

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
C.A. NO. 21-2726 H

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

BARNHARDT MANUFACTURING
COMPANY AND NORTH RIVER, LLC,

Defendants.

Noted
Sent
12/31/21
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CONSENT JUDGMENT

WHEREAS, Plaintiff, the Commonwealth of Massachusetts (the "Commonwealth"), acting by and through the Attorney General and the Massachusetts Department of Environmental Protection (the "Department") and the Massachusetts Division of Fisheries and Wildlife (together, the "Agencies"), has filed a Complaint in this action alleging that Barnhardt Manufacturing Company and North River, LLC (together, "Barnhardt"), the defendants in the above-captioned action, have violated multiple environmental laws and regulations of the Commonwealth in the course of their activities at cotton-bleaching and wastewater-treatment facilities owned and operated by Barnhardt at 247 Main Road in Colrain, Massachusetts (the "Site");

WHEREAS, the Complaint alleges that: on September 1, 2019, between approximately fifty-three (53) to sixty (60) gallons of concentrated sulfuric acid sprayed out of a leaking above-ground storage tank at the Site; the acid soaked into the ground and flowed into a nearby brook and down the North River, damaging over fourteen (14) acres of sensitive riverine and wetland

resources, including protected habitat of two (2) state-listed rare species; and the acid depleted the North River's popular cold-water fishery, killing nearly three hundred thousand (300,000) fish in a single day, including almost three thousand (3,000) individual Longnose Suckers, a state-listed rare fish;

WHEREAS, the Complaint further alleges that, between 2017 and 2020, Barnhardt violated numerous operating, staffing, reporting, and maintenance requirements at their wastewater treatment facility ("Facility") at the Site, unlawfully discharged toxic and polluted wastewater into the North River from the Facility, and mishandled waste oil;

WHEREAS, the Complaint further alleges that Barnhardt's actions and omissions violated or gave rise to damages under the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40, and its implementing regulations at 310 C.M.R. §§ 10.00 *et seq.*; the Massachusetts Endangered Species Act, G.L. c. 131A, and its implementing regulations at 321 C.M.R. §§ 10.00 *et seq.*; the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, G.L. c. 21E, §§ 1-22; the Massachusetts Inland Fisheries Statute, G.L. c. 131, § 42; the Massachusetts Clean Waters Act, G.L. c. 21, §§ 26-53, and certain of its implementing regulations at 314 C.M.R. §§ 3.00 *et seq.*, 5.00 *et seq.*, and 12.00 *et seq.*, and 310 C.M.R. §§ 32.00 *et seq.*; and the Massachusetts Hazardous Waste Management Act, G.L. c. 21C, §§ 1-30, and its implementing regulations at 310 C.M.R. §§ 30.000 *et seq.*;

WHEREAS, the Complaint seeks the assessment of civil penalties and assessments, natural resource and commercial fish loss damages, and injunctive relief;

WHEREAS, Barnhardt denies the Commonwealth's allegations, except as provided in Paragraphs 4, 5, 6, 12, and 13 of the Complaint (Jurisdiction, Venue, and Parties);

WHEREAS, the Commonwealth and Barnhardt (together, the "Parties") have reached an agreement to resolve the Commonwealth's claims against Barnhardt, including a release of liability against Barnhardt and an agreement on the amount of civil penalties and assessments, damages, and injunctive relief, as provided herein;

WHEREAS, the Parties consent to the entry of this Consent Judgment without a trial on any issues and agree that the entry of this Consent Judgment is an appropriate means to resolve this case; and

WHEREAS, the Parties agree that the settlement of this matter has been negotiated in good faith and at arm's length; that implementation of this Consent Judgment will avoid prolonged and complicated litigation between the Parties; and that this Consent Judgment is consistent with the goals of the Commonwealth's Wetlands Protection Act, Endangered Species Act, Oil and Hazardous Material Release Prevention and Response Act, Inland Fisheries Statute, Clean Waters Act, and Hazardous Waste Management Act, and is in the public interest.

NOW, THEREFORE, based on the joint motion of the Parties for entry of this Consent Judgment, and before taking any testimony and without the adjudication of any issue of fact or law except as provided in Paragraphs 1–2 of this Consent Judgment (Jurisdiction and Venue), it is **ORDERED AND ADJUDGED**, as follows:

I. JURISDICTION AND VENUE

1. The Superior Court has jurisdiction over the subject matter of this action and authority to grant the relief requested pursuant to G.L. c. 12, § 11D; G.L. c. 214, §§ 1, 3(12); G.L. c. 131, §§ 40 and 42; G.L. c. 131A, § 6; G.L. c. 21A, § 2A; G.L. c. 21, §§ 42 and 46; and G.L. c. 21C, § 10. This Court has personal jurisdiction over Barnhardt pursuant to the Massachusetts long-arm statute, G.L. c. 223A, § 3, and the United States Constitution.

2. Venue is proper in Suffolk County pursuant to G. L. c. 223, § 5.
3. The Complaint alleges facts, which, if proven, would constitute good and sufficient grounds for the relief set forth in this Consent Judgment.

II. PAYMENT PROVISIONS

4. Barnhardt shall pay to the Commonwealth eight hundred and sixty seven thousand and two hundred and thirty five dollars (\$867,235) comprised of five hundred thousand dollars (\$500,000) in civil penalties and assessments pursuant to the Commonwealth's Wetlands Protection Act, Endangered Species Act, Clean Waters Act, and Hazardous Waste Management Act, and three hundred sixty seven thousand two hundred thirty-five dollars (\$367,235) in damages and costs pursuant to the Commonwealth's Oil and Hazardous Material Release Prevention and Response Act and Inland Fisheries Statute, in the following manner:

Civil Penalties and Assessments (\$500,000):

- a. Within thirty (30) days of entry of the Consent Judgment, Barnhardt shall pay to the Commonwealth one hundred thirty two thousand seven hundred fifty dollars (\$132,750), pursuant to G.L. c. 131, § 40, G.L. c. 21, § 42, and G.L. c. 21C, § 10, by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures, using the following account information:

Commonwealth of Massachusetts, Office of the Attorney General
ABA No. 011075150
Account No. 00088882022
Santander Bank
75 State Street
Boston, MA 02109
TIN: 046002284
Reference Docket No. ___[to be inserted at time of payment]___

and shall include the following payment information: "*EPD, Commonwealth v.*

Barnhardt Manufacturing Company & North River, LLC – Civil Penalties."

- b. Within thirty (30) days of entry of the Consent Judgment, Barnhardt shall pay to the Commonwealth's Natural Heritage and Endangered Species Fund, established pursuant to G.L. c. 10, § 35D, two hundred thousand dollars (\$200,000) pursuant to G.L. c. 131, § 40, by EFT in accordance with current EFT procedures, using the following account information:

Commonwealth of Massachusetts, Division of Fisheries and Wildlife
ABA No. 011000138
Account No. 0005 0020 2751
Bank of America
P.O. Box 25118
Tampa, FL 33622-5118
TIN: 04-6002284
Reference Docket No. __[to be inserted at time of payment]__

and shall include the following payment information: "*Commonwealth v. Barnhardt Manufacturing Company & North River, LLC – Civil Assessments to Natural Heritage & Endangered Species Fund.*"

- c. The balance of the civil penalties and assessments, being one hundred sixty seven thousand two hundred fifty dollars (\$167,250), shall be suspended ("Suspended Penalty"). The Commonwealth shall waive the Suspended Penalty three (3) months following the date that the Commonwealth, in its sole discretion, determines that Barnhardt has made the final payment under this Section and complied with all of the requirements in Sections III and IV of this Consent Judgment (Supplemental Environmental Project and Injunctive Relief) and shall issue such waiver determination in writing. If, at any time before the Commonwealth waives the Suspended Penalty, the Commonwealth believes that Barnhardt has not complied with all of the terms of this Consent Judgment, then the Commonwealth shall notify Barnhardt in writing of that determination.

Barnhardt shall pay the Suspended Penalty, as well as any remaining unpaid portion of the penalties, assessments, damages, and costs described in this Section, to the Commonwealth within thirty (30) days of the Commonwealth's written determination pursuant to this Paragraph, unless Barnhardt timely invokes the provisions of Section V (Dispute Resolution) of this Consent Judgment. If Barnhardt requests reconsideration pursuant to Section V (Dispute Resolution) and the Commonwealth's determination ultimately becomes final or is otherwise upheld in whole or in part, Barnhardt shall pay the Suspended Penalty to the Commonwealth within fifteen (15) days after the Commonwealth's determination is final or the court's decision is entered on the docket by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures, using the following account information:

Commonwealth of Massachusetts, Office of the Attorney General
ABA No. 011075150
Account No. 00088882022
Santander Bank
75 State Street
Boston, MA 02109
TIN: 046002284
Reference Docket No. ___[to be inserted at time of payment]___

and shall include the following payment information: "*EPD, Commonwealth v.*

Barnhardt Manufacturing Company & North River, LLC – Suspended Penalties."

Damages & Costs (\$367,235):

- d. Within thirty (30) days of entry of the Consent Judgment, Barnhardt shall pay to the Natural Resource Damages Trust authorized under St. 2011, c. 9, § 22, two hundred twenty-five thousand dollars (\$225,000), pursuant to G.L. c. 21E, § 5(a)(ii), as monetary compensation for the injury to and for destruction or loss of natural

resources alleged in the Commonwealth's complaint, to fund environmental restoration projects in the Deerfield River Watershed in Colrain, Massachusetts, with a focus on projects in and around the North River. Barnhardt shall make such payment to the Natural Resource Damages Trust by EFT to the Commonwealth of Massachusetts in accordance with current EFT procedures, using the following account information:

Commonwealth of Massachusetts, Department of Environmental Protection
ABA No. 011000138
Account No. 0500201846
Bank of America
75 State Street, Boston, MA 02109
TIN: 04-6002284
Reference Docket No. __[to be inserted at time of payment]__

and shall include the following payment information: "*Commonwealth v. Barnhardt Manufacturing Company & North River, LLC – Natural Resource Damages to NRD Trust.*"

- e. Within thirty (30) days of entry of the Consent Judgment, Barnhardt shall pay to the Commonwealth's Natural Resource Damages Trust fifty thousand dollars (\$50,000), pursuant to G.L. c. 21E, § 5(a)(ii), to reimburse the Commonwealth for the costs of assessing and evaluating the natural resource damages. Barnhardt shall make such payment to the Natural Resource Damages Trust by EFT to the Commonwealth of Massachusetts in accordance with current EFT procedures, using the following account information:

Commonwealth of Massachusetts, Department of Environmental Protection
ABA No. 011000138
Account No. 0500201846
Bank of America
75 State Street, Boston, Massachusetts, 02109
TIN: 04-6002284
Reference Docket No. __[to be inserted at time of payment]__

and shall include the following payment information: "*Commonwealth v. Barnhardt Manufacturing Company & North River, LLC – Natural Resource Damages Assessment Costs.*"

- f. Within thirty (30) days of entry of the Consent Judgment, Barnhardt shall pay to the Commonwealth's Inland Fisheries and Game Fund, established pursuant to G.L. c. 131, §§ 2C and 3, ninety two thousand two hundred thirty five dollars (\$92,235), pursuant to G.L. c. 131, § 42, as remuneration to the Commonwealth, through its Division of Fisheries and Wildlife, for the injured, killed, or damaged fish and fish spawn resulting from the sulfuric acid discharge at the Site, as alleged in the Commonwealth's complaint, to fund fish restocking in the Deerfield River Watershed in Colrain, Massachusetts, with a focus on projects in and around the North River. Barnhardt shall make such payment to the Inland Fish and Game Fund by EFT to the Commonwealth of Massachusetts in accordance with current EFT procedures, using the following account information:

Commonwealth of Massachusetts, Division of Fisheries and Wildlife
ABA No. 011000138
Account No. 0005 0020 2751
Bank of America
P.O. Box 25118
Tampa, FL 33622-5118
TIN: 04-6002284
Reference Docket No. __[to be inserted at time of payment]__

and shall include the following payment information: "*Commonwealth v.*

Barnhardt Manufacturing Company & North River LLC – Commercial Fish Loss Damages to IFG Fund."

5. Any payments received by the Commonwealth after 4:00 P.M. (Eastern Time) will be credited on the next business day. At the time of payment, Barnhardt shall send notice that such

payment has been made to the Commonwealth by electronic mail in accordance with the notice provision of Section VII of this Consent Judgment (Notices and Submissions).

6. Barnhardt shall be required to pay to the Commonwealth, for any period of non-payment after the payment obligation becomes due, interest on the amount due at the rate of twelve percent (12%) per year pursuant to G.L. c. 231, § 6B, and shall pay all reasonable expenses, including attorney's fees and costs, associated with collecting any unpaid amount and interest.

III. SUPPLEMENTAL ENVIRONMENTAL PROJECT

7. In order to secure significant environmental benefits, protection, and improvements above and beyond regulatory compliance, Barnhardt shall donate as a Supplemental Environmental Project ("SEP") three hundred thousand dollars (\$300,000) to the Town of Colrain ("Town") to be used to replace and enhance culvert(s) in the Deerfield River Watershed to meet or exceed stream crossing standards in accordance with a Memorandum of Understanding to be entered into between the Commonwealth and the Town. Within thirty (30) days of entry of the Consent Judgment, Barnhardt shall pay the three hundred thousand dollars (\$300,000) ("Escrow Payment") to Samantha P. McDonald, of Bowditch & Dewey, LLP, as escrow agent ("Escrow Agent"). Barnhardt shall provide evidence of Barnhardt's submission of the Escrow Payment to the Commonwealth on the day the payment is made. The Escrow Payment shall be managed and disbursed by the Escrow Agent in accordance with the Executed Escrow Agreement, which is attached hereto as Exhibit 1 and incorporated herein by reference.

8. Barnhardt shall arrange with the Town to provide to the Commonwealth and Barnhardt written quarterly reports prepared by the Town as to the status of culvert enhancement or replacement project(s) funded through the SEP. Barnhardt shall also arrange with the Town for the submission to the Commonwealth and Barnhardt of a Culvert Project Completion Report

prepared by the Town which shall include a detailed description of the culvert enhancement or replacement project(s) funded through the SEP. The Town's failure to submit quarterly status reports or a Culvert Project Completion Report shall not be deemed a violation of this Consent Judgment by Barnhardt, provided Barnhardt makes reasonable efforts to secure the Town's timely submission of such reports. Reasonable efforts to secure the Town's timely submission of such reports shall be deemed to include informing the Town, in writing, with a copy to the Department, of the Town's reporting obligations once before each report is due.

9. If the Commonwealth and the Town have not entered into a Memorandum of Understanding governing implementation of the SEP within one (1) year of entry of the Consent Judgment, Barnhardt and the Commonwealth shall enter into good faith negotiations regarding an alternative use of the Escrow Payment to secure significant environmental benefits, protection, and improvements above and beyond regulatory compliance.

10. Barnhardt hereby certifies that the SEP is not required under any other state, local, or federal law or regulation, order, consent decree, or permit, and that the SEP is not to be implemented as a consequence of another agreement to which Barnhardt is a party. Barnhardt also certifies that it has not negotiated, is not presently negotiating, and will not in the future negotiate to initiate or complete the SEP in response to any other local, state, or federal enforcement action or in order to receive a grant from any entity.

11. Any public statement, oral or written, made by or on behalf of Barnhardt making reference to the SEP shall include the following language: "This Project was undertaken in connection with the settlement of an enforcement action, *Commonwealth v. Barnhardt Manufacturing Company & North River, LLC* (Suffolk Superior Court), taken by the Commonwealth alleging violations of and damages under the Commonwealth's Wetlands

Protection Act, Endangered Species Act, Oil and Hazardous Material Release Prevention and Response Act, Inland Fisheries Statute, Clean Waters Act, and Hazardous Waste Management Act.” This requirement does not apply to statements made by Barnhardt, or its employees, agents, or contractors during internal meetings not attended by members of the public nor televised.

IV. INJUNCTIVE RELIEF

12. Within sixty (60) days of entry of the Consent Judgment, Barnhardt shall submit to the Department for review and approval, with a copy to the U.S. Environmental Protection Agency (“EPA”), a plan for (a) training all wastewater treatment operating personnel at the Facility and (b) ensuring successive operating personnel are trained and competent to operate the Facility in accordance with 314 CMR §§ 12.00 *et seq.* and 257 CMR §§ 2.00 *et seq.*

13. Within sixty (60) days of entry of the Consent Judgment, Barnhardt shall submit to the Department for review and approval, with a copy to EPA, a staffing plan compliant with 314 CMR §§ 12.00 *et seq.* and 257 CMR §§ 2.00 *et seq.* that provides staff coverage by appropriate number and grade of certified wastewater treatment plant operators at all times of operation, as set forth at 314 C.M.R. § 12.03(4), including, as applicable, a Chief Operator, Assistant Chief Operator, shift operator(s), and weekend operator(s).

14. Every six (6) months for a period of two (2) years following the Department’s approval of the wastewater treatment plan pursuant to Paragraph 13 of this Consent Judgment, Barnhardt shall submit to the Department, with a copy to EPA, a certification that, during the preceding six (6) months, (a) Barnhardt complied with the Facility staffing plan, and (b) all operators staffed at the Facility were appropriately trained and certified in accordance with 314 CMR §§ 12.00 *et seq.* and 257 CMR §§ 2.00 *et seq.*

15. Within six (6) months of entry of the Consent Judgment, Barnhardt shall:
- a. submit to the Department for review and approval, with a copy to EPA, an updated Operations and Maintenance ("O&M") manual and an updated Laboratory Quality Control and Quality Assurance manual that comply with 314 C.M.R. §§ 12.00 *et seq.*, with additional wastewater treatment operation information, including:
 - i. a plan and schedule for inspecting, assessing integrity of, maintaining, and exercising treatment works components, including pipes, tanks, valves, and underground infrastructure, to ensure that such components remain in good condition and operative;
 - ii. a plan for safe operation of treatment works, including installation of an alarm system for sodium hydroxide and a plan for responding to alarms and ensuring that all incompatible materials remain separate;
 - iii. a site plan displaying the stormwater-catchment areas of each catch basin, drain, or outfall using field-verified site topography, including contour lines showing each foot of site elevation, and any connections to street catch basins; and
 - iv. building plumbing plan(s) documenting all interior floor drains and associated drainage paths and discharge points, including identifying all piping along drainage paths.
 - b. integrate and cross-reference all updated manufacturing process control standard-operating procedures into both the O&M manual and Best Management Practices ("BMP") plan.

The revised O&M manual submitted pursuant to this Paragraph shall not be deemed presumptively

approved.

16. Every year for a period of two (2) years following the Department's approval of the updated O&M manual pursuant to Paragraph 15 of this Consent Judgment, Barnhardt shall submit to the Department, with copies to EPA, annual reports documenting and certifying Barnhardt's compliance during the preceding year with the requirements of the updated O&M manual and revised BMP plan, including (i) integration of standard operating procedures into the O&M manual and BMP plan, (ii) all valve exercising that occurred during the year, and (iii) any planned valve exercising for the following year.

17. Within six (6) months of entry of the Consent Judgment, Barnhardt shall submit to the Agencies for review and approval, with a copy to EPA, an updated Environmental Management System ("EMS") program plan, including:

- a. expanded response protocols for any bypass or breach of a containment structure at the Site or any releases of a hazardous substance that may enter the Tailrace Brook or North River, including but not limited to (i) installation of containment alarms triggered by float mechanisms like emergency sump-pump alarms or "high-water alarms," or the equivalent, and (ii) taking pH measurements, samples, fish-kill measurements, and photographs every two (2) hours at a minimum of three (3) locations downstream of the Site in the North River and three (3) locations downstream of the Site in the Tailrace Brook, as determined in consultation with the Agencies; and
- b. procedures for immediate notification of the Agencies upon any release of any hazardous material at the Site that may enter the Tailrace Brook or North River, which notification procedures shall be in effect for a period of two (2) years

following the Department's approval of the EMS program.

The EMS program approved pursuant to this Paragraph shall apply even if Barnhardt does not know whether the bypass or breach of a containment structure at the Site or release of hazardous materials exceeded reportable concentrations or reportable quantities or whether the release entered the Tailrace Brook or North River.

18. Within six (6) months of entry of the Consent Judgment, Barnhardt shall submit to the Agencies, for review and approval, with a copy to EPA:

- a. a surveyed Site plan displaying the estimated area inundated during a 1-percent annual exceedance probability ("Zone A7" or "100 year flood elevation") and during a 0.2-percent annual exceedance probability ("Zone B" or "500-year flood elevation") using the National Flood Insurance Program, Flood Insurance Rate Map (or other appropriate reference) and field-verified site topography, including contour lines showing each foot of site elevation referencing an appropriate datum such as mean sea level; and
- b. a plan to store or locate hazardous materials, hazardous waste, waste oil, equipment, and compliance documentation at the Site above the 100 year flood elevation or, if elevation of hazardous materials, hazardous waste, waste oil, or equipment is not possible, to protect the Site against damage or releases of hazardous materials during a future storm or flood event through, for example, facility alarms and relocation of equipment or hazardous materials prior to and during severe weather events.

19. Every three (3) months for a period of two (2) years following entry of the Consent Judgment, Barnhardt shall submit to the Department, with a copy to EPA, quarterly reports documenting all testing and activity Barnhardt has performed in the previous quarter, and all testing

and activity Barnhardt plans to perform in the forthcoming quarter, in order to meet the toxicity limits in its surface water discharge/NPDES Permit (No. MA 0003697) (as modified in 2021). If Barnhardt resumes utilizing a defoamer to comply with toxicity limits, Barnhardt shall submit to the Department for review and approval, with a copy to EPA, Safety Data Sheets and Bench Testing for any defoamer utilized at the Facility and documentation of Barnhardt's ability to comply with toxicity limits using the defoamer.

20. Within six (6) months of entry of the Consent Judgment, Barnhardt shall submit to the Department for review and approval, with a copy to EPA, a short- and long-term capital improvement plan and an engineering report outlining in sufficient detail what facility modifications or other changes are needed to ensure that the Facility will comply with 314 C.M.R. §§ 3.00 *et seq.* and 12.00 *et seq.* and Barnhardt's surface water discharge/NPDES Permit (No. MA 0003697) (as modified in 2021) through the remainder of the permit term and beyond, including:

- a. a map of the location of the treatment works and related components with a qualitative assessment of their physical condition and functionality, including but not limited to all pipes and valves;
- b. a plan for repair or replacement of expiring, malfunctioning, or failing treatment works and related components, including maintaining functional backup equipment; and
- c. and a financial plan containing cost estimates for implementing proposed facility repairs that demonstrates how Barnhardt will finance the needed repairs.

21. If Barnhardt resumes land application of sludge and septage, Barnhardt shall first submit to the Department for review and approval revised WP 28 and WP 29 Applications including provision for sampling solids in accordance with 310 CMR §§ 32.00 *et seq.*

22. Within six (6) months of entry of the Consent Judgment, Barnhardt shall submit to the Department for review and approval, with a copy to EPA, an emergency spill plan stamped by a professional engineer including the same information for non-oil hazardous materials, hazardous waste, and waste oil stored or utilized at the Site as are contained in a Spill Prevention Control and Countermeasure Plan for oil.

V. DISPUTE RESOLUTION

23. Unless otherwise provided in this Consent Judgment, the Dispute Resolution procedures in this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Judgment. These procedures, however, shall not apply to actions by the Commonwealth or the Agencies to enforce obligations of Barnhardt that have not been disputed in accordance with this Section. In the event that Barnhardt utilizes the procedures in this Section for a dispute arising under Section II of this Consent Judgment (Payment Provisions), then all references to the Agencies in this Section shall include the Commonwealth.

24. If Barnhardt disagrees with a written determination of one or both of the Agencies that Barnhardt has failed to comply with one or more terms of this Consent Judgment, then Barnhardt may, within thirty (30) days of the date of the Agencies' determination, request reconsideration of the determination by submitting to the Agencies, with a copy to the Office of the Attorney General, any information or material it believes demonstrates that the Agencies' determination was erroneous. Barnhardt's failure to submit a request for reconsideration within the period specified in this Paragraph shall constitute a waiver of Barnhardt's ability to seek reconsideration and, in that case, the Agencies' determination shall be final and unreviewable. If, after consideration of a timely request for reconsideration, the Agencies decide to affirm, in

whole or in part, the Agencies' original determination, then the Agencies shall notify Barnhardt of their determination on reconsideration.

25. The Agencies' determination on reconsideration shall be final unless Barnhardt seeks judicial review of the dispute by filing with the Court and serving on the Commonwealth, in accordance with Section VII of this Consent Judgment (Notices and Submissions), a motion in this case requesting judicial resolution of the dispute within fourteen (14) days of receipt of the Agencies' determination. In an action for judicial review under this Section, Barnhardt shall bear the burden of demonstrating that the Agencies' determination on reconsideration was arbitrary and capricious or otherwise not in accordance with law. Barnhardt's motion and supporting memorandum shall not raise any new issues or be based on new facts or information that Barnhardt did not present previously to the Agencies during the dispute resolution process described in this Section.

VI. FORCE MAJEURE

26. Barnhardt shall perform the actions required by Sections III and IV of this Consent Judgment (Supplemental Environmental Project and Injunctive Relief) within the time limits established in those Sections, unless the performance is prevented or delayed solely by events that constitute a force majeure event. A force majeure event is an event that arises from causes entirely beyond Barnhardt's control that will delay or prevent the performance of any action required by Sections III and IV (Supplemental Environmental Project and Injunctive Relief) despite Barnhardt's due diligence. A force majeure event does not include, among other things, unanticipated or increased costs of performance, changed economic circumstances, or a financial inability to perform. Except as excused by the Agencies pursuant to this Section, delay on the part of Barnhardt's contractors, subcontractors, or consultants shall be attributable to

Barnhardt. The Commonwealth will not seek to collect the Suspended Penalty (or any part thereof) for an approved period of delay or during the time the Agencies are considering a timely request for an extension under this Paragraph.

27. Any request to extend a deadline set forth in Sections III and IV of this Consent Judgment (Supplemental Environmental Project and Injunctive Relief), including a deadline in a plan submitted to the Agencies by Barnhardt pursuant to that Section, due to a force majeure event or otherwise, shall be made in writing to the Agencies, with a copy to the Office of the Attorney General, prior to the expiration of the deadline. In its written request to the Agencies, Barnhardt shall describe (a) what action has been affected, (b) the anticipated length of delay, (c) the cause of the delay, and (d) the steps or measures it will take to prevent or minimize the delay. Upon receipt of a timely request for an extension under this Section, the Agencies may, in their discretion, grant additional time if they are persuaded that the delay in performance is the result of a force majeure event or otherwise determine an extension of the deadline is appropriate. The Agencies shall not unreasonably withhold or condition an extension, but if the Agencies do not agree that a force majeure event has occurred or do not agree to the length of the extension of time sought by Barnhardt or that an extension of the deadline is otherwise appropriate and that disagreement cannot be resolved by informal negotiation, then the Agencies will notify Barnhardt in writing of the Agencies' position, which shall be binding unless, within seven (7) days after receipt of the Agencies' written notice, Barnhardt invokes the Dispute Resolution procedures set forth in Section V (Dispute Resolution). In any proceedings under Section V (Dispute Resolution), Barnhardt shall bear the burden of demonstrating, by a preponderance of the evidence, that (a) Barnhardt provided the written request required above, (b) the delay in performance is the result of circumstances entirely beyond Barnhardt's control, and

(c) Barnhardt could not have prevented or avoided the delay by the reasonable exercise of due care, foresight, or due diligence. Barnhardt's failure to comply with the notice requirements of this Paragraph shall constitute a waiver of its right to request an extension of time with regard to any delay, and a waiver of any right to relief from the deadlines in Sections III and IV (Supplemental Environmental Project and Injunctive Relief) or any plan submitted to the Agencies pursuant to that Section.

VII. NOTICES AND SUBMISSIONS

28. All notices and submissions required by this Consent Judgment shall be made in writing by first class mail and electronic mail to the following addresses:

For the Department:

Department of Environmental Protection
Attention: Christine LeBel, Chief
Regional Counsel
436 Dwight Street
Springfield, MA 01103
Christine.LeBel@mass.gov

For the Office of the Attorney General:

Office of the Attorney General
Attention: Turner Smith, Assistant
Attorney General & Deputy Division
Chief, & Betsy Harper, Assistant
Attorney General & Chief
Environmental Protection Division
One Ashburton Place
Boston, MA 02108
Turner.Smith@mass.gov
Betsy.Harper@mass.gov

For the Division of Fisheries and Wildlife:

Division of Fisheries and Wildlife
Attention: Jesse Leddick, Chief of
Regulatory Review
One Rabbit Hill Road
Westborough, MA 01581
Jesse.Leddick@mass.gov

*For Barnhardt Manufacturing Company and
North River, LLC:*

Robert D. Cox Jr., Esq.
Samantha P. McDonald, Esq.
Bowditch & Dewey, LLP
311 Main Street
Worcester, MA 01615
rcox@bowditch.com
smcdonald@bowditch.com

Barnhardt Manufacturing Company &
North River, LLC
1100 Hawthorne Lane
Charlotte, NC 28205

*For the U.S. Environmental Protection
Agency:*

Office of Regional Counsel
Attention: Kathleen E. Woodward, Senior
Enforcement Counsel
U.S. Environmental Protection Agency
5 Post Office Square
Mail Code: ORC 04-2
Boston, MA 02109-3912
Woodward.Kathleen@epa.gov

VIII. PARTIES BOUND

29. The provisions of this Consent Judgment shall apply to and bind Barnhardt, and any person or entity acting by, for, or through Barnhardt, including Barnhardt's managers, directors, officers, supervisors, employees, agents, servants, attorneys-in-fact, successors, and assigns, and those persons in active concert or participation with Barnhardt who receive notice of this Consent Judgment.

30. No change in ownership or relocation of the company will alter in any way the responsibilities of Barnhardt under this Consent Judgment. At least thirty (30) days prior to any change or transfer of ownership or any changes in management or operation of the Facility or Site that affect any terms of this Consent Judgment or of any permits required by the EPA or the Department, and for a period of 2 years from entry of judgment, Barnhardt shall provide a copy of this Consent Judgment to the proposed transferee or new manager or operator and shall simultaneously provide written notice of the prospective change or transfer in ownership or change in management or operation of the Facility or Site, together with a copy of the proposed written change or transfer agreement, to the Attorney General in accordance with Section VII of this Consent Judgment (Notices and Submissions). In the event of a change in management or operations that is not voluntarily elected by Barnhardt and of which Barnhardt does not receive

notice thirty (30) days prior to its effective date, Barnhardt shall provide notice in accordance with the requirements of this Paragraph as soon as practicable. Any attempt to change or transfer ownership, management, or operation of the Facility or Site without complying with this Paragraph shall constitute a violation of this Consent Judgment.

31. In addition to any relief specifically provided for herein, Barnhardt understands and agrees that violations of this Consent Judgment are subject to and may be punishable by a contempt proceeding being initiated against it.

32. In any action to enforce this Consent Judgment, Barnhardt shall not raise as a defense the failure by any of its managers, directors, officers, supervisors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Judgment.

33. The terms of this Consent Judgment may be modified only by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to any term of this Consent Judgment, it shall be effective only by written approval of the Parties and the approval of the Court.

IX. RELEASE AND RESERVATION OF RIGHTS

34. Upon full compliance with the terms of this Consent Judgment, Barnhardt and its officers, directors, affiliates, successors, agents, and assigns shall be released from any and all claims for the violations specifically pleaded in the Complaint.

35. Except as otherwise provided herein, nothing in this Consent Judgment:

- a. Shall be deemed to excuse any non-compliance by Barnhardt, its affiliates, agents, employees, servants, successors, and assigns with any law or regulations not

asserted in the Complaint or any claims not conditionally released pursuant to Paragraph 34 of this Consent Judgment;

- b. Shall in any way bar any future actions by the Commonwealth against Barnhardt based upon any claims or allegations not asserted in the Complaint or any claims not conditionally released pursuant to Paragraph 34 of this Consent Judgment;
- c. Shall be construed to bar, diminish, adjudicate, or in any way affect any legal or equitable rights the Commonwealth may have to take additional administrative or legal action against Barnhardt with respect to any future violations of the laws or regulations of the Commonwealth or any violations that have not been revealed to the Commonwealth; or
- d. Shall preclude a future separate or ancillary action by the Commonwealth against Barnhardt to enforce this Consent Judgment.

36. Barnhardt agrees not to assert any claims or causes of action against the Commonwealth, including the Agencies, and their employees, agents, representatives, contractors, subcontractors, attorneys, successors, and assigns for any and all liability arising from the claims resolved by this Consent Judgment.

X. ENFORCEMENT AND MISCELLANEOUS PROVISIONS

37. Upon approval and entry of this Consent Judgment by the Court, this Consent Judgment shall constitute a Final Judgment of the Court.

38. The Court shall retain jurisdiction over this case following entry of this Final Judgment for purposes of resolving disputes that arise under this Consent Judgment, entering orders modifying this Consent Judgment, or effectuating or enforcing compliance with the terms

of this Consent Judgment and any permits, approvals, or directives issued by the Agencies pursuant to the terms of this Consent Judgment.

39. The Parties waive the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure. The Parties will not challenge or appeal the entry of the Consent Judgment or this Court's jurisdiction to enter and enforce the Consent Judgment.

40. All reports and certifications submitted to the Agencies pursuant to Sections III and IV of this Consent Judgment (Supplemental Environmental Project and Injunctive Relief) shall contain the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments to it, and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.

41. Barnhardt shall ensure that each certified statement is signed by a responsible corporate officer, such as a president, vice-president, secretary, treasurer, or manager responsible for environmental policy-making, decision-making, and compliance with environmental laws and regulations at the Facility and Site and having the authority to make management decisions that govern the operation of the Facility and Site and directing and authorizing actions to ensure the Facility and Site are in compliance with environmental laws and regulations and the terms of this Consent Judgment.

42. Any information provided by Barnhardt pursuant to this Consent Judgment may be used by the Commonwealth in any proceeding to enforce the provisions of this Consent Judgment.

43. The Agencies shall have the right to enter the Site at all reasonable times upon reasonable notice, without securing any judicial or administrative warrants or other process, for the purposes of conducting any activity related to the enforcement of the terms of this Consent Judgment, or for inspections and monitoring compliance with any applicable laws or regulations. Barnhardt expressly consents to such entry by the Agencies. During any inspection, personnel of the Agencies may take videos or photographs of anything at the Site; may obtain copies of any record or other documentary evidence regarding the Site or operations at the Site that is kept at the Site, or any other location under the control of Barnhardt; and may take samples of any waste, product, soil, water, or other materials at the Site. Any information, documents, samples, visual or recorded evidence, or materials or tangible evidence gathered by the Agencies during any inspection pursuant to this Paragraph may be used by the Commonwealth in an action to enforce this Consent Judgment or in any other administrative, civil, or criminal enforcement action against Barnhardt or its successor. Notwithstanding any provision of this Consent Judgment, the Agencies retain all of their access authorities and rights under applicable state and federal law.

44. In addition to any other applicable local, state, or federal records-preservation requirements, until two (2) years after Barnhardt completes all of the requirements of Sections III and IV of this Consent Judgment (Supplemental Environmental Project and Injunctive Relief), Barnhardt shall preserve at least one legible copy of all documents, including electronic documents, in its possession, custody, or control that relate to the performance of Barnhardt's

obligations under this Consent Judgment. If Barnhardt retains or employs any agent, consultant, or contractor for the purpose of complying with the terms of this Consent Judgment, then Barnhardt's agreement or contract with the agent, consultant, or contractor shall require such person or persons to provide Barnhardt with a copy of all documents, including electronic documents, relating to the performance of Barnhardt's obligations under this Consent Judgment.

45. Barnhardt understands and agrees that, pursuant to 11 U.S.C. § 523(a)(7), the civil penalty and any other costs or sums that Barnhardt may be required to pay under this Consent Judgment are not subject to discharge in any bankruptcy.

46. The Commonwealth, acting through either the Attorney General or the Agencies, may extend any deadline in this Consent Judgment as it determines is appropriate.

47. The titles in this Consent Judgment have no independent legal significance and are used merely for the convenience of the Parties.

48. Massachusetts law shall govern the interpretation and enforcement of this Consent Judgment.

49. If this Court should decline to approve the Consent Judgment on any ground except one related to form, this Consent Judgment is voidable at the option of either party within fourteen (14) days of this Court's decision, and the terms of the Consent Judgment may not be used as evidence in any litigation between the Parties. If, for any reason, this Court should determine that substantive modifications to the Consent Judgment are necessary, the Parties shall enter into good faith negotiations to discuss the modification and this Consent Judgment shall be void unless the Parties agree otherwise within fourteen (14) days of this Court's determination.

JUDGMENT is hereby entered in accordance with the foregoing, this 1st day of December, 2021.

Approved and so ordered:



Justice, Superior Court

12/1/21
Date

Attest: STEVEN J. MASSE
Assistant Clerk

12/1/21
Date

Stipulated and agreed:

FOR COMMONWEALTH OF
MASSACHUSETTS

By its attorneys:

MAURA HEALEY
ATTORNEY GENERAL



Turner Smith, BBO No. 684750
Tracy Triplett, BBO No. 651729
Assistant Attorneys General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 963-2782
Tracy.Triplett@mass.gov
Turner.Smith@mass.gov
Date: November 22, 2021

By its Natural Resource Trustee:

KATHLEEN A. THEOHARIDES
SECRETARY OF ENERGY AND
ENVIRONMENTAL AFFAIRS

Date: _____

FOR BARNHARDT MANUFACTURING
COMPANY AND NORTH RIVER, LLC:

By its attorney:

Robert D. Cox Jr., BBO No. 546486
Samantha P. McDonald, BBO No. 676744
Bowditch & Dewey, LLP
311 Main Street
Worcester, MA 01615
(508) 926-3277
rcox@bowditch.com
smcdonald@bowditch.com
Date: _____

Stipulated and agreed:

FOR COMMONWEALTH OF
MASSACHUSETTS

By its attorneys:

MAURA HEALEY
ATTORNEY GENERAL

Turner Smith, BBO No. 684750
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KATHLEEN A. THEOHARIDES
SECRETARY OF ENERGY AND
ENVIRONMENTAL AFFAIRS

Date: _____

FOR BARNHARDT MANUFACTURING
COMPANY AND NORTH RIVER, LLC:

By its attorney:

DocuSigned by:
Robert D. Cox, Jr.
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Robert D. Cox Jr., BBO No. 546486
Samantha P. McDonald, BBO No. 676744
Bowditch & Dewey, LLP
311 Main Street
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(508) 926-3277
rcox@bowditch.com
smcdonald@bowditch.com
Date: 11/17/2021

Stipulated and agreed:

FOR COMMONWEALTH OF
MASSACHUSETTS

By its attorneys:

MAURA HEALEY
ATTORNEY GENERAL

Turner Smith, BBO No. 684750
Tracy Triplett, BBO No. 651729
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Office of the Attorney General
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Turner.Smith@mass.gov
Date: _____

By its Natural Resource Trustee:

KATHLEEN A. THEOHARIDES
SECRETARY OF ENERGY AND
ENVIRONMENTAL AFFAIRS

K. Theoharides

Date: 11/19/2021

FOR BARNHARDT MANUFACTURING
COMPANY AND NORTH RIVER, LLC:

By its attorney:

Robert D. Cox Jr., BBO No. 546486
Samantha P. McDonald, BBO No. 676744
Bowditch & Dewey, LLP
311 Main Street
Worcester, MA 01615
(508) 926-3277
rcox@bowditch.com
smcdonald@bowditch.com
Date: _____

EXHIBIT 1

ESCROW AGREEMENT

ESCROW AGREEMENT

AGREEMENT made this 19th day of November 2021 by and between Barnhardt Manufacturing Company and North River, LLC (the "Defendants"), and the Commonwealth of Massachusetts ("Commonwealth"), acting through the Office of the Attorney General ("Attorney General's Office") (collectively "Parties"), and Bowditch & Dewey, LLP by Samantha P. McDonald, as escrow agent ("Escrow Agent").

Recitals

WHEREAS, the Commonwealth and the Defendants have executed a Consent Judgment in the matter entitled *Commonwealth v. Barnhardt Manufacturing Company and North River, LLC* (Suffolk Superior Court) dated as of the date hereof (the "**Consent Judgment**"), concurrently with the execution of this Escrow Agreement, a copy of which Escrow Agent acknowledges receiving. The Consent Judgment is, by this reference, made a part hereof, and all terms used but not defined herein shall have the meanings given to such terms in the Consent Judgment.

WHEREAS Paragraph 7 of the Consent Judgment requires the payment of three hundred thousand dollars (\$300,000) (the "Escrow Payment") to the Escrow Agent to establish an Escrow Account (the "Escrow Account") for the purpose specified therein.

WHEREAS, this Escrow Agreement sets forth the procedures by which funds will be released from the Escrow Account in accordance with Paragraphs 7 and 9 of the Consent Judgment;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Parties agree as follows:

I. Escrow Agent

1. The Parties designate Bowditch & Dewey, LLP, attention: Samantha P. McDonald, to be the Escrow Agent to hold, manage, and disburse the Escrow Account in accordance with the terms and conditions of the Consent Judgment and of this Escrow Agreement.

II. Establishment of Escrow Account and Accounting

2. The Defendants shall deliver the Escrow Payment to the Escrow Agent in accordance with the terms and conditions of the Consent Judgment.
3. Within five (5) business days of receiving the Escrow Payment, the Escrow Agent shall deposit in an account in a federally insured bank with branches located in Massachusetts the full amount of the Escrow Payment.
4. Within seven (7) days of opening the Escrow Account, the Escrow Agent shall notify the Parties of the name and address of the bank, the account number of the Escrow Account, and the Escrow Account balance. The Escrow Agent shall keep possession of the book(s) of the Escrow Account until such time as it is terminated in accordance

with the terms of the Consent Judgment and this Escrow Agreement, or until a successor Escrow Agent is appointed as provided herein.

5. The Parties shall have the right to inspect all books and records of the Escrow Agent relating to the Escrow Account at reasonable times upon written request.
6. Any taxes, fees, charges, or other costs of administration of the Escrow Account shall be paid for by the Defendants and shall not be paid out of the Escrow Payment. The Defendants shall pay for the services of the Escrow Agent, and such payment for the services of the Escrow Agent shall not be paid out of the Escrow Payment.
7. Any interest accrued from the Escrow Payment shall be included as part of the Escrow Payment and disbursed in accordance with the terms of the Consent Judgment and this Escrow Agreement.

III. Disbursements from Escrow Account

8. **Within seven (7) days** of the date the Escrow Agent receives written notice that the Commonwealth and the Town of Colrain ("Town") have entered into a Memorandum of Understanding governing expenditure of the Escrow Payment to replace and enhance culvert(s), as specified in Paragraphs 7 and 9 of the Consent Judgment, which written notice shall contain the mailing address to which the Escrow Payment shall be sent, the Escrow Agent shall pay the Escrow Payment to the Town. In the event the notice contains direction to disburse any portion of the Escrow Payment to any entity other than the Town, the Escrow Agent shall give written notice to the Defendants of such demand. If the Escrow Agent does not receive a written objection within fourteen (14) days after the giving of such notice, the Escrow Agent is hereby authorized to make the requested payment. If the Escrow Agent does receive such written objection within such fourteen (14) day period or if for any other reason the Escrow Agent in good faith shall elect not to make such payment, the Escrow Agent shall continue to hold such amount until otherwise directed by written instructions assented to by the Commonwealth and the Defendants or an order of Suffolk Superior Court issued pursuant to the Consent Judgment.
9. If the Commonwealth and the Town have not entered into a Memorandum of Understanding governing implementation of the SEP **within one (1) year of entry of the Consent Judgment**, the Escrow Agent shall disburse the Escrow Payment as jointly instructed by the Attorney General's Office and the Defendants. In the event the Commonwealth and the Town have not entered into a Memorandum of Understanding governing implementation of the SEP **within one (1) year of entry of the Consent Judgment** and the Attorney General's Office and the Defendants do not issue a joint instruction, the dispute resolution provisions of the Consent Judgment shall apply.
10. Disbursements shall be made from the Escrow Account only in accordance with the terms of this Escrow Agreement.

IV. Responsibilities of Escrow Agent

11. The Escrow Agent's sole obligation hereunder shall be to perform the duties set forth in this Escrow Agreement, which duties are intended to be purely ministerial in nature. The Escrow Agent shall not be liable to either Party if the Escrow Agent acts in accordance with this Escrow Agreement. The Escrow Agent shall be entitled to assume the truth and correctness of any notice, signature, or document(s) presented to them. The Escrow Agent shall not be responsible for any act or failure to act on its part as Escrow Agent except they shall be responsible in the cases of their own bad faith or gross negligence.

V. Resignation, Removal, or Successor Escrow Agent

12. The Escrow Agent may resign from serving as an escrow agent pursuant to this Escrow Agreement without prejudice to their rights, privileges, or immunities by giving at least thirty (30) days prior written notice to the Parties. Such resignation shall take effect on the date specified in such notice or on the date thirty (30) days from the date it is received by the Parties, whichever is later, unless a successor Escrow Agent shall have been sooner appointed, in which event such resignation shall take effect immediately upon the appointment of a successor Escrow Agent. In the event that no successor Escrow Agent is appointed, and absent written instructions to the contrary from the Parties, Escrow Agent shall tender unto the custody of the clerk of Suffolk Superior Court all money or property in Escrow Agent's hands held under the terms of this Escrow Agreement and the Consent Judgment, and thereupon shall be discharged of its obligations hereunder and under the Consent Judgment.
13. The Escrow Agent may be removed at any time by a written instrument or concurrent instruments signed by the Parties and delivered to the Escrow Agent.
14. If at any time hereafter the Escrow Agent resigns, is removed, or otherwise becomes incapable of acting, or the position of Escrow Agent shall become vacant for any other reason, the Parties hereto shall promptly appoint a successor Escrow Agent. Upon appointment, such successor Escrow Agent shall execute and deliver to their predecessor and to the Parties hereto an instrument in writing accepting such appointment. Thereupon, without further act, such successor Escrow Agent shall be fully vested with all the rights, immunities, and powers, and shall be subject to all the duties and obligations of their predecessor, and the predecessor Escrow Agent shall promptly deliver all books, records, and other property and monies held by them hereunder to such successor Escrow Agent.
15. The Commonwealth and the Defendants hereby covenant and agree that Escrow Agent is acting solely as a stakeholder at the request of the Commonwealth and the Defendants, and for their convenience; and that Escrow Agent shall not be deemed to be the agent of either of the parties and shall not be liable for any loss, cost or damage which it may incur as a result of serving as Escrow Agent hereunder, except for any loss, cost or damage arising out of Escrow Agent's negligence or willful misconduct. Accordingly, except as otherwise provided in this Section, Escrow Agent shall not

incur any liability with respect to (a) any action taken or omitted to be taken in good faith upon advice of its counsel, given with respect to any questions relating to its duties and responsibilities hereunder, or (b) any action taken or omitted to be taken in reliance upon any document, including any written notice of instruction provided for herein or in the Consent Judgment, not only as to the due execution and the validity and effectiveness thereof, but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall in good faith believe to be genuine and to have been signed or presented by proper person or persons in conformity with the provisions of this Escrow Agreement. The Defendants hereby agree to indemnify and hold harmless Escrow Agent against any and all losses, claims, damages, liabilities and expenses, including reasonable costs of investigation and reasonable attorneys' fees and disbursements actually incurred, which may be imposed upon and incurred by Escrow Agent in connection with its serving as Escrow Agent hereunder. In the event of a dispute between the Commonwealth and the Defendants, Escrow Agent shall be entitled to tender unto the custody of the clerk of Suffolk Superior Court all money or property in Escrow Agent's hands held under the terms of this Escrow Agreement and the Consent Judgment, together with such legal pleadings as it deems appropriate, and thereupon shall be discharged of its obligations hereunder and under the Consent Judgment. The Escrow Agent shall give written notice of such deposit to the Commonwealth and the Defendants. The provisions of this Section shall survive the termination of this Agreement.

VII. Termination.

This Agreement shall terminate automatically and without further notice, and the Escrow Agent be relieved of all responsibility hereunder, upon disbursal of the total Escrow Payment in accordance with Sections 8, 9 or 12 hereinabove.

VII. Notices

16. All notices, certifications, authorizations, requests, or other communications required or permitted to be made under this Escrow Agreement shall be provided by email and delivered by overnight courier, or by certified mail, postage prepaid, return receipt requested, as follows:

To the Attorney General's Office:

Turner Smith
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 963-2782
Turner.Smith@mass.gov

To the Defendants:

Robert D. Cox Jr.

Samantha P. McDonald
Bowditch & Dewey, LLP
311 Main Street
Worcester, MA 01615
(508) 926-3327
rcox@bowditch.com
smcdonald@bowditch.com

To the Escrow Agent:
Bowditch & Dewey, LLP
Attn: Samantha McDonald
311 Main Street
Worcester, MA 01615
(508) 926-3327
smcdonald@bowditch.com

VIII. Miscellaneous

17. This Escrow Agreement may not be amended, altered, or modified except by written instrument executed by all parties hereto.
18. The parties hereby acknowledge that the Escrow Agent serves as counsel to the Defendants. The parties covenant and agree that Escrow Agent's dual position as counsel to Defendants and as Escrow Agent will not be challenged, nor will the parties seek to remove Escrow Agent as counsel to Defendants based on a conflict of interest, or otherwise based on grounds related to that dual position and that Bowditch & Dewey, LLP shall not be precluded from representing the Defendants in this matter on account of its role as Escrow Agent.
19. This Agreement shall be governed by, construed in accordance with, and enforced under the laws of the Commonwealth of Massachusetts, without reference to the conflict of laws or choice of law provisions thereof.
20. This Escrow Agreement may be executed in one or more counterparts and by .pdf or electronic signatures, each of which shall be deemed an original, but all of which shall constitute one and the same original document.

[End of Text. Signatures on Following Page.]

