

**DRAFT – PUBLIC COMMENT DRAFT
PUBLICATION DATE - 7-15-14**

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:)
)
)
Clean Harbors Kingston Facility)
Corporation,)
RESPONDENT)
_____)

File No.: ACO-BO-14-2001

ADMINISTRATIVE CONSENT ORDER

I. THE PARTIES

1. The Department of Environmental Protection (“MassDEP” or “Department”) is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108.
2. Clean Harbors Kingston Facility Corporation (“Clean Harbors” or “Respondent”) is a corporation with its principal place of business at 42 Longwater Drive, Norwell, MA, 02061. Respondent owns and operates a waste oil storage and treatment facility at 30 Joseph Street, Kingston, Massachusetts. Respondent’s mailing address for purposes of this Consent Order is Attn.: General Counsel, Clean Harbors Kingston Facility Corporation, 42 Longwater Drive, Norwell, MA 02061-9149.

II. STATEMENT OF FACTS AND LAW

3. MassDEP is responsible for the implementation and enforcement of M.G.L. c. 21C and the Hazardous Waste Regulations at 310 CMR 30.000 and M.G.L. c. 21E and the Massachusetts Contingency Plan (“MCP”) at 310 CMR 40.0000. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.
4. Respondent is a waste oil storage and treatment facility with interim status pursuant to 310 CMR 30.099. Respondent is the current owner and operator of the property located at 30 Joseph Street, Kingston, Massachusetts, at or from which there is or has been a release and/or

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threat of release of oil and/or hazardous material pursuant to M.G.L. c. 21E (“Property” or “Kingston Facility”). For purposes of this Consent Order, “Site” shall mean the Property, and any other place or area where the release of oil and/or hazardous material at or from the Property has come to be located.

5. The Respondent has requested to proceed with executing its Closure Plan for its Kingston Facility.

6. This Consent Order will act as the mechanism to effectuate closure of the Kingston Facility, an interim status facility, pursuant to 310 CMR 30.099(6)(b). This Consent Order also outlines the framework whereby the Respondent will assess and remediate any releases of hazardous material to the environment at the Kingston Facility and other areas where contamination has come to be located, including actual and potential releases to soil or groundwater, so as to achieve a Permanent Solution as defined by the MCP, by complying with the Corrective Action requirements for interim status facilities at 310 CMR 30.099(13) and with M.G.L. c. 21E and 310 CMR 40.0000.

7. The following facts have led MassDEP to issue this Consent Order:

HAZARDOUS WASTE MANAGEMENT

- A. Pursuant to M.G.L. c. 21C, § 7, MassDEP issued Clean Harbors Interim Hazardous Waste License No. 172 on June 24, 1980 (“Interim License”).
- B. Pursuant to M.G.L. c. 21C, § 7, in November 1985 Clean Harbors applied for a Massachusetts Hazardous Waste facility license (“Part B license”).
- C. Clean Harbors implemented a Limited Site Investigation (“LSI”) at its Kingston Facility, and submitted LSI Interim Reports to MassDEP on April 20, 1988 and March 10, 1989.
- D. Pursuant to 310 CMR 30.200, in April of 1988, Clean Harbors applied for a Class B(3) hazardous waste recycling permit for its Kingston Facility. MassDEP issued a Class B(3) recycling permit to Clean Harbors, Permit No. S-04-14, pursuant to a Consent Agreement which was effective March 31, 1989 (“1989 Consent Agreement”).
- E. Pursuant to the 1989 Consent Agreement, Clean Harbors agreed to suspend all waste oil storage and treatment operations not expressly authorized by the Class B(3) recycling permit. Clean Harbors also agreed to assess and, if necessary, remediate soil and groundwater contamination at the Kingston Facility.
- F. Once the 1989 Consent Agreement was signed, Clean Harbors stopped pursuing a Part B license and no longer conducted any activities that were not expressly authorized under the Class B(3) recycling permit.

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- G. Site assessment activities have been conducted at the Kingston Facility since the 1980s, and have been recorded in many documents submitted to the MassDEP. Remedial activities conducted to date at the Kingston Facility have included soil excavation and off-site disposal, on-site soil treatment and recapping with asphalt, on-site groundwater treatment and recharge, in-situ chemical oxidation, and continuous groundwater monitoring.
- H. In a letter dated October 17, 2007, Clean Harbors stated its intent to relinquish its Class B(3) recycling permit, close its recycling operations, and begin work on a Closure Plan.
- I. Clean Harbors submitted a Closure Plan on January 25, 2008.
- J. Clean Harbors notified MassDEP in January 2011 of its intent to revise the Closure Plan.

8. Without limitation, Respondent agrees to the conditions listed in this Consent Order. The parties agree that this Consent Order supersedes the 1989 Consent Agreement referenced in paragraph 7 above.

III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

9. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

10. MassDEP's authority to issue this Consent Order is conferred by the statutes and regulations cited in Part II of this Consent Order.

11. Closure of Interim Status Facility

A. Pursuant to 310 CMR 30.099(6)(b) of the Hazardous Waste Regulations, Interim Status facilities must comply with the requirements of 40 CFR Part 265, Subpart G, Closure and Post-Closure, subject to the provisions in 310 CMR 30.099(6)(b)1 through 8.

B. The Respondent has submitted to MassDEP for approval a Closure Plan and a Closure Schedule for the Hazardous Waste Management Units at the Kingston Facility, which includes four aboveground tanks, one underground storage tank receiving vessel

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and its containment structure. The Closure Plan satisfies the requirements of 310 CMR 30.099(6)(b)1. through 8. and was approved by MassDEP on February 22, 2013.

C. On March 16, 2013, the Respondent published notice of the Closure Plan in a newspaper of general circulation serving the Town of Kingston. The notice stated that the public had an opportunity to submit written comments on the Closure Plan and to request modifications to the Closure Plan no later than thirty (30) days from the date of publication of the notice.

D. The Respondent implemented the Closure Plan and the Closure Schedule in accordance with MassDEP's written approval. All tanks identified in the Closure Plan and Closure Schedule have been removed and closed pursuant to the dates listed in the Schedule.

E. Pursuant to 310 CMR 30.586, within ninety (90) days of the effective date of this Consent Order and no later than the submission of the certification of closure required by 310 CMR 30.587(1), the Respondent shall record in the appropriate Registry of Deeds or, if the land in question is registered land, in the registry section of the land court for the district wherein the Kingston Facility lies, a survey plat with the content required by 310 CMR 30.586. Within thirty (30) days of recording the survey plat, the Respondent shall submit a copy of the filed survey plat to MassDEP. Within thirty (30) days of receipt of a certified copy of said survey plat from the Registry of Deeds, the Respondent shall submit a copy of the certified survey plat to MassDEP.

F. Within 120 days of the effective date of this Consent Order, the Respondent shall submit to MassDEP a certification of closure, signed by an independent Massachusetts registered professional engineer and the owner or operator of the Kingston Facility, in accordance with 310 CMR 30.587(1), certifying that the tanks and ancillary equipment listed in the Closure Plan have been closed in compliance with the requirements of 310 CMR 30.000 and the approved Closure Plan. The certification of closure shall also certify that the survey plat has been recorded and copies submitted to MassDEP and to the appropriate Board of Health, in compliance with 310 CMR 30.586.

G. Pursuant to 310 CMR 30.099(6)(b)8. and 310 CMR 30.582, closure performance standards, the owner or operator shall close the facility in a manner that minimizes the need for further maintenance. Post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground water, surface water, soil, or the atmosphere shall be eliminated or minimized to the extent necessary to assure compliance with 310 CMR 30.000 and to prevent any threat to public health, safety, or welfare, or the environment.

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H. Pursuant to 310 CMR 30.585, closure of a hazardous waste facility shall not be considered complete until all facility equipment, structures, and soil have been properly disposed of or decontaminated by removal of all hazardous wastes and residues. If Respondent cannot achieve removal of all hazardous wastes and residues, Respondent shall comply with the post-closure requirements of 310 CMR 30.099(6)(b)1. through 8., which incorporates 40 CFR Part 265, Subpart G, by reference. Post-closure activities required to remove or cleanup contaminated soil and groundwater, if necessary, will also be addressed pursuant to the Corrective Action requirements of 310 CMR 30.099(13) and M.G.L. c. 21E and 310 CMR 40.0000, as described in Paragraphs 12.A through 12.Y. of this Consent Order.

I. Respondent shall comply with the financial responsibility requirements of 310 CMR 30.900 for closure. As of the effective date of this Consent Order, Respondent has established an insurance policy, with \$24,143.19 designated to secure performance of closure of the Kingston Facility.

J. Pursuant to 310 CMR 30.587(3), closure of the Kingston Facility shall not be considered complete until MassDEP has notified Respondent in writing that it is no longer required to maintain financial assurance for the closure of the Kingston Facility. Until such time as MassDEP notifies the Respondent in writing that it is no longer required to maintain financial assurance for closure of the Kingston Facility, Respondent shall maintain financial assurance for closure. In addition, Respondent shall promptly submit to MassDEP, on request, any documentation supporting the certification of closure.

K. Every year by March 15 Respondent shall submit a revised cost estimate for closure until the Respondent is notified by MassDEP in writing that Respondent is no longer required to maintain financial assurance for closure. With each annual submission, Respondent shall adjust the cost estimates for inflation. In addition, Respondent shall adjust the cost estimate for closure if MassDEP determines that any additional work is required, or if any other condition increases the cost of the work to be performed under this Consent Order.

L. Respondent shall submit each cost estimate described in Paragraph 11.K to MassDEP for review. MassDEP will review each cost estimate and notify Respondent in writing of MassDEP's approval, disapproval, or modification of the cost estimate.

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12. Corrective Action and Post-Closure

A. As a result of a release of hazardous constituents at the Kingston Facility, the Respondent shall comply with M.G.L. c. 21C, 310 CMR 30.000, and the Resource Conservation Recovery Act (“RCRA”) and its implementing regulations. The Respondent shall comply with the Corrective Action requirements of 310 CMR 30.099(13), which incorporates the provisions of 40 CFR 264.101 and 310 CMR 40.0000 by reference. Compliance with 310 CMR 30.099(13) shall include, but not be limited to, Respondent complying with notification requirements contained at 310 CMR 40.0300 and performing response actions in accordance with M.G.L. c. 21E and 310 CMR 40.0000, the MCP, under the oversight of a Licensed Site Professional (“LSP”). Each and every LSP Opinion submitted to the Department shall be submitted in accordance with 310 CMR 40.0015.

B. Within one hundred and eighty (180) days from the effective date of this Consent Order, the Respondent shall submit to MassDEP, pursuant to 310 CMR 30.099(13)(c)2. and 310 CMR 40.0510, either: (1) a Tier Classification and LSP Opinion that will summarize the remedial activities that have taken place at the Site and address all releases and potential releases at or from the Site, including any newly discovered releases or threats of release of oil or hazardous material at or from the Site, in full compliance with all applicable provisions of M.G.L. c. 21E and the MCP; or (2) a Permanent Solution Statement for the Site, containing all supporting documentation, which meets the requirements set forth in 310 CMR 40.1000, indicating that a Permanent Solution, if feasible, has been achieved at the Site; or, if appropriate, a Remedy Operation Status (“ROS”) Submittal, which meets the requirements set forth in 310 CMR 40.893.

C. In the event that Respondent does not submit a Permanent Solution Statement or an ROS Submittal to MassDEP pursuant to paragraph 12.B. above, the Respondent shall comply with all of the provisions in paragraphs 12.D. through 12.Y below. In the event that Respondent does submit a Permanent Solution Statement or an ROS Submittal to MassDEP pursuant to paragraph 12.B. above, the Respondent shall comply with all of the provisions in paragraph 12.K. and paragraphs 12.N. through 12.Y. below.

D. Respondent has conducted a Phase II Comprehensive Site Assessment pursuant to 310 CMR 40.0830 for prior identified releases. Respondent shall submit to MassDEP, in accordance with a deadline established by MassDEP, an updated Conceptual Phase II Scope of Work in accordance with 310 CMR 40.0834 and an updated Phase II Report in accordance with 310 CMR 40.0835, which shall address all releases and potential

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releases at or from the Site, including any newly discovered releases or threats of release of oil or hazardous material at or from the Site, in full compliance with all applicable provisions of M.G.L. c. 21E and the MCP.

E. Respondent has conducted a Phase III – Identification, Evaluation and Selection of Comprehensive Remedial Alternatives (“Phase III Remedial Alternative Evaluation”) pursuant to 310 CMR 40.0850 through 40.0860 and has submitted a Remedial Action Plan (“Phase III Report”) in accordance with 310 CMR 40.0861, that proposed remedial actions aimed at achieving a Level of No Significant Risk, if feasible, pursuant to 310 CMR 40.0900. Respondent shall submit to MassDEP, in accordance with a deadline established by MassDEP, an updated Phase III Remedial Alternative Evaluation in accordance with 310 CMR 40.0850 through 40.0860 and an updated Phase III Report in accordance with 310 CMR 40.0861, which shall address all releases and potential releases at or from the Site, including any newly discovered releases or threats of release of oil or hazardous material at or from the Site, in full compliance with all applicable provisions of M.G.L. c. 21E and the MCP. The Phase III Remedial Alternative Evaluation shall include an estimate of comparative costs of the Remedial Alternatives, as required by 310 CMR 40.0858(4).

F. In addition to the applicable public participation requirements contained in the MCP at 310 CMR 40.1400, as required by 310 CMR 30.099(13)(e)1., the Respondent shall provide a minimum thirty (30) day comment period on the updated Phase III Report. The Respondent shall give public notice of the opportunity to submit comments, and of the public meeting if any, by publishing a notice in a newspaper having a substantial circulation in the area of the facility and by providing the public notice to the Department and all persons on the facility mailing list maintained pursuant to 310 CMR 40.1400.

G. Within 90 days of the end of the public comment period on the updated Phase III Report, or later, pursuant to a request for an extension filed with and approved by the Department, Respondent shall submit to MassDEP an updated Phase III Report which shall include a copy of all the public comments received along with an explanation of how the comments have been addressed.

H. Respondent shall submit to MassDEP, in accordance with a deadline established by MassDEP, an updated Phase IV Remedy Implementation Plan (“Phase IV”) in accordance with 310 CMR 40.0870 through 40.0881, which shall address all releases and potential releases at or from the Site, including any newly discovered releases or threats of release of oil or hazardous material at or from the Site, in full compliance with all

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applicable provisions of M.G.L. c. 21E and the MCP. In accordance with a deadline established by MassDEP, Respondent shall submit a Phase IV Completion Statement in accordance with 310 CMR 40.0879.

I. Compliance with 310 CMR 30.099(13) requires that Respondent provide assurances of financial responsibility for completing the Corrective Action (see 40 CFR 264.101(b) and (c)). Such assurances of financial responsibility shall cover all of the costs of completing the Corrective Action.

J. Respondent shall include in the updated Phase IV, required in paragraph 12.H above, a cost estimate in an amount sufficient to cover all of the costs of completing the Corrective Action, including, but not limited to, the selected Comprehensive Remedial Alternative. MassDEP will review the cost estimate and notify Respondent in writing of MassDEP's approval, disapproval, or modification of the cost estimate. Within 90 days of submittal of the updated Phase IV as required in paragraph 12.H above, Respondent shall provide assurance of financial responsibility in an amount sufficient to cover all of the costs of completing the Corrective Action, including, but not limited to, the selected Comprehensive Remedial Alternative.

K. Within sixty (60) days of the effective date of this Consent Order, Respondent shall submit to MassDEP a cost estimate for post-closure care, including, but not limited to, groundwater monitoring and maintenance of the facility and the other requirements of 310 CMR 30.590 *et seq.* MassDEP will review the cost estimate and notify Respondent in writing of MassDEP's approval, disapproval, or modification of the cost estimate. In accordance with 310 CMR 30.900 *et seq.*, including without limitation 310 CMR 30.906, Respondent shall, within sixty (60) days of MassDEP's approval of the cost estimate, establish and continuously maintain financial assurance for post-closure monitoring and maintenance of the facility using the options specified in 310 CMR 30.906(1) through (6) and in compliance with all applicable provisions of 310 CMR 30.000 *et seq.*

L. Every year by March 15 Respondent shall submit to MassDEP, for its review and approval, a revised cost estimate for both post-closure care and Corrective Action until Respondent is notified by MassDEP in writing that Respondent is no longer required to maintain financial assurance for both the post-closure care and the Corrective Action work required by this Consent Order. With each annual submission, Respondent shall adjust the cost estimates for inflation. In addition, Respondent shall adjust the cost estimates of post-closure care and/or Corrective Action if MassDEP determines that any additional work is required, or if any other condition increases the cost of the work to be performed under this Consent Order. MassDEP will review each cost estimate and notify

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Respondent in writing of MassDEP's approval, disapproval, or modification of the cost estimate.

M. The Respondent shall complete all response actions necessary to achieve, if feasible, a Permanent Solution, in accordance with the provisions of M.G.L. c. 21E and the requirements of the MCP. When site conditions indicate that a level of No Significant Risk exists, the Respondent shall submit to MassDEP a Permanent Solution Statement containing all supporting documentation, pursuant to 310 CMR 40.1000 indicating that a Permanent Solution has been achieved at the Site. If appropriate, Respondent may submit an ROS Submittal, which meets the requirements set forth in 310 CMR 40.893.

N. The Respondent shall provide a minimum thirty (30) day comment period, which may include a public meeting, for the public to comment on the proposed Permanent Solution Statement or ROS Submittal submitted pursuant to paragraph 12.B or 12.M above, and any Activity and Use Limitation proposed for the Site. The Respondent shall give public notice of the opportunity to submit comments, and of the public meeting if any, by publishing a notice in a newspaper having a substantial circulation in the area of the facility and by providing the public notice to the Department and all persons on the facility mailing list maintained pursuant to 310 CMR 40.1400.

O. Within ninety (90) days of the end of the public comment period referred to in paragraph 12.N above, or later, pursuant to a request for an extension filed with and approved by the Department, the Respondent shall submit to the Department a revised Permanent Solution Statement or ROS Submittal with a summary of all the public comments received and an explanation of how the comments have been addressed.

P. Respondent shall submit to MassDEP a Phase V Status Report as described in 310 CMR 40.0892 six months after submittal of the Phase IV Completion Statement required by 310 CMR 40.0879. A Phase V Status Report shall be submitted to MassDEP every six months thereafter for the duration of the operation of the remedy. Each Status Report shall document activities that occurred over the period of time since the previously submitted Status Report. Each Status Report shall contain the information required in 310 CMR 40.0892(2), including without limitation, all groundwater sampling results for that period.

Q. No later than sixty (60) days after completion of the post-closure care period, Respondent shall submit to MassDEP for review and approval a certification signed by both Respondent and by an independent Massachusetts registered professional engineer and the LSP for the Site, which shall be a post-closure certification as specified in 310

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CMR 30.596. Post-closure care shall not be considered complete until MassDEP issues its approval in writing of Respondent's certification. Until such time as MassDEP issues such approval and until such time as MassDEP notifies Respondent that it is no longer required to maintain financial assurance for the Facility's post-closure care, Respondent shall maintain such financial assurance. Respondent and its certifying engineer and LSP shall each promptly submit to MassDEP on request any documentation supporting said certification.

R. Corrective Action shall not be considered complete until the Department makes a determination that the actions taken have complied with all applicable requirements by issuing a Notice of Audit Findings (NOAF). As provided by 310 CMR 30.099(13)(e)4., upon a tentative determination by the Department that response actions undertaken at the Kingston Facility were performed in compliance with M.G.L. c. 21E, the MCP, 310 CMR 30.099(13) and any other requirements applicable to such response actions, and that all other requirements for the termination of interim status have been met, the Department shall publish, or cause to be published, a public notice reflecting the Department's tentative determination to terminate the Kingston Facility's interim status as a Massachusetts Hazardous Waste facility. The Department will accept public comments on the tentative determination for at least thirty (30) days from the date of the public notice. After the public comment period, which may include holding a public meeting, the Department will make a final determination. The Department will make a final determination to terminate a facility's interim status only if it finds that the Kingston Facility has completed Corrective Action in full compliance with this Consent Order, M.G.L. c. 21E, the MCP, 310 CMR 30.099(13) and any other requirements applicable to the response actions at the Kingston Facility, and that all other requirements for the termination of interim status have been met.

S. If at any time, for any reason, including based on public comments received, the Department determines that response actions being performed or completed at the Kingston facility and other areas where contamination has come to be located, or any portion thereof, are not being carried out in accordance with M.G.L. c. 21E, 310 CMR 40.0000 (the MCP) or 310 CMR 30.099(13), the Respondent shall be in non-compliance with this Consent Order. In the event of such non-compliance, the Department may take any appropriate action, including, without limitation, (1) issuance of an order pursuant to M.G.L. c. 21E, Sections 9 and 10, and 310 CMR 40.0010, requiring compliance with 310 CMR 40.0000 (the MCP); (2) issuance of an order pursuant to Chapter 21C, Sections 7 and 9, requiring Respondent to comply with the requirements of 310 CMR 30.099(13) and this Consent Order; or (3) notifying the Respondent in writing if the Department determines that further response actions are required, with an explanation of the basis for any such determination in such notification. If additional response actions are required,

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Respondent must provide for public participation using the same procedures as described in paragraph 12.N, above.

T. If at any time MassDEP determines that a financial assurance instrument provided pursuant to this Consent Order is inadequate, or no longer satisfies the requirements set forth or incorporated by reference in this Consent Order, whether due to an increase in the estimated cost of completing the work or for any other reason, MassDEP shall so notify Respondent in writing. If at any time Respondent becomes aware of information indicating that any financial assurance instrument provided pursuant to this Consent Order is inadequate or no longer satisfies the requirements set forth or incorporated by reference in this Consent Order, whether due to an increase in the estimated cost of completing the work or for any other reason, then Respondent shall notify MassDEP in writing of such information within ten (10) days. Within thirty (30) days of receipt of notice of MassDEP's determination, or within thirty (30) days of Respondent becoming aware of such information, as the case may be, Respondent shall obtain and present to MassDEP for approval a proposal for a revised or alternative form of financial assurance that satisfies all requirements set forth or incorporated by reference in this Consent Order. Respondent shall establish and maintain revised or alternative financial assurance as approved by MassDEP.

U. Respondent's inability or failure to establish or maintain financial assurance for completion of the work required by this Consent Order ("the work") shall in no way excuse performance of any other requirements of this Consent Order, including, without limitation, the obligation of Respondent to complete the work in strict accordance with the terms of this Consent Order.

V. Recordkeeping and Reporting

1. Respondent shall retain all data and all final documents now in Respondent's possession or control or that come into Respondent's possession or control, which relate to this Consent Order, during the pendency of this Consent Order, and for the time frames established in the MCP.
2. Within thirty (30) days of the effective date of this Consent Order, Respondent shall enter into an agreement with any agent, consultant, or contractor ("agents") Respondent has hired for the purpose of carrying out the terms of this

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Consent Order, to give Respondent a copy of all final data and final non-privileged documents produced pursuant to this Consent Order.

3. Respondent shall not assert any privilege claim concerning any factual data gathered during any investigation, sampling, or other actions required by this Consent Order.

4. Respondent shall provide any requested document(s) within fifteen (15) days of MassDEP's request.

W. Nothing in this Consent Order shall limit the authority of the Department to enforce any statute or regulation, to issue any order to prevent or abate releases of oil or hazardous material or potential sources of oil or hazardous material, or to require additional remediation measures to protect human health and the environment.

X. In the event of spills or releases at the Kingston Facility, the Respondent shall comply with 310 CMR 30.697 and 310 CMR 40.0000, including the notification requirements contained at 310 CMR 40.0300.

Y. The Respondent is responsible for payment of all Annual Compliance Fees for which it can be assessed pursuant to 310 CMR 4.00, M.G.L. c. 21E and the MCP, and is responsible for payment of all applicable fees required to accompany any submissions pursuant to 310 CMR 4.00, M.G.L. c. 21E and the MCP.

13. Unless submitted via eDEP or except as otherwise provided herein, all notices, submittals and other communications required by Paragraph 12 of this Consent Order shall be directed to:

For MassDEP:

Jeff Chormann
MassDEP
One Winter Street – 6th Floor
Boston, MA 02108

All notices, submittals and other communications required by this Consent Order pursuant to Paragraphs 11, 12.F, 12.J, 12.K, 12.L, 12.N, 12.Q and 12.T shall be directed to:

James Paterson
MassDEP

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One Winter Street – 7th Floor
Boston MA 02108

Such notices, submittals and other communications shall be considered delivered by Respondent upon receipt by MassDEP.

For Respondent:

Attn: General Counsel
Clean Harbors Kingston Facility Corporation
42 Longwater Drive
Norwell, MA 02061-9149

Notices of actions and other communications from MassDEP to Respondent shall be presumed received upon the day of hand delivery or delivery by electronic mail or, if mailed, three days after the date postmarked.

14. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

15. Respondent understands, and hereby waives its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.

16. This Consent Order, including any schedules set forth herein, may be modified only by written agreement of the parties hereto.

17. MassDEP hereby determines, and Respondent hereby agrees, that the deadlines set forth in this Consent Order constitute reasonable periods of time for Respondent to take the actions described.

18. Respondent is Permittee, as that term is defined in 310 CMR 4.02, for the purpose of assessing and collecting annual compliance assurance fees pursuant to M.G.L. c. 21A, §18 and M.G.L. c. 21E, §3B.

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19. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.

20. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to: (a) enforce this Consent Order in an administrative or judicial proceeding; (b) recover costs incurred by MassDEP in connection with response actions conducted at the Site; and (c) recover damages for injury to and for destruction or loss of natural resources pursuant to M.G.L. c. 21E, § 5 or 42 U.S.C. 9601, et seq.

Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting MassDEP's authority to: (a) perform response actions at the Site or (b) require Respondent to conduct response actions at the Site or take other actions beyond those required by this Consent Order in order to comply with all applicable laws and regulations including, without limitation, M.G.L. c. 21E and the MCP.

21. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

22. This Consent Order shall be binding upon Respondent and upon Respondent's heirs, successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's directors, officers, employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

23. If respondent violates any provision of the Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in the amount of \$1000.00 per day for each day, or portion thereof, each such violation continues.

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance.

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All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

24. Force Majeure

A. MassDEP agrees to extend the time for performance of any requirement of this Consent Order if MassDEP determines that such failure to perform is caused by a Force Majeure event. The failure to perform a requirement of this Consent Order shall be considered to have been caused by a Force Majeure event if the following criteria are met: (1) an event delays performance of a requirement of this Consent Order beyond the deadline established herein; (2) such event is beyond the control and without the fault of Respondent and Respondent's employees, agents, consultants, and contractors; and (3) such delay could not have been prevented, avoided or minimized by the exercise of due care by Respondent or Respondent's employees, agents, consultants, and contractors.

B. Financial inability and unanticipated or increased costs and expenses associated with the performance of any requirement of this Consent Order shall not be considered a Force Majeure Event.

C. If any event occurs that delays or may delay the performance of any requirement of this Consent Order, Respondent shall immediately, but in no event later than 5 days after obtaining knowledge of such event, notify MassDEP in writing of such event. The notice shall describe in detail: (i) the reason for and the anticipated length of the delay or potential delay; (ii) the measures taken and to be taken to prevent, avoid, or minimize the delay or potential delay; and (iii) the timetable for taking such measures. If Respondent intends to attribute such delay or potential delay to a Force Majeure event, such notice shall also include the rationale for attributing such delay or potential delay to a Force Majeure event and shall include all available documentation supporting a

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claim of Force Majeure for the event. Failure to comply with the notice requirements set forth herein shall constitute a waiver of Respondent's right to request an extension based on the event.

D. If MassDEP determines that Respondent's failure to perform a requirement of this Consent Order is caused by a Force Majeure event, and Respondent otherwise complies with the notice provisions set forth in paragraph C above, MassDEP agrees to extend in writing the time for performance of such requirement. The duration of this extension shall be equal to the period of time the failure to perform is caused by the Force Majeure event. No extension shall be provided for any period of time that Respondent's failure to perform could have been prevented, avoided or minimized by the exercise of due care. No penalties shall become due for Respondent's failure to perform a requirement of this Consent Order during the extension of the time for performance resulting from a Force Majeure event.

E. A delay in the performance of a requirement of this Consent Order caused by a Force Majeure event shall not, of itself, extend the time for performance of any other requirement of this Consent Order.

25. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

26. Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to the Kingston facility for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

27. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

28. This Consent Order does not relieve Respondent's obligation to pay Annual Compliance Assurance Fees pursuant to 310 CMR 4.00 *et. seq.*

29. All applicable transmittal fees shall accompany any submissions(s) required by this Consent Order.

30. The Respondent shall comply with all applicable Public Involvement Activities regarding the Kingston facility, as described in 310 CMR 40.1400.

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31. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

32. This Consent Order shall become effective on the date that it is executed by MassDEP.

Consented To:
Clean Harbors Kingston Facility Corporation

By: _____

Clean Harbors Kingston Facility Corporation

Date:

Issued By:
Department of Environmental Protection

By: _____

MassDEP
One Winter Street
Boston, MA 02108

Date:

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