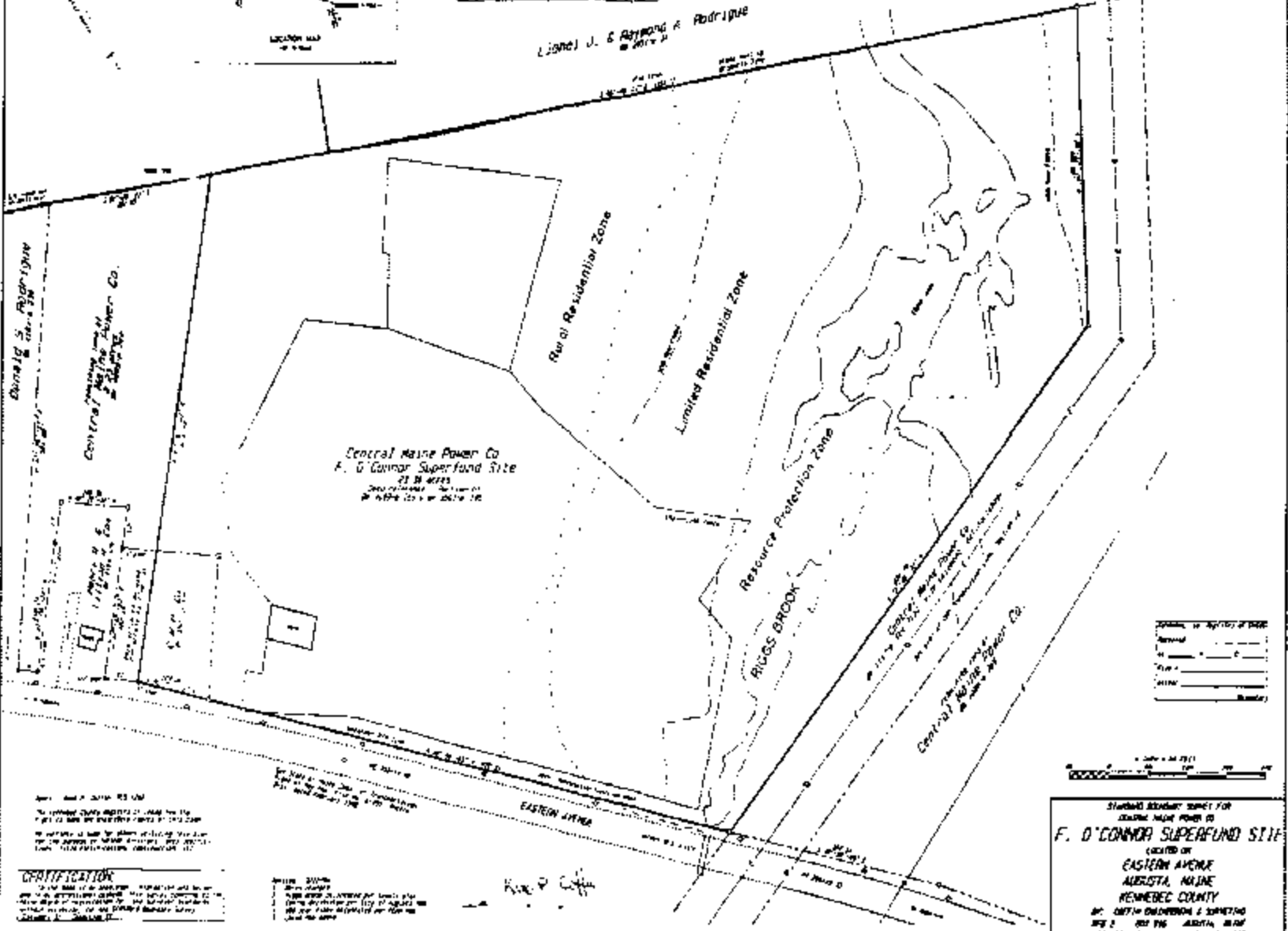
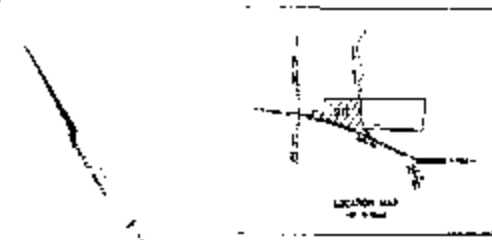
The Surveyor's Report is a statement of the facts and circumstances known to the Surveyor at the time of the Survey. It is not a guarantee of the accuracy of the information contained therein. The Surveyor is not responsible for the accuracy of the information contained in this Report. The Surveyor is not responsible for the accuracy of the information contained in this Report.

**NOTES**

The Surveyor's Report is a statement of the facts and circumstances known to the Surveyor at the time of the Survey. It is not a guarantee of the accuracy of the information contained therein. The Surveyor is not responsible for the accuracy of the information contained in this Report.

LINE	BEARING	DISTANCE	AREA
1	N 89° 15' 00" W	100.00	100.00
2	S 89° 15' 00" E	100.00	100.00
3	N 89° 15' 00" W	100.00	100.00
4	S 89° 15' 00" E	100.00	100.00

- LEGEND**
- 2 — PROPERTY LINE
  - 3 — LOT LINE
  - 4 — CURVE
  - 5 — ROAD
  - 6 — RAILROAD
  - 7 — STREAM
  - 8 — FENCE
  - 9 — UTILITY
  - 0 — BOUNDARY



DATE OF SURVEY: \_\_\_\_\_

BY: \_\_\_\_\_

SCALE: \_\_\_\_\_

**DISCLAIMER**

The Surveyor is not responsible for the accuracy of the information contained in this Report. The Surveyor is not responsible for the accuracy of the information contained in this Report.





**Standard Record Form for Eastern Maine Power Co. F. O'CONNOR SUPERFUND SITE**

LOCATED ON EASTERN AVENUE, ARISTIDA, MAINE, KENNEBEC COUNTY

BY: OETHE ENGINEERS & SURVEYORS, INC. 205 TWO ARISTIDA BLVD. ARISTIDA, MAINE 04912-0001

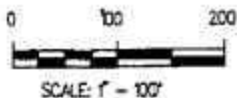
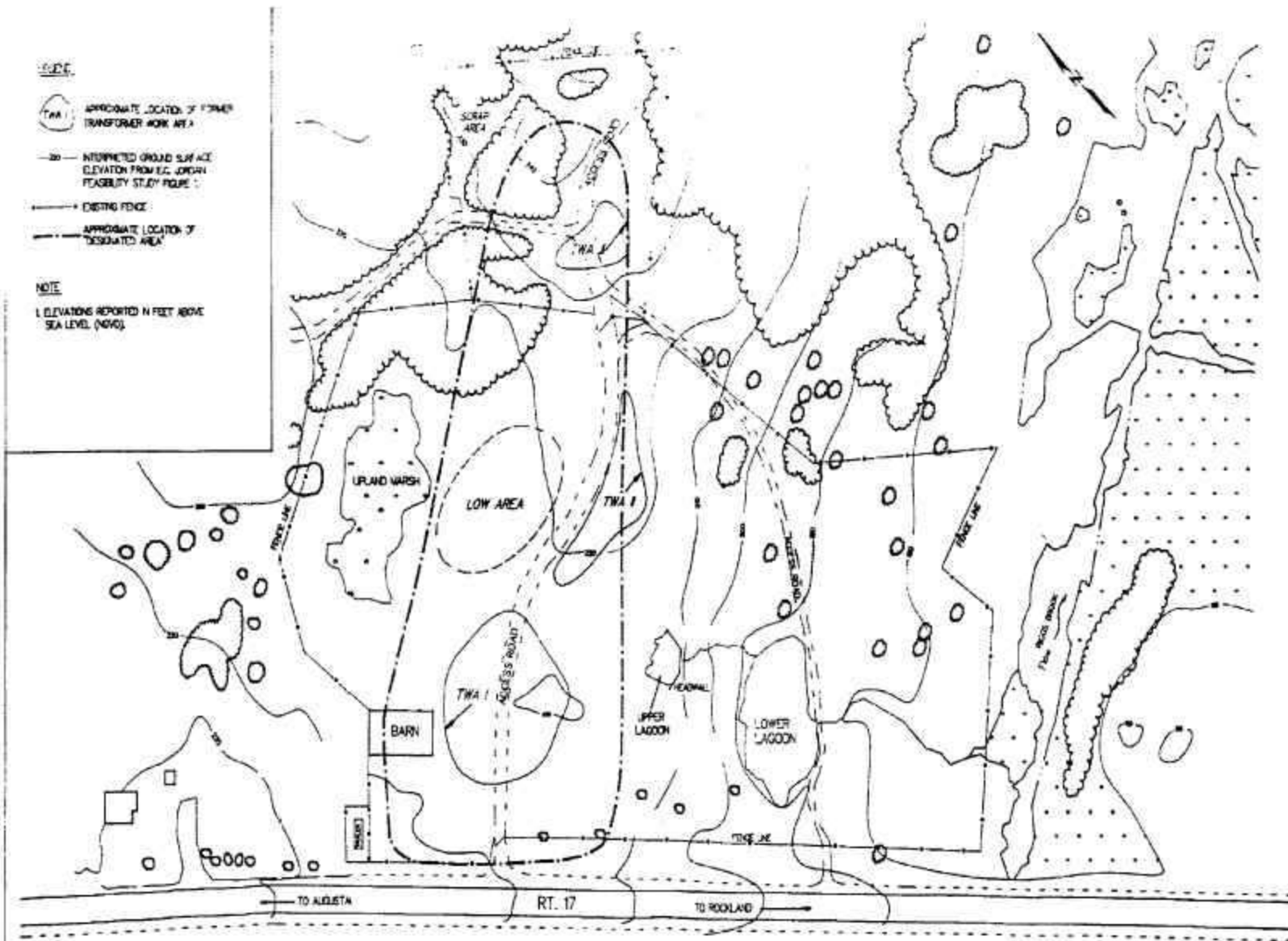
DATE: JULY 22, 1993


LEGEND

-  APPROXIMATE LOCATION OF FORMER TRANSFORMER WORK AREA
-  INTERPRETED GROUND SURFACE ELEVATION FROM E.C. JORDAN FEASIBILITY STUDY FIGURE 1
-  EXISTING FENCE
-  APPROXIMATE LOCATION OF "DESIGNATED AREA"

NOTE

1. ELEVATIONS REPORTED IN FEET ABOVE SEA LEVEL (NAVD).



Central Maine Power Company Augusta, Maine	O'Connor Site Augusta, Maine	SITE FEATURES MAP
 GRI Consultants, Inc.	Project 90393	April 1994



STATE OF MAINE

# DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN R. McKERNAN, JR.  
GOVERNOR

DEBRAH J. RICHARD  
ACTING COMMISSIONER

June 20, 1994

John DeVillars  
Administrator, Region I  
U.S. Environmental Protection Agency  
J.F.K. Federal Building  
Boston, Massachusetts 02203-2211

Ref: O'Connor Superfund Site;  
Explanation of Significant Difference;  
Maine Department of Environmental Protection Concurrence.

Dear Mr. DeVillars:

The Maine Department of Environmental Protection (State) agrees that it is practical to change the source control remedy specified in the Record of Decision (ROD) dated September 27, 1989, for the O'Connor Superfund Site, and that the adjustment, as specified in the Explanation of Significant Difference (ESD), which allows contaminated soil with concentration levels of less than or equal to 10 parts per million (ppm) of polychlorinated biphenyls (PCBs) and less than or equal to 10 ppm of carcinogenic polycyclic aromatic hydrocarbons (cPAHs) to remain on site, maintains protection of human health and the environment provided the following actions are taken:

Note: For the purpose of this letter, the clean-up goal of less than or equal to 10 ppm of PCBs, less than or equal to 10 ppm of cPAHs, and less than or equal to 248 ppm lead shall be referred to as the "Standard".

1. An area be designated on site for the placement of soils with hazardous substance concentration levels meeting the Standard;
2. This designated area be excavated prior to the placement of contaminated soil to allow for removal of soil with hazardous substance concentration levels greater than the Standard;
3. Sampling of the soil forming the "floor" of the designated area be done in a manner that will provide assurance that no soils with hazardous substance concentration levels exceeding the Standard remain in the designated area;
4. All soils on the site, with the exception of those in the designated area, containing concentrations greater than 1 ppm PCBs, or 1 ppm cPAHs, or 248 ppm lead, be excavated;
5. Excavated soils containing concentrations of PCBs greater than 10 ppm or cPAHs greater than 10 ppm be treated on site in the manner described in the ESD;

*Serving Maine People & Protecting Their Environment*

AUGUSTA  
STATE HOUSE STATION 17  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX (207)287-7826  
OFFICE LOCATED AT RAY BUILDING, HOSPITAL STREET

PORTLAND  
312 CANCO ROAD  
PORTLAND, ME 04103  
(207) 879-6300 FAX (207)879-6303

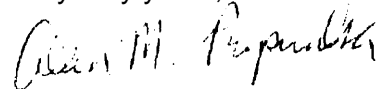
BANGOR  
106 HOGAN ROAD  
BANGOR, ME 04401  
(207) 941-4570 FAX (207)941-4584

PRESQUE ISLE  
1235 CENTRAL DRIVE SKYWAY PARK  
PRESQUE ISLE, ME 04769  
(207) 764-0477 FAX (207)764-1507

6. Soils containing concentrations of PCBs greater than 1 ppm but equal to or less than 10 ppm, cPAHs greater than 1 ppm but equal to or less than 10 ppm, or lead equal to or less than 248 ppm, after application of the solvent extraction process, be placed in the designated area;
7. Soils containing concentrations greater than 248 ppm of lead, after application of the solvent extraction process, be taken off site for appropriate disposal;
8. Soils containing concentrations of PCBs greater than 10 ppm, or cPAHs greater than 10 ppm, after application of the solvent extraction process, be taken off site for appropriate disposal;
9. The designated area, after placement of all soils with concentration levels not exceeding the Standard, be covered with 12 inches of clean soil (defined as containing concentration levels of less than or equal to 1 ppm PCBs, 1 ppm cPAHs, and 248 ppm lead);
10. Institutional controls, as set forth in the agreement between Central Maine Power (CMP) and the State (signed June 8, 1994), be enacted by CMP, after completion of source control remedial activities, to restrict the Site to commercial/industrial uses approved by the State, and to provide for maintenance of the clean soil cover on the designated area.

Understanding that the above actions will be taken, the State concurs with the ESD, which modifies the ROD dated September 27, 1989, for the O'Connor Superfund Site.

Very truly yours,



Alan M. Prysunka  
Director, Bureau of Hazardous Material and Solid Waste Control

cc: D. Harnish, Maine Assistant Attorney General  
M. Barden, Maine DEP  
H. Aho, Maine DEP  
L. Brown, Maine DEP  
R. Gilleland, U. S. EPA

## AGREEMENT, RELEASE AND STIPULATION

This Agreement, Release and Stipulation is entered among the State of Maine and Maine Department of Environmental Protection (collectively called "Department") and Central Maine Power Company, Inc. ("CMP"), for the purposes of resolving claims by the Department against CMP arising from conditions on a parcel of real property, more particularly described in the attached Declaration of Restrictive Covenant, which parcel CMP owns and which parcel the Department has designated as an "uncontrolled hazardous substance site" pursuant to 38 M.R.S.A. §§ 1364 - 1365, and attaching conditions to said parcel of real property.

For purposes of this Agreement, and not to be construed as an admission by any party, but subject to the conditions and limitations set forth below, CMP and the Department hereby agree and stipulate as follows:

1. CMP is record owner of two parcels of property located on Eastern Avenue, so-called (State Route 17) in Augusta, Kennebec County, Maine. Said parcels are more particularly described in the attached Declaration of Restrictive Covenant. A portion of the aforesaid parcels has been designated by the Department as an uncontrolled hazardous substance site pursuant to 38 M.R.S.A. §§ 1364 and 1365 due to the presence in the soils on the Site and the groundwater under the Site of PCBs, polyaromatic hydrocarbons (PAHs), and lead, all of which are hazardous substances under Maine and Federal law. This same portion has been listed on the National Priorities List as a "Superfund Site" by the United States Environmental Protection Agency ("EPA"). The designated portion shall hereinafter be referred to as the "Site".

2. As a generator of the lead, PCBs and PAHs who arranged to dispose of these hazardous substances at the Site, CMP has been identified as one of the parties liable to remediate the Site by both the Department and EPA.

3. The Site is being cleaned up under a Consent Decree agreed to by CMP and EPA on November 23, 1990, which was entered by the United States District Court for the District of Maine on September 3, 1991, at United States, et al. v. Central Maine Power Company, Civil Action No. 92-0302-B. Pursuant to this Consent Decree, CMP will remediate the contaminated soils and surface water on the Site and contaminated groundwater under the Site using methods approved by the EPA, after opportunity for review and comment by the Department. The treatment technologies and cleanup levels for lead, PCBs and cPAHs at the Site are set forth in the Record of Decision ("ROD") issued by EPA. EPA proposes to adjust certain cleanup levels in a document identified as the Explanation of Significant Difference (ESD).

4. The ROD states that on-site soils will be treated using solvent extraction so as to reduce the level of PCBs and cPAHs to one part per million (ppm).

5. While it is feasible to reach this cleanup level for PCBs in the less contaminated soils on site, information which came to light after the ROD was initially

approved indicates that it will neither be technically feasible nor cost effective to achieve the one ppm cleanup level using the specified solvent extraction method for the more contaminated soils. In addition, EPA has determined that levels of 10 ppm of total PCBs and 10 ppm of total cPAHs falls within the risk range which is protective of human health. For these reasons, the soil cleanup levels set forth in the ROD will be adjusted by EPA by use of the ESD, such that the soil treatment method set forth in the ROD will be used only on soils with contaminant levels greater than 10 ppm and will terminate when the residual levels of the PCBs and cPAHs are lowered to 10 ppm. In order to protect the environment, however, on-site soils containing levels of total PCBs and total cPAHs of between 1 ppm and 10 ppm will be covered with clean soil from off site sources, to the thickness of 12 inches as specified in the ESD. The Department agrees that a soil cover 12 inches or greater meets the Department's risk criteria of  $10^{-5}$  provided that the cover is maintained.

6. Pursuant to the Consent Decree, following Site inspection and submission of a written report signed by the CMP's Project Coordinator, and a registered professional engineer, certifying that all remedial activities have been completed in full satisfaction of the requirements of the Consent Decree, and EPA's agreement with this finding, EPA will certify completion of the remedial work.

7. Natural resources of the State of Maine, including the groundwater under the Site, have been damaged by contamination at the Site.

8. Under both Section 107 of CERCLA, 42 U.S.C. § 9607, and Maine's Uncontrolled Sites Law, 38 M.R.S.A. § 1367 (1989), the State of Maine has a cause of action against CMP for damages for injury to, destruction of or loss of natural resources of the State.

9. Use of the groundwater beneath the Site prior to the completion of remediation activities could pose risks to the public health and imperil the timely remediation of the Site. Likewise, other on site activities could disrupt remedial or monitoring measures installed pursuant to the Consent Decree or imperil the ongoing adequacy of the remediation implemented under the Consent Decree, including, without limitation, the clean soil cap described above. In order to avoid the possibility of any such interferences, it is necessary for CMP to file a Declaration of Restrictive Covenant in the form attached hereto as Exhibit A.

NOW, THEREFORE,

A. The effective date of this Agreement shall be the date upon which EPA issues the ESD.

B. Within thirty (30) days of the effective date of this Agreement, CMP shall pay the sum of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) in full



compensation for the natural resource damages described above. Payment shall be made by a check made payable to the "Maine DEP Uncontrolled Hazardous Substance Fund." This check shall be delivered within the time specified to the Director, Division of Site Investigation and Remediation, Bureau of Hazardous Materials and Solid Waste Control, State House Station #17, Augusta, Maine 04333.

C. Within thirty (30) days of the effective date of this Agreement, CMP shall date, execute and deliver to the Department for its acknowledgment, a Declaration of Restrictive Covenant in the form attached hereto as Exhibit A. The Department shall acknowledge and execute the Declaration and hold the Declaration in escrow until the "completion of the remedial action" by CMP as that phase is defined and used in the above-referenced Consent Decree. The Department shall then file the executed Declaration in the Kennebec County Registry of Deeds.

In consideration of CMP's full and timely compliance with the terms of this Agreement, and in consideration of CMP's full and timely compliance with all terms and provisions of the Consent Decree it entered with the United States Environmental Protection Agency, as described above, the Department releases and discharges CMP, its principals, successors, assigns, parent corporations, subsidiaries, affiliates, agents, servants, employees, attorneys and directors from all actions, suits, causes of action, claims and demands whatsoever which the Department now has, or, but for the execution of this Agreement, could or might have, against CMP, by reason of or in respect to the contamination of the Site described in and addressed by the Consent Decree.

CMP releases the Department and the State of Maine from any and all actions, suits, causes of action, claims or demands whatsoever which it might have, or but for the execution of this Agreement, could or might have had, against the Department and the State of Maine by reason or in respect to the contamination of the Site described in and addressed by the Consent Decree.

This Release shall become final and effective upon full payment of the amount stated in paragraph A above, the filing of the Declaration of Restrictive Covenant provided in paragraph B above and CMP's full and timely compliance with the Consent Decree, including, without limitation, EPA's issuance of all certificates of completion called for by the Consent Decree.

This Release does not apply to any person or entity not a signatory hereto and does not apply to any conditions other than those described above.

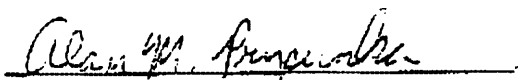
By entering this Agreement, the Department does not waive and specifically reserves all of its authority to address any conditions other than those described above which may be discovered at the Site and may require additional work.

In addition, this is without prejudice to the Department's right with respect to all matters not described above, including but not limited to, the following:

- (1) Claims based on a failure by CMP to meet a requirement of this Agreement;
- (2) State law claims arising from a failure by CMP to meet a requirement of the Consent Decree;
- (3) Liability for any future uncompensated response costs which the Department may incur with regard to the Site. It is not presently contemplated that there will be any such response costs, it being contemplated that the United States Environmental Protection Agency's annual operations grant to the State of Maine shall cover all State oversight costs incurred at the Site prior to the issuance of certificates of completion by the EPA under the Consent Decree.

Notwithstanding any other provision of this Agreement, Release and Stipulation, the Department retains all authority and reserves all rights to take any and all response actions authorized by law and to seek reimbursements from CMP of costs incurred by the State in taking such response actions.

DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

  
ALAN M. PRYSUNKA  
Director, Bureau of Hazardous  
Materials & Solid Waste Control

DATED: 6/21/94

STATE OF MAINE  
KENNEBEC, ss.

Personally appeared before me this 21<sup>st</sup> day of June, 1994 the above-named Alan M. Prysunka, and made oath that the foregoing is true and correct and based upon his personal knowledge.

  
NOTARY PUBLIC

**CENTRAL MAINE POWER COMPANY**




Gerald C. Poulin  
Vice President, Generation and  
Technical Support

DATED: June 8, 1994

**STATE OF MAINE  
KENNEBEC, ss.**

Personally appeared before me this 8<sup>th</sup> day of April, 1994 the  
above-named Gerald C. Poulin, and made oath that the  
foregoing is true and correct and based upon his person knowledge.

  
**NOTARY PUBLIC**

Karla E. SWASEY  
Notary Public, Maine  
My Commission Expires April 1, 2001

**DECLARATION OF RESTRICTIVE COVENANT**

**THE STATE OF MAINE**                    )  
  )  
**COUNTY OF KENNEBEC**                )       **KNOW ALL MEN BY THESE PRESENTS THAT:**

WHEREAS, Central Maine Power Company, a Maine corporation (“CMP”), is record owner of two parcels of property located on Eastern Avenue, so-called (State Route 17) in Augusta, Kennebec County, Maine. Parcel #1 is described in a Deed from William R. O’Connor to the F. O’Connor Company, dated April 1,1977 and recorded in the Kennebec County Registry of Deeds in Book 1987, Page 44. Parcel #2 is described in a Deed from Carroll E. Theriault and Mary J. Theriault to Robert L. Hussey and Jean C. Hussey, dated August 31,1973 and recorded in the Kennebec County Registry of Deeds in Book 1670, Page 165; and

WHEREAS, a portion of the aforesaid parcels has been designated as an Uncontrolled Hazardous Substance Site pursuant to 38 M.R.S.A. §§1364 and 1365 by the Maine Department of Environmental Protection (“DEP”) and has been listed on the National Priorities List as a “Superfund Site” by the United States Environmental Protection Agency (“EPA”) and is subject to remediation pursuant to a Consent Decree entered between CMP and EPA; and

WHEREAS, an Agreement, Release and Stipulation entered into by CMP and DEP requires CMP to file a Declaration of Restrictive Covenant in the Kennebec County Registry of Deeds in order to ensure the integrity of certain remedial measures;

NOW, THEREFORE, the parties hereto agree that the following covenant shall run with the land and be binding upon CMP and its successors and assigns, and shall apply to the portion of the CMP parcels described in Attachment A, which is attached hereto and made a part hereof, and which affected portion shall hereinafter be referred to as the “Property” and shall be effective upon the “completion of the remedial action” by CMP as that phrase is defined and used in the above-referenced Consent Decree:

1. Any use of the groundwater beneath the Property shall be prohibited without the prior written approval of the DEP.
2. Any activity which might disrupt remedial or monitoring measures installed pursuant to the Consent Decree shall be prohibited without the prior written approval of the DEP.
3. CMP or subsequent owner shall maintain the Property in a condition adequate to ensure the continued compliance with all applicable cleanup standards prescribed in, and to ensure the ongoing adequacy of the

remediation implemented under the Consent Decree. By way of example, and not by way of limitation, CMP or subsequent owner shall maintain all drainage ways, berms, monitoring wells, permeable or impervious caps or covers (including paved portions of the property and areas covered by topsoil or other clean fill), piping, pumps and electrical equipment constructed or installed under the Consent Decree.

- 4. The parties hereto agree that the restrictive covenant herein shall be perpetually binding upon the Property, however, if conditions on the Property change, CMP or any subsequent owner of the Property may petition DEP for consent to the removal of the restriction on the Property created hereby and the termination of this Declaration of Restrictive Covenant.
- 5. The restriction contained herein shall only inure to the benefit of and shall only be enforceable by DEP. No owner of any property or other third party shall benefit from the restriction contained herein or have any right or standing to enforce same.
- 6. By its execution hereof, DEP acknowledges and agrees that it has reviewed and approved of the matters contained herein and that this Declaration of Restrictive Covenant, upon being filed in the Kennebec County Registry of Deeds, will satisfy the applicable provisions of the Agreement, Release and Stipulation it has entered with CMP regarding the Property.

IN WITNESS WHEREOF, the parties hereto have executed this Declaration of Restrictive Covenant as of the \_\_\_\_\_ day of \_\_\_\_\_, 1994.

CENTRAL MAINE POWER COMPANY

By: \_\_\_\_\_  
Name:  
Title:

STATE OF MAINE  
KENNEBEC, ss.

Personally appeared before me this \_\_\_\_\_ day of April, 1994, the above-named \_\_\_\_\_ and made oath that the foregoing is true and correct and based upon his/her personal knowledge.

\_\_\_\_\_  
NOTARY PUBLIC

**ACKNOWLEDGED AND AGREED TO:**

**DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

By: \_\_\_\_\_

Name:

Title:

**STATE OF MAINE**

**KENNEBEC, ss.**

Personally appeared before me this \_\_\_\_\_ day of April, 1994, the above-named  
and made oath that the foregoing is true and correct  
and based upon his/her personal knowledge.

\_\_\_\_\_  
NOTARY PUBLIC

DEED DESCRIPTION

The following described parcel, situated on the Northeasterly side of State Route 17, locally known as Eastern Avenue, in the City of Augusta, Kennebec County, particularly bounded and described as follows:

Beginning at a 1" iron pipe found at an angle point in the Northeasterly sideline of Eastern Avenue (Bk 4089-p. 269), as shown on a plan entitled, "Standard Boundary Survey for Central Maine Power Company, F. O'Connor Superfund Site" by Coffin Engineering, Revision dated March 22, 1994. Said point of beginning is also situated S 47°24' 45" E of and 52.78 feet from a 3/4" iron pipe found at the most Southerly corner of Henry R. & Lillian W. Cox (Bk 1554-p. 126).

Thence N 47°42' 03" E a distance of 623.68 feet to a 5/8" rebar set in a stone wall in the Southwesterly line of Lionel J. & Raymond A. Rodrigue (Bk 2857-p.34). Said rebar is also situated S 60°26' 23" E of and 251.05 feet from a 5/8" rebar set in a drill hole at the most Easterly corner of Donald S. Rodrigue (Bk 4164-p. 336).

Thence Southeasterly along the Southwesterly line of Ridrigue, and partially following said stone wall, to a 5/8" rebar set at the Northwesterly sideline of a 100 foot wide transmission line corridor designated Section #19 (Bk 1117-p. 314). The tie line between the two last mentioned rebars is S 60°46' 07" E and 1,354.72 feet.

Thence S 35°12' 18" W along the Northwesterly line of said transmission corridor, a distance of 386.82 feet to a 5/8" rebar set.

Thence S 79°45' 02" W along the Northerly line of said transmission corridor, a distance of 824.70 feet to a 5/8" rebar set in the Northeasterly sideline of Eastern Avenue.

Thence N 40°50' 03" W along the Northeasterly side of Eastern Avenue, a distance of 822.31 feet to a 5/8" rebar set at the most Southerly corner of land conveyed from Jean E. & Robert L. Hussey to Central Maine Power Company (Bk 3507-p. 195).

Thence continuing N 40°50' 03" along the Northeasterly side of Eastern Avenue, a distance of 109.00 feet back to the point of beginning.

Meaning and intending to describe 23.36 acres of land, as shown on a plan entitled, "Standard Boundary Survey for

Central Maine Power Company F. O'Connor Superfund Site" by Coffin Engineering & Surveying, revision dated March 22, 1994.

All directions are Magnetic 1987, based on a survey entitled, "Proposed Sale to Augusta Water District" by Coffin Engineering & Surveying, dated November 9, 1987.

Reserving an easement granted to the state of Maine, recorded in the Kennebec County Registry of Deeds in Book 3343-p. 221.

Excepting the old Field burial ground which contains about one eighth of an acre.

The herein described parcel is a portion of land conveyed from F. O'Connor Co. to Central Maine Power Co., recorded in the Kennebec County Registry of Deeds in Book 4089-p. 269, and also a portion of land conveyed from Jean E. & Robert L. Hussey to said CMPCo., recorded in Book 3507-p. 195.



ATTACHMENT 2

DEED DESCRIPTION

The following described parcel, situated on the Northeasterly side of State Route 17, locally known as Eastern Avenue, in the City of Augusta, Kennebec County, particularly bounded and described as follows:

Beginning at a 1" iron pipe found at an angle point in the Northeasterly sideline of Eastern Avenue (Bk 4089-p. 269), as shown on a plan entitled, "Standard Boundary Survey for Central Maine Power Company, F. O'Connor Superfund Site" by Coffin Engineering, Revision dated March 22, 1994. Said point of beginning is also situated S 47°24' 45" E of and 52.78 feet from a 3/4" iron pipe found at the most Southerly corner of Henry R. & Lillian W. Cox (Bk 1554-p. 126).

Thence N 47°42' 03" E a distance of 623.68 feet to a 5/8" rebar set in a stone wall in the Southwesterly line of Lionel J. & Raymond A. Rodrigue (Bk 2857-p.34). Said rebar is also situated S 60°26' 23" E of and 251.05 feet from a 5/8" rebar set in a drill hole at the most Easterly corner of Donald S. Rodrigue (Bk 4164-p. 336).

Thence Southeasterly along the Southwesterly line of Ridrigue, and partially following said stone wall, to a 5/8" rebar set at the Northwesterly sideline of a 100 foot wide transmission line corridor designated Section #19 (Bk 1117-p. 314). The tie line between the two last mentioned rebars is S 60°46' 07" E and 1,354.72 feet.

Thence S 35°12'18" W along the Northwesterly line of said transmission corridor, a distance of 386.82 feet to a 5/8" rebar set.

Thence S 79°45' 02" W along the Northerly line of said transmission corridor, a distance of 824.70 feet to a 5/8" rebar set in the Northeasterly sideline of Eastern Avenue.

Thence N 40°50' 03" W along the Northeasterly side of Eastern Avenue, a distance of 822.31 feet to a 5/8" rebar set at the most Southerly corner of land conveyed from Jean E. & Robert L. Hussey to Central Maine Power Company (Bk 3507-p. 195).

Thence continuing N 40°50' 03" along the Northeasterly side of Eastern Avenue, a distance of 109.00 feet back to the point of beginning.

Meaning and intending to describe 23.36 acres of land, as shown on a plan entitled, "Standard Boundary Survey for

Central Maine Power Company F. O'Connor Superfund Site" by Coffin Engineering & Surveying, revision dated March 22, 1994.

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