

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,)
)
 Plaintiff)
)
 v.)
)
 DEAD RIVER COMPANY and)
)
 IRVING OIL CORPORATION,)
)
 Defendants)

COMPLAINT
(Injunctive Relief Requested)

I. INTRODUCTION

1. This is an antitrust enforcement action brought by the Attorney General of the State of Maine pursuant to 10 M.R.S.A. §§ 1102-A and 1104, seeking injunctive relief to prevent the occurrence of adverse effects on competition which might result from the Defendant Dead River Company's ("Dead River") acquisition of certain assets owned or beneficially owned by Irving Oil Corporation ("Irving").

II. PARTIES

2. Plaintiff, the State of Maine, sues in its sovereign capacity. The State, through the Office of the Attorney General, is charged by statute with the enforcement of the antitrust laws, including 10 M.R.S.A. §§ 1102-A and 1104.

3. Defendant Dead River Company is a Maine corporation with headquarters in Portland. Dead River's principal business is wholesale and retail trade in petroleum products.

4. Defendant Irving Oil Corporation is a Maine corporation with headquarters in Bangor. Irving is the affiliate, under common control, of a closely held New Brunswick corporation with headquarters in Saint John, namely, Irving Oil Limited. Irving's principal

business in Maine is the wholesale and retail trade in petroleum products refined and produced by the affiliate corporation.

III. JURISDICTION & VENUE

5. This Court has jurisdiction of this action pursuant to 4 M.R.S.A. § 105, 10 M.R.S.A. § 1104, and 14 M.R.S.A. § 6051 (13).

6. Venue is proper in this Court pursuant to 14 M.R.S.A. § 501.

IV. NATURE OF TRADE AND COMMERCE

7. Dead River conducts wholesale and retail petroleum business throughout the State of Maine, including Aroostook County. As a part of its business, Dead River operates a 90,000-gallon bulk propane storage facility in Caribou. Dead River purchases or has access to the purchase of propane on U.S. and international markets for delivery by rail to its Caribou facility. The Caribou facility has rail access as well as sidings where rail cars loaded with 30,000 gallons of propane can be accommodated. Dead River offers to sell and sells propane from its Caribou facility at wholesale to retailers in Aroostook County. Dead River also supplies its own retail propane business in Aroostook County from its Caribou facility.

8. Irving conducts a wholesale and retail petroleum business throughout the State of Maine, including Aroostook County. Irving's affiliate corporation, Irving Oil Limited, is a refiner of petroleum products headquartered in Saint John, New Brunswick, where it also operates a refinery which produces a range of petroleum products, including propane. Irving operates a 30,000-gallon bulk propane storage facility in Presque Isle, Maine. Irving supplies its Presque Isle facility by tanker truck deliveries from the Saint John refinery, or from other bulk propane facilities which the affiliate corporation possesses at other New Brunswick locations. Irving uses the propane stored at its Presque Isle facility to supply its own retail propane business

in Aroostook County. Although Irving currently does not sell propane from its Presque Isle facility at wholesale to independent retailers, it is an important potential competitor in the wholesale market for propane in Aroostook County.

9. Dead River and Irving possess the only bulk propane storage facilities located in Aroostook County.

10. Because of the significant financial investment required to establish a bulk propane storage facility, the barriers to entry into the wholesale market for propane are high. The barriers to entry into the retail market for propane, by contrast, are low, provided the entrant possesses an assured source of supply.

11. As noted in paragraph 1 above and more fully described below, Dead River expects to consummate the acquisition of certain petroleum (including propane) assets owned by Irving in Aroostook, Penobscot and Washington Counties early in calendar year 2003.

V. MARKET DEFINITION AND CONCENTRATION

12. The lines of commerce and geographical areas within which the acquisition referred to in paragraph 11 above must be assessed are the sale at wholesale and retail of propane in Aroostook County, and specifically in the Presque Isle and Houlton markets as delineated on the map attached hereto as Exhibit A.

13. As of the date of filing of this Complaint, the wholesale market for propane in Aroostook County is highly concentrated. Dead River possesses a high degree of horizontal market power in the wholesale market for propane. In addition, the retail market for propane in the Presque Isle and Houlton markets is highly concentrated. But for the potential competitive threat in the wholesale market posed by Irving, Dead River would also possess a high degree of vertical market power in these markets.

VI. THE PROPOSED ACQUISITION

14. Dead River proposes to acquire substantially all of Irving's home heating oil and propane-related retail assets in Aroostook, as well as portions of Penobscot and Washington Counties. The assets to be acquired include Irving's 30,000-gallon bulk propane storage facility, currently located at Presque Isle.

VII. CAUSE OF ACTION

15. The proposed acquisition, if consummated, would have the following effects in the Aroostook County wholesale propane market:

- (a) competition would be substantially lessened;
- (b) Dead River's market power would be increased; and
- (c) concentration in the market would be increased.

16. The proposed acquisition, if consummated, would have the following effects in the Presque Isle and Houlton retail propane markets:

- (a) competition would be substantially lessened;
- (b) Dead River's market power and ability to block new entry would be increased; and
- (c) concentration in the market would be increased.

17. Defendants' proposed acquisition as described above would violate 10 M.R.S.A. § 1102-A.

VIII. PRAYER

WHEREFORE, the Attorney General prays that this Court:

A. Permanently enjoin the acquisition, or, in the alternative, subject Defendant Dead River's proposed acquisition to conditions which will protect the Aroostook County wholesale

propane market and the Presque Isle and Houlton retail propane markets from the effects described in paragraphs 15-16 above.

B. Award such further relief as the Court deems just and proper.

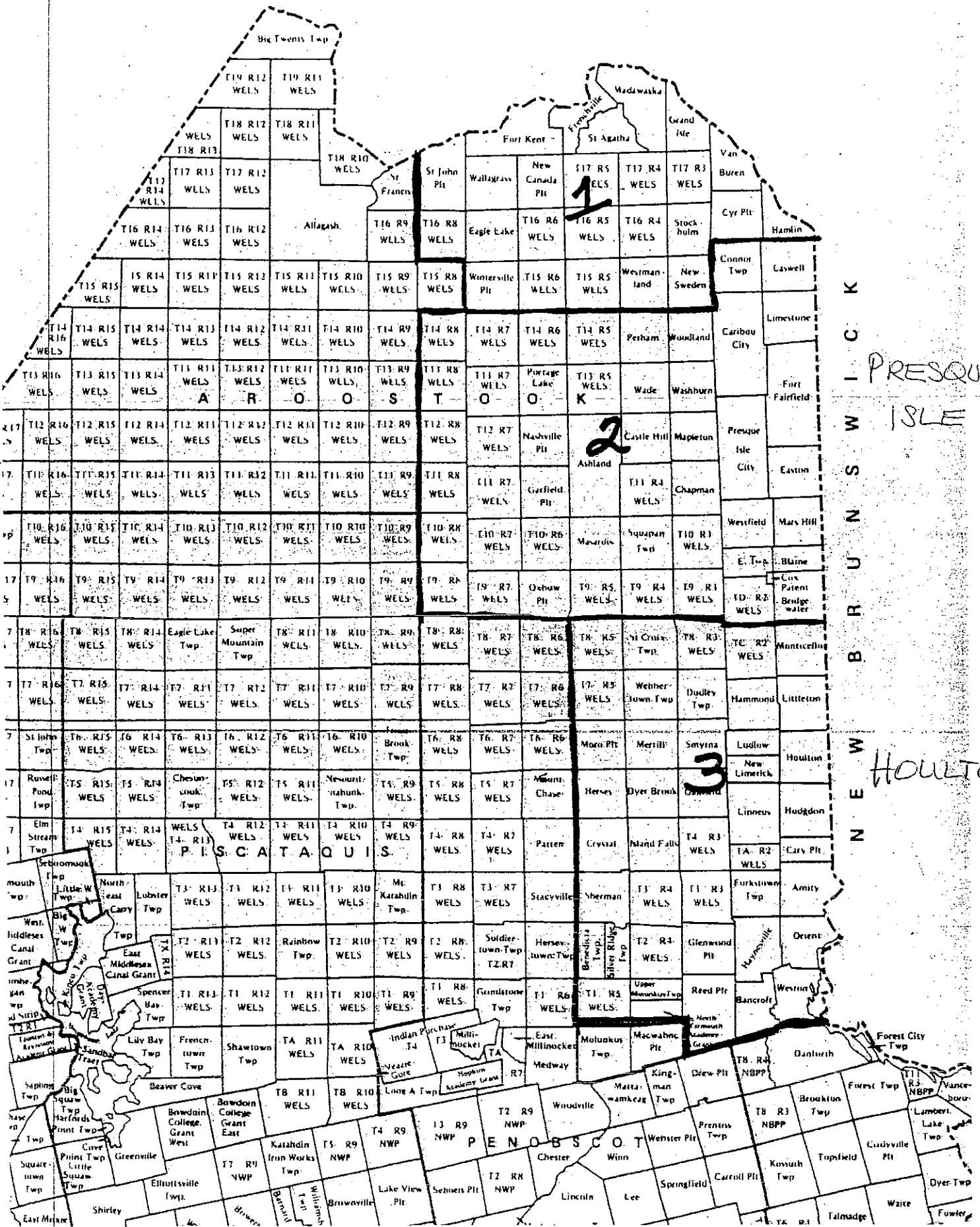
G. STEVEN ROWE
Attorney General

Dated: February 18, 2003



FRANCIS ACKERMAN
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EXHIBIT A



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 PRESQUE ISLE
 HOULTON

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. *CV03-32*

STATE OF MAINE,)
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 DEAD RIVER COMPANY and)
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 IRVING OIL CORPORATION,)
)
 Defendants)

CONSENT DECREE

WHEREAS, Plaintiff, the State of Maine, filed the Complaint herein on *February 18* ~~January~~ , 2003, alleging that Defendant Dead River Company's proposed acquisition of certain home heating oil and propane-related assets of Defendant Irving Oil Corporation located in northern and eastern Maine, insofar as it relates to certain propane-related assets, would violate 10 M.R.S.A. § 1102-A; and

WHEREAS, Plaintiff and Defendants have agreed to the entry of this Consent Decree without trial or adjudication of any issue of fact or law raised by the Complaint; and

WHEREAS, the fact of Defendants' consent to the entry of this Decree shall not be deemed to constitute an admission by Defendants of any facts (other than jurisdictional facts) alleged in the Complaint, or an admission that absent the relief contemplated by the Consent Decree the proposed acquisition would violate 10 M.R.S.A. § 1102-A;

NOW THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law and upon consent of the parties hereto, it is hereby

ORDERED AND DECREED as follows:

I. JURISDICTION

This Court has jurisdiction of the subject matter of this action. The Complaint states a claim upon which relief may be granted against the Defendants under 10 M.R.S.A. §§ 1102-A and 1104.

II. DEFINITIONS

As used in this Consent Decree:

- (a) "Attorney General" refers to the State of Maine, Office of the Attorney General.
- (b) "Court" refers to the Maine Superior Court.
- (c) "Dead River" refers collectively to Defendant Dead River Company, and any parents, subsidiaries and affiliates now in existence or to be formed in the future, their successors, officers, employees, agents, servants, attorneys and persons in active concert or participation with them.
- (d) "Irving Oil Corporation" refers collectively to Defendant Irving Oil Corporation, and any parents, subsidiaries and affiliates now in existence or to be formed in the future, their successors, officers, employees, agents, servants, attorneys and persons in active concert or participation with them.
- (e) "Acquisition" refers to the proposed acquisition by Dead River from Irving of retail home heating oil and propane-related assets at five locations in northern and eastern Maine, as set forth in a revised letter of intent entered into by the parties dated December 27, 2002.
- (f) "Decree" means this Consent Decree.

III. RELIEF

A. Relief Provisions Specific to Dead River

1. Dead River shall enter into a contract, subject to the prior approval of the Attorney General, for the throughput of propane supplied by or for the account of Irving Oil Corporation at Dead River's propane bulk storage plant in Caribou, for the purpose of allowing Irving Oil Corporation to wholesale propane from that location, for a period beginning on the closing date of the Acquisition and ending upon the termination of this Decree. The contract shall provide that Dead River will throughput propane supplied by or for the account of Irving Oil Corporation at a negotiated throughput fee not to exceed \$.05 per gallon. The contract may provide that the maximum throughput fee specified in this paragraph may be adjusted to reflect changes in the Consumer Price Index, Northeast Region, pursuant to paragraph IV (3) below. Prior to the date of closing of the Acquisition, Dead River shall provide to the Attorney General a copy of its throughput contract with Irving Oil Corporation.

2. In addition to its contract to throughput propane for Irving Oil Corporation, for the term of this Decree Dead River shall offer to contract to throughput propane at Dead River's Caribou propane bulk storage plant to at least one other firm, at a throughput fee not to exceed \$.05 per gallon, for the purpose of enabling that firm to wholesale propane. Dead River shall submit its acceptance or rejection of any firm's application for a throughput arrangement to the Attorney General for prior approval. The contract with the throughputting firm may provide that the maximum throughput fee specified in this paragraph may be adjusted to reflect changes in the Consumer Price Index, Northeast Region, pursuant to paragraph IV (3) below.

3. If the quantity of propane to be throughputted by Dead River at its Caribou propane bulk storage plant, when combined with quantities required by Dead River to serve its wholesale and retail customer base, exceeds the capacity of the plant, Dead River may seek the permission of the Attorney General to prorate storage capacity at the plant among itself and the firm or firms throughputting at the plant in quantities proportional to the average amount of propane drawn by each firm at the plant over the preceding 12 months, or in quantities measured according to some other standard which is more equitable in the circumstances. The Attorney General shall freely grant such permission, and shall exercise his sole discretion to determine the appropriate standard for proration. Pending a determination otherwise by the Attorney General, Dead River may prorate storage capacity at the plant among itself and the firm or firms throughputting at the plant in quantities proportional to the average amount of propane drawn by each firm at the plant over the preceding 12 months.

4. Any throughput contract covered by this Decree may include any commercially reasonable terms which are standard in the industry. For example, without limitation, any such contract may include terms which: (1) provide for mutual indemnification; (2) provide for mutually consistent product quality; (3) govern the payment of taxes, environmental fees and environmental cleanup costs; (4) provide for termination for material nonpayment of throughput fees, or failure to make any withdrawals for a thirty-day period, and authorize Dead River to sell product remaining in its tanks to reduce arrearages; (5) adjust the throughput fee to reflect changes in the Consumer Price Index, Northeast Region; and (6) provide for the proportional allocation of any product shrinkage.

5. Dead River shall mail a copy of the Notice set forth in Exhibit A to the parties listed in Exhibit B. Dead River shall within a reasonable time, not to exceed 30 days after entry of this Consent Decree, provide a written confirmation of the required mailing to the Attorney General.

B. Relief Provisions Specific to Irving Oil Corporation

1. Within one year from the date of entry of this Decree, subject to the prior approval of the Attorney General, Irving Oil Corporation shall sell its propane storage tank located in Presque Isle to the highest-bidding qualified buyer. For purposes of this paragraph, a qualified buyer is any person or firm that agrees in the transfer deed or bill of sale: (1) to remove the tank from its current location on Irving Oil Corporation-owned property in Presque Isle to a new location in the Presque Isle-Caribou area; (2) to use the tank at least in part for the wholesale sale of propane in Aroostook County for at least three years, and (3) that the Attorney General in his capacity as the agency charged with the enforcement of Maine antitrust law, is the intended beneficiary of these provisions. Irving Oil Corporation shall cooperate with the qualified buyer in good faith to permit the buyer to fully effectuate these provisions of the transfer deed or bill of sale.

2. If Irving Oil Corporation has not sold the tank, absolutely and in good faith and with the prior approval of the Attorney General, within one year of the entry of this Decree, the Attorney General may appoint a Trustee to sell the tank, subject to the consent of Irving Oil Corporation, which consent shall not be unreasonably withheld, or direct Irving Oil Corporation to continue diligently to offer the propane tank for sale. The Trustee shall be a person with experience in petroleum equipment sales. Within ten days of the appointment of a Trustee, Irving Oil Corporation shall execute a trust agreement in

commercially reasonable form, subject to the prior approval of the Attorney General, which transfers to the Trustee all rights and powers necessary to permit the Trustee to effect the required sale. The trust agreement shall award commercially reasonable fees to the Trustee to be paid by Irving Oil Corporation. The Trustee shall have up to three years from the date of entry of this Decree to accomplish the required sale. The Trustee shall use best efforts to negotiate the most favorable price and terms subject to Irving Oil Corporation's absolute and unconditional obligation to sell the tank at no minimum price. Irving Oil Corporation shall maintain the tank in a marketable condition until its obligation to sell, directly or through the Trustee, expires, or until the tank is sold, whichever first occurs.

3. All obligations of Irving Oil Corporation in Sections 1 and 2 above (except its liability for the Trustee's fee, if incurred) shall expire sixty days following the third anniversary of this Decree.

4. Beginning on the closing date of the Acquisition, Irving Oil Corporation shall exercise commercially reasonable efforts to sell at wholesale the propane stored by Irving Oil Corporation at the Dead River propane storage facility in Caribou pursuant to the contract described in Section III(A) (1) of this Decree. Irving Oil Corporation may require assurances of creditworthiness as a condition for making any sale on credit and, absent adequate assurance, require cash on delivery as a condition to making any sale. Irving Oil Corporation may refuse to sell product to any firm whose balance due to Irving Oil Corporation is not paid in full after more than 30 days from date of delivery.

5. Irving Oil Corporation shall enter into a contract, subject to the prior approval of the Attorney General, for the throughout of propane supplied by Irving Oil

Corporation at Dead River's Caribou propane bulk storage plant, for a period beginning on the closing date of the Acquisition and ending upon the termination of this Decree, as described in Section III(A) (1) of this Decree.

IV. MISCELLANEOUS

1. Dead River shall make annual reports to the Attorney General on each anniversary date of this Consent Decree, during its term, setting forth for any party with throughput arrangements at Dead River's bulk propane storage facilities in Caribou, Maine the monthly gallonages of propane withdrawn by that party from Dead River's bulk propane storage facilities in Caribou, Maine. All such reports shall be treated as confidential pursuant to 16 M.R.S.A. § 614(1)(F).

2. Irving shall provide periodic reports to the Attorney General, as requested by the Attorney General, detailing its efforts to comply with the provisions in Section III(B) (1) of this Decree for the sale of its propane tank in Presque Isle, Maine. All such reports shall be treated as confidential pursuant to 16 M.R.S.A. § 614(1)(F).

3. Dead River and Irving Oil Corporation shall fully comply with any additional requests for information relating to the subject matter of this Decree directed to either of them by the Attorney General during the pendency of this Decree. Dead River and Irving Oil Corporation's responses to any such request shall be treated as confidential pursuant to 16 M.R.S.A. § 614(1)(F).

4. On each January 1 of any year during which this Decree is in effect, the maximum throughput fee for propane specified by this Decree shall be adjusted by an amount proportional to the percentage change in the Consumer Price Index, Northeast Region (base year 1982-84=100), by comparing the index to the then most recently

completed half year to the index for the first half of 2002 (186.9). Dead River shall compute the percentage change, and notify the Attorney General of its calculation one month prior to any change in the CPI adjustment factor.

V. RETENTION OF JURISDICTION

Jurisdiction is retained by the Court for the purpose of enabling any of the parties to the Decree to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the interpretation or implementation of this Consent Decree, for the modification of or relief from any of the provisions hereof, and for the enforcement of compliance herewith. Any dispute between Dead River and the Attorney General resulting from an alleged breach of a throughput contract between Dead River and Irving Oil Corporation or any third party contemplated by this Decree shall first be submitted to alternative dispute resolution as agreed upon by the parties, or failing such agreement, as ordered by the Court. The expense of such ADR shall be borne by Dead River and shall not be chargeable to the Attorney General or the Court. The Court may, in its sole discretion, decide to bypass alternative dispute resolution, upon request by either party. Nothing herein shall be construed to alter the contract rights or remedies of any party.

VI. COSTS

Defendants shall pay to the Department its costs of investigation in this matter, pursuant to 10 M.R.S.A. §1104, in the total amount of \$7,500.00.

VII. TERM

This Decree shall expire sixty days from its eighth anniversary. If at any time following the third anniversary of this decree, it is determined that there is a wholesale

supplier of propane (other than Dead River) operating a bulk plant in the Presque Isle-Caribou area for at least 24 months then this Decree shall be terminated by the Court upon petition by any party. Following the third anniversary of this Decree, upon application by any party, the Court may relieve that party from further obligation under this Decree if it determines (1) that the status of competition in the wholesale sale of propane in Aroostook County and the retail sale of propane in the Presque Isle-Caribou and Houlton areas is equal to or better than its status immediately prior to the acquisition; and (2) that the provisions of this Decree applicable to that party are no longer reasonably necessary to preserve such competition in the wholesale sale of propane in Aroostook County or the retail sale of propane in the Presque Isle-Caribou and Houlton areas.

VIII. PUBLIC INTEREST

Entry of this Consent Decree is in the public interest.

Dated: 2/18/03

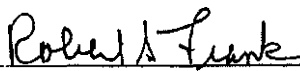
CONSENTED TO ON BEHALF OF
THE STATE OF MAINE BY:



FRANCIS ACKERMAN
Assistant Attorney General

Dated: 2/18/03

CONSENTED TO ON BEHALF OF
DEFENDANT DEAD RIVER
COMPANY BY:

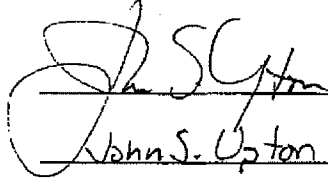


Attorney for Dead River Co.

Dated: 2/18/03

CONSENTED TO ON BEHALF OF


DEFENDANT IRVING OIL
CORPORATION BY:



John S. Upton # 2034

It is hereby ordered and adjudged as set forth above. Judgment shall enter in accordance with the above terms, which are incorporated herein by this reference.

Dated: 2/18/03



JUSTICE, Superior Court