

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS – SOUTH

SUPERIOR COURT

Docket No.: 226-2014-CV-00336

State of New Hampshire  
Department of Environmental Services

v.

Kimball Physics, Inc.

**CONSENT DECREE**

NOW COME the Petitioner, the State of New Hampshire Department of Environmental Services (hereinafter “State” or “Department”), by and through its attorneys, the Office of the Attorney General, and the Respondent, Kimball Physics, Inc. (“KPI”) , by and through its attorneys, Devine, Millimet & Branch, P.A. and hereby agree to the following settlement of claims asserted by the State in this case.

**A. INTRODUCTION**

1. The Department, located at 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire, 03301-0095, is the State agency responsible for the administration and enforcement of New Hampshire’s Hazardous Waste Management Act, RSA chapter 147-A, and the administrative rules adopted thereunder.
2. RSA 147-A:17, I, authorizes the State to seek a civil forfeiture of up to fifty thousand dollars (\$50,000) against a person for each day of each continuing violation of any provision of RSA 147-A or any rules adopted relative to RSA 147-A.
3. Respondent KPI is a Delaware corporation authorized to conduct business in New Hampshire with its principal office and mailing address of 311 Kimball Hill Road, Wilton, New

Hampshire 03086. KPI designs and manufactures electron emitting and related machines and equipment.

4. The State and KPI, wishing to avoid the expense of litigation agree, without adjudication of the facts or law, that settlement of this matter in the public interest and that entry of this Decree without further litigation is an appropriate and just way to resolve any dispute. The parties enter into this agreement solely to resolve disputed claims and KPI admits to no liability for any of the State's claims, nor, other than its answer to the Petition, to any of the facts the State has alleged.

5. The State and KPI consent to entry of this Decree.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

**B. JURISDICTION AND VENUE**

6. This Court has jurisdiction over the parties and this action pursuant to RSA 147A:4, RSA 147-A:9 and RSA 147-A:17 (2005). Venue is proper in this county because the KPI is located in Wilton, New Hampshire.

**C. CIVIL FORFEITURE**

7. KPI shall be assessed a total civil forfeiture of one hundred thirty thousand dollars (\$130,000), in exchange for a release and full settlement of the violations of the hazardous waste statutes and rules alleged or that could have been alleged in the Petition as they relate to the KPI facilities located in Wilton, New Hampshire. In addition to the total civil forfeiture, KPI shall be responsible for the completion of audits pursuant to all terms of paragraphs 9 through 11.

8. The civil forfeiture provided by this Decree shall be satisfied by a payment of one hundred thirty thousand dollars (\$130,000) to the New Hampshire Hazardous Waste Cleanup Fund ("HWCF") within ten days of the effective date of this Decree.

9. KPI shall be responsible for the completion of three (3) unannounced, third-party hazardous waste audits of all of its New Hampshire facilities within the timeframe set forth below. KPI will contract a qualified third-party hazardous waste consulting firm (i.e., auditors that are State Certified Hazardous Waste Coordinators) as approved by the Department, to perform the first audit during the month of November 2015 with a submittal date to the Department within thirty (30) days of the audit; two (2) audits in the second year to be performed in June and December 2016 with submittal dates to the Department within thirty (30) days of the audits.

10. The audits are to be full compliance evaluation inspections that will assess compliance with all applicable hazardous waste management requirements and will include completion of the Department's Hazardous Waste Generator RCRA Inspection Checklist and associated modules. All results and reports generated by the audits, including completed copies of the Hazardous Waste Generator RCRA Inspection Checklist and associated modules, shall be submitted to the Department within 30 days of the date the audit was conducted. The audit reports must be submitted to the Department prior to or simultaneously with the submission of audit results to KPI. KPI shall submit copies of invoices, purchase orders, or cancelled checks to demonstrate the expenses incurred.

11. Audit results and reports pursuant to this agreement shall be mailed to NH Department of Environmental Services, Waste Management Division, Attn: John Duclos, Administrator, Hazardous Waste Management Bureau, P.O. Box 95, Concord, NH 03302-0095.

12. The payment due to the State under this Decree shall be due and payable without any demand from the State. The payment shall be delivered by hand or certified mail to the Office of the Attorney General, Environmental Protection Bureau, 33 Capitol Street, Concord, New

Hampshire, 03301, Attn: Lauren J. Noether, Senior Assistant Attorney General. KPI shall pay interest on any late payment, which interest shall accrue at a rate of 10% per annum, per RSA 336:1, I.

#### **D. OTHER TERMS AND CONDITIONS**

13. The Department, by and through the Attorney General, releases and covenants not to sue or take any administrative action against KPI and its successors and assigns based on the facts and the violations alleged in the Petition or for violations that might have been alleged based on specific material facts known to the State.

14. The parties acknowledge that KPI and its successors and assigns have a continuing obligation to remain in compliance with all applicable federal and state laws, rules and permits relating to its facility. The State reserves the right to bring any administrative, civil, or criminal action for any hazardous waste, solid waste, or other environmental violation arising after the effective date of this Decree. This reservation of rights includes, but is not limited to, violations that occur in connection with the terms of this Decree. KPI reserves any and all defenses with regard to any such claims the State may assert.

15. It is the intention of the parties that this Decree be entered and enforced as an Order of the Court, subject to all the power of the Court at law and equity. KPI acknowledges that any violation of the Decree or the agreements reflected herein may be cause for KPI being adjudged in contempt of court and hereby waives any objections to jurisdiction or service of process if such remedy is sought by the State.

16. The State's failure to enforce any provision of this Decree after any breach or default shall not be deemed a waiver of its right to enforce each and all of the provisions of this Decree upon further breach or default.

17. This Decree contains the entire agreement of the parties, and any material modifications hereto must be agreed to in writing by both KPI and the State, acting through the Attorney General's Office, and filed with the Court. The parties may agree in writing without Court approval of non-material modification, such as modification to schedules established by this Decree with no effect on statutory, regulatory, or permitted obligations. Such non-material modifications become effective upon execution by both parties.

18. The effective date of this Decree shall be the date upon which it is entered as an Order of the Court.

19. This Decree shall be construed in accordance with the laws of New Hampshire.


20. Each party shall bear its own costs and attorneys' fees.

21. The Court shall retain jurisdiction of this matter for purposes of enforcement of the Decree and shall act upon the case upon motion by either party for enforcement of its terms.

THE STATE OF NEW HAMPSHIRE

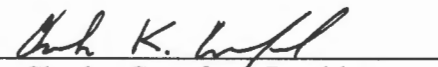
By its attorney,  
JOSEPH A. FOSTER  
ATTORNEY GENERAL

Dated: August 21, 2015

By:   
Lauren J. Noether, N.H. Bar # 1881  
Senior Assistant Attorney General Environmental  
Protection Bureau  
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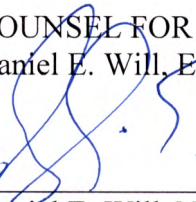
KIMBALL PHYSICS, INC.

Dated: August 21, 2015

By:   
Dr. Charles Crawford, President  
Wilton, New Hampshire

COUNSEL FOR Kimball Physics, Inc.  
Daniel E. Will, Esquire

Dated: August 21, 2015

By:   
Daniel E. Will, N.H. Bar #12176  
Devine, Millimet & Branch, P.A.  
111 Amherst Street  
Manchester NH 03101  
(603) 695-8626

I hereby enter this Consent Decree as an Order of the Court.

Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Justice of the Superior Court