

contractors, caused or allowed an unpermitted release (the “release”) to the environment of approximately 20,000 gallons of #2 fuel oil from an open pipeline on a petroleum product transfer dock (the “Irving/Global Dock”) in Revere, Massachusetts, that they jointly own and operate, and that connects Irving's and Global's tank farms adjacent thereto (the “Tank Farms”), and that approximately 1,500 gallons of the #2 fuel oil were captured at the Irving/Global Dock, and that the remaining approximately 18,800 gallons of the #2 fuel oil were discharged without a permit from the Irving/Global Dock to the Chelsea River (also known as Chelsea Creek) and its tributary, Mill Creek (together, the "Site"), causing injury to those natural resources and to associated wetland areas; and

Whereas, Release Tracking Number ("RTN") 3-25720 has been assigned to the release by MassDEP; and

Whereas, the Commonwealth has further alleged that by failing to conduct assessment actions required under the MCP, the Defendants were unable to determine whether additional containment and removal actions were required at the Site, and whether injury had occurred to the Commonwealth's natural resources; and

Whereas, the Commonwealth has further alleged that Irving did not comply with the MCP by filing a deficient Response Action Outcome ("RAO") report with MassDEP that was incomplete and unsupported by required sampling and other analytical information, and that concluded Irving had no obligation to further remediate the Site or to further comply with the MCP's requirements, and that Global then ratified and adopted Irving's acts and omissions to act with respect to the deficient RAO; and

Whereas, these alleged acts and omissions to act by the Defendants caused MassDEP to invalidate the RAO pursuant to the MCP; and

Whereas, as a remedy for these violations, the Commonwealth has sought injunctive relief, substantial civil penalties from the Defendants for their alleged violations of law; and to recover, without regard to fault, damages for injury to, destruction of, or loss of the Commonwealth's natural resources at the Site, including the reasonable costs of assessing and evaluating such injury, destruction, or loss; and

Whereas, Irving Oil Corporation is a Maine corporation and Irving Oil Terminals Inc. is a Delaware corporation, both corporations having their principal New England office located at 190 Commerce Way, Portsmouth, New Hampshire and a Massachusetts office at 41 Lee Burbank Highway, Revere, Massachusetts; and

Whereas, Global is a Massachusetts corporation with its principal office at 800 South Street, Waltham, Massachusetts; and

Whereas, the Defendants and the Commonwealth have reached an agreement that resolves Irving's and Global's liability to the Commonwealth for the violations alleged in the Complaint; and

Whereas, this settlement was reached before the taking of testimony, and without any adjudication of issues of law or fact; and

Whereas, this settlement was reached after evaluating respective litigation risks and is in the public interest.

Now, therefore, the Commonwealth and the Defendants hereby agree as follows:

Jurisdiction, Venue, and Parties Bound

1. The Superior Court has jurisdiction over the subject matter of the above-captioned action and over the parties thereto. Venue is appropriate in Suffolk County. The Complaint alleges facts which, if proven, would constitute good and sufficient grounds for the relief set

forth in the proposed final judgment (the "Final Judgment") attached hereto.

2. The Defendants do not admit liability pursuant to the statutory and regulatory provisions referenced above or to any of the Commonwealth's allegations in the Complaint, nor do the Defendants admit that they violated any law or regulation or otherwise committed a breach of duty at any time. Except as to the existence of both personal and subject matter jurisdiction, and as to the facts specifically admitted in this Settlement Agreement, this Settlement Agreement shall not constitute an admission of liability, law, or fact or evidence of same, and shall not be admitted as evidence of an admission or declaration against interest by the Defendants as to liability in any proceeding other than one to enforce the Final Judgment and this Settlement Agreement. The Defendants acknowledge, however, that any violation of this Settlement Agreement or the Final Judgment may be cause for one or more of them being adjudged in contempt of court.

3. The parties bound by this Settlement Agreement and the Final Judgment are the Commonwealth, Irving, Global and any person or entity acting by, for or through Irving or Global, including, but not limited to, Irving's and Global's respective officers, directors, agents, servants, attorneys-in-fact, employees, successors, and assigns. The Defendants are obligated to ensure compliance by their contractors with the terms of this Settlement Agreement and the Final Judgment. No change in ownership of Irving, Global, the Irving/Global Dock, or Irving's or Global's Tank Farms, and no change in the responsibility for operating or maintaining the Irving/Global Dock will alter in any way any responsibility of either Irving or Global under this Settlement Agreement or the Final Judgment.

Joint Motion for Entry of Final Judgment

4. Concurrently with the execution of this Settlement Agreement, the

Commonwealth and the Defendants shall authorize and direct their attorneys of record to execute and file with the Suffolk Superior Court a Joint Motion for Entry of Final Judgment in the form attached hereto as Exhibit A.

5. The Commonwealth and the Defendants consent to the entry of a Final Judgment in the form attached hereto as Exhibit B. The Defendants waive all rights of appeal upon entry of the Final Judgment on the Court's docket and upon entry on the Court's docket of any future modifications to the Final Judgment.

6. This Settlement Agreement shall become effective upon being signed by the Commonwealth and all Defendants.

7. If for any reason the Court should decline to approve the Final Judgment on any ground except as to form, this Settlement Agreement is voidable at the option of either the Commonwealth or the Defendants within fourteen (14) days of its receipt of written notice of the Court's decision. If, for any reason, the Court should determine prior to the entry of the Final Judgment that substantive modifications to the Final Judgment are necessary prior to approving the Final Judgment, the Commonwealth and the Defendants shall enter into good faith negotiations to attempt to reach agreement on such modifications, and this Settlement Agreement shall be void unless the Commonwealth and the Defendants agree on modifications within fourteen (14) days of the Court's determination.

Payment of Civil Penalties and Natural Resource Damages

8. Within ten (10) days of the entry of the Final Judgment on the Court's docket ("Entry Date"), the Defendants shall pay the Commonwealth a civil penalty (the "Civil Penalty") of One Hundred Thousand Dollars (\$100,000.00). Fifty Thousand Dollars (\$50,000.00) of the Civil Penalty is for the Defendants' alleged violation of G.L. c. 21, §§ 26-53A, and 314 C.M.R.

3.00 *et seq.*, and Fifty Thousand Dollars (\$50,000.00) of the Civil Penalty is for the Defendants' alleged violations of G.L. c. 21E and the MCP. Also within ten (10) days of the Entry Date, the Defendants shall pay the Commonwealth the sum of Twelve Thousand Five Hundred Dollars (\$12,500.00) (the "Natural Resource Damages") to compensate the Commonwealth for damages caused to the Commonwealth's natural resources by the release and discharge of #2 fuel oil at and from the Site. Payment of the Civil Penalty and the Natural Resource Damages shall be made by certified or bank check made payable to the "Commonwealth of Massachusetts" and delivered to the Office of the Attorney General, Environmental Protection Division, 1 Ashburton Place, 18th Floor, Boston, MA 02108, Attention: Frederick D. Augenstern, Assistant Attorney General, for deposit into the Natural Resource Damages Trust established under 2004 Mass. Acts Chapter 149, Section 222, amending Chapter 194 of the Acts of 1998. The Defendants shall clearly write on the face of the certified or bank check their federal employer identification numbers and the words "In the Matter of Irving Oil Corporation, Irving Oil Terminals Inc. and Global Petroleum Corporation – Natural Resource Damages Trust."

Payment of Stipulated Penalties

9. In addition to the Civil Penalty and the Natural Resources Damages referred to in this Settlement Agreement, the Defendants shall pay stipulated penalties for violating the terms of this Settlement Agreement or the Final Judgment, as follows:

Period of Noncompliance	Penalty Per Day
1 st - 30 th day	\$1,000.00
31 st - 90 th day	\$5,000.00
Each day beyond 90 th day	\$10,000.00

All penalties due under this provision shall be paid to the Commonwealth in the manner described in Paragraph 8, above by the Defendants and/or any others bound by this Settlement Agreement or the Final Judgment within ten (10) days of receipt of a written demand from the Commonwealth. If the Defendants and/or any others bound by this Settlement Agreement or the Final Judgment disagree that an act or omission to act constituting an alleged violation of this Settlement Agreement or the Final Judgment has occurred and the parties cannot reach agreement on the issue after negotiating in good faith, the matter in question may be submitted to the Superior Court for resolution. If the Superior Court affirms the Commonwealth's position that any violation has occurred, the Defendants and/or any others bound by this Settlement Agreement or the Final Judgment shall pay each stipulated penalty due from the date each violation occurred, less the time for the resolution of the matter by the Court, unless the Court determines that the position of one or more of the Defendants or any person bound was asserted in bad faith, together with the interest, costs and attorneys' fees provided for in Paragraph 10, below.

Interest and Collections

10. If any payment required pursuant to this Settlement Agreement or the Final Judgment is late or not made, the Defendants shall pay interest on any overdue amount for the period of such nonpayment at the rate of twelve percent (12%) per annum and shall pay all expenses associated with collection by the Commonwealth of the payment and the enforcement of this Settlement Agreement and the Final Judgment, including reasonable attorneys' fees and costs of collection incurred by the Commonwealth.

Affirmative Relief Under the MCP.

11. Given MassDEP's invalidation in January of 2008 of the deficient RAO filed by Irving on or about December 14, 2006, and ratified by Global on or about January 19, 2007, the Defendants must properly Tier Classify the Site in accordance with the requirements for Tier Classification found in the MCP at 310 C.M.R. 40.0500 *et seq.* and must file a new RAO that complies with the MCP.

12. Within fifteen (15) days after the Entry Date, the Defendants shall, pursuant to 310 C.M.R. 40.0510, submit to MassDEP a Phase I Report and Tier Classification for the Site in accordance with the requirements of 310 C.M.R. 40.0510, and shall include a Phase II Scope of Work completed in accordance with 310 C.M.R. 40.0834, and shall assess in accordance with the requirements of the MCP whether the salt marsh at the property covered by RTN 3-27037 (One Forbes Street, Downgradient Property Status) requires further remediation as a consequence of the release and discharge of #2 fuel oil described above and, if so, the Defendants shall remediate said salt marsh in accordance with the requirements of the MCP.

13. If the Defendants classify the Site as a Tier I Disposal Site, they shall comply with the Response Action Deadlines and Requirements for Tier I Disposal Sites set forth in 310 C.M.R. 40.0550. If the Defendants classify the Site as a Tier II Disposal Site, they shall comply with the Response Action Deadlines and Requirements for Tier II Disposal Sites set forth in 310 C.M.R. 40.0560.

14. The Defendants shall comply with all of the specific requirements and deadlines set forth in the MCP to ensure that RTN 3-25720 is brought to regulatory closure in accordance with the MCP.

15. The Defendants shall achieve a permanent solution, as that term is defined in 310 C.M.R. 40.0006 and G.L. c. 21E, § 3A(g), and in doing so shall follow all of the applicable requirements of and deadlines set forth in the MCP.

16. Within thirty (30) days after the Entry Date, the Defendants shall provide to MassDEP written documentation of all steps taken or planned by the Defendants to address spill prevention at and from the Irving/Global Dock, including without limitation all "lock out" and "tag out" procedures, and all emergency response procedures for the Irving/Global Dock. If MassDEP determines that said spill prevention plans are inadequate to protect the environment, it shall provide written comments on those plans to the Defendants within ninety (90) days. The Defendants shall then have the opportunity to consult with MassDEP to resolve its concerns within the next thirty (30) days or such longer period as may be determined by MassDEP. Within thirty (30) days after the close of the consultation period, the Defendants shall modify said plans to the extent that the changes are not inconsistent with the federal rules and regulations governing spill prevention and emergency response procedures, and shall provide written documentation to MassDEP of those changes. Within thirty (30) days after the Entry Date, the Defendants shall ensure that all employees at the Tank Farms and at the Irving/Global Dock whose duties and responsibilities involve transfers of petroleum products to or from the Irving/Global Dock or the associated piping known as the " Bull Pen" are properly trained in the proper procedures for petroleum transfers, including without limitation all "lock out" and "tag out" procedures, all emergency response procedures, and about proper precautions and procedures to take when service or maintenance is conducted on any equipment and fixtures at the Tank Farms and the Irving/Global Dock.

Supplemental Environmental Project

17. In order to secure significant environmental and public health benefits, protection and improvement, the Defendants shall perform a Supplemental Environmental Project (“SEP”) that goes beyond what is required of the Defendants by law. Within ten (10) days of the Entry Date, the Defendants shall, using the procedure described in Paragraph 8, above, pay to the Commonwealth the sum of Two Hundred Thousand Dollars (\$200,000.00) for deposit into the Natural Resource Damages Trust established under 2004 Mass. Acts Chapter 149, Section 222, amending Chapter 194 of the Acts of 1998, for use to meet the purposes identified in said statutes. The Defendants shall clearly write on the face of the certified or bank check their federal employer identification numbers and the words “In the Matter of Irving Oil Corporation, Irving Oil terminals Inc. and Global Petroleum Corporation – Natural Resource Damages Trust SEP.”

18. If any portion of the payment required to be made to fund the SEP is not made by the deadline established in the preceding Paragraph, the unpaid amount shall become payable by the Defendants to the Commonwealth as additional civil penalty and shall be paid within five (5) days following the passage of said deadline in the manner described in Paragraph 8, above. For missing said deadline, the Defendants shall also pay stipulated penalties in accordance with the provisions of Paragraph 9, above, and interest and costs in accordance with Paragraph 10, above.

19. Nothing in this Settlement Agreement or the Final Judgment relating to the SEP shall be construed to limit MassDEP’s permitting authority and discretion under any statute or regulation, or to excuse the Defendants' compliance with all applicable state, federal and local laws and regulations.

