

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO.

COMMONWEALTH OF MASSACHUSETTS,	)
	)
Plaintiff,	)
v.	)
IRVING OIL CORPORATION; IRVING OIL	)
TERMINALS INC.; and GLOBAL	)
PETROLEUM CORP;	)
	)
Defendants.	)

**SETTLEMENT AGREEMENT**

**Introduction**

Whereas, the Commonwealth of Massachusetts (the "Commonwealth"), acting by and through the Attorney General, the Massachusetts Department of Environmental Protection ("MassDEP"), and the Executive Office of Energy and Environmental Affairs ("EOEEA"), has brought this action against Defendants Irving Oil Corporation and Irving Oil Terminals Inc. (together, "Irving") and Defendant Global Petroleum Corp. ("Global"), to remedy alleged violations by the Defendants of certain provisions of the Massachusetts Clean Waters Act, G.L. c. 21, §§ 26-53A; its implementing regulations found at 314 C.M.R. 3.00 *et seq.*; the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, G.L. c. 21E; and its implementing regulations found at 310 C.M.R. 40.0000 *et seq.* (known as the Massachusetts Contingency Plan or "MCP"); and

Whereas, the Commonwealth has alleged that on or about March 8, 2006, Irving and Global, by their actions or omissions to act, or by the acts or omissions of their agents or

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:

<b>Period of Noncompliance</b>	<b>Penalty Per Day</b>
1 <sup>st</sup> - 30 <sup>th</sup> day	\$1,000.00
31 <sup>st</sup> - 90 <sup>th</sup> day	\$5,000.00
Each day beyond 90 <sup>th</sup> 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.

20. The Defendants hereby certify that, as of the date of execution of this Settlement Agreement, the Defendants are not otherwise required, by virtue of any local, state or federal order, consent decree, permit or agreement, to perform the SEP. The Defendants further certify that they have not agreed to undertake and are not presently negotiating to undertake, the obligation set forth in the SEP in any other enforcement action or pursuant to any grant from MassDEP, the United States Environmental Protection Agency ("EPA"), or any other entity.

21. The Defendants agree that any public statements by either of them, whether oral or written, to any person or entity as to the SEP shall include the following language: "This project was undertaken by Irving oil Corporation, Irving Oil terminals Inc. and Global Petroleum Corporation in connection with the settlement of an enforcement action brought by the Commonwealth of Massachusetts for alleged violations of the environmental laws of the Commonwealth."

22. For Federal Income Tax purposes, the Defendants agree that they will neither capitalize into inventory or basis, nor deduct, any costs or expenditures incurred in performing the SEP.

#### **MassDEP's Right of Access**

23. MassDEP shall have the right to enter the Defendants' premises in Revere, Massachusetts, including without limitation the Irving/Global Dock or the associated piping known as the "Bull Pen", at reasonable times, without prior notice and without securing any judicial or administrative warrants or other process, to monitor the Defendants' compliance with this Settlement Agreement and the Final Judgment. MassDEP personnel making any such inspection shall report their arrival and departure at the reception area of Irving's or Global's Tank Farm. The Defendants shall have the right to assign an employee to accompany MassDEP

personnel during the inspection, and the Defendants shall make the assignment and allow each inspection to begin promptly, but in any case, within thirty (30) minutes of MassDEP's arrival at either of the Tank Farms. The thirty-minute time limitation set forth in the preceding sentence shall not prevent immediate access by MassDEP personnel to the Defendants' premises in the event that MassDEP has obtained information of an ongoing or recent release or threat of release of oil or hazardous material to the environment at or from the Defendants' premises. During any such inspections, MassDEP personnel may take videos or photographs of anything at the Defendants' premises, may obtain copies of any record or other documentary evidence kept at the Defendants' premises, and may take samples of any waste, product, or other materials at the Defendants' premises. Any of the foregoing information, documents, samples, visual and recorded evidence, and other materials gathered by MassDEP during any such inspection may be used for any purpose by the Commonwealth in any other civil or criminal prosecution against either or both Defendants, as well as in this action to enforce this Settlement Agreement and the Final Judgment.

#### **Notices**

24. All notices and submissions required by this Settlement Agreement and the Final Judgment shall be made in writing by hand delivery, overnight or first class mail to the following addresses:

FOR MASSDEP:

Department of Environmental Protection – Northeast Region  
205B Lowell Street  
Wilmington, MA 01887  
Attn: Maureen Vallatini, Office of General Counsel

FOR THE ATTORNEY GENERAL:

Office of the Attorney General  
1 Ashburton Place, 18th Floor  
Boston, Massachusetts 02108  
Attn: Frederick Augenstein, Assistant Attorney General  
Environmental Protection Division

FOR IRVING OIL CORPORATION and IRVING OIL TERMINALS INC.:

Irving Oil Corporation  
190 Commerce Way  
Portsmouth, New Hampshire 03801-3242  
Attn: Gregory B. Poitras, Esquire

FOR GLOBAL PETROLEUM CORP.:

Global Petroleum Corp.  
800 South Street  
P.O. Box 9161  
Waltham, Massachusetts 02454-9161  
Attn: Edward J. Faneuil, Esquire

The Defendants shall notify MassDEP and the Attorney General in writing within five (5) business days of establishing a new mailing address.

#### **Further Relief and Conditional Release**

25. Upon payment by the Defendants of all sums due to the Commonwealth and otherwise required to be expended under Paragraphs 8 through 10 of this Settlement Agreement, the Defendants shall be released from liability to the Commonwealth for the claims specifically made in the Complaint that arose prior to the effective date of this Settlement Agreement. In addition, four (4) years after the later of (a) the submission of an RAO demonstrating achievement of a permanent solution for the Release RTN3-25720, or (b) the successful resolution of any audit of said RAO instituted by MassDEP within two (2) years of submission of the RAO, this Settlement Agreement and the Final Judgment shall cease to have any further force or effect. Neither the release described in the first sentence of this Paragraph, nor the

“sunset” provision contained in the second sentence of this Paragraph shall become effective if at the time of the triggering event there is pending any action by the Commonwealth to enforce the terms of this Settlement Agreement or the Final Judgment because of non-compliance by either or both Defendants or any successor or assign. In such circumstances, the release and the “sunset” provision, as the case may be, would become effective at the time the non-complying Defendant(s) or such successor or assign returns to compliance with the terms of this Settlement Agreement and Final Judgment and the action described in the preceding sentence is fully resolved.

26. Nothing in this Settlement Agreement, the Final Judgment, or any permit or approval issued to any of the Defendants by MassDEP: (a) shall bar any action by the Commonwealth on any claim not specifically pleaded in the Complaint; (b) shall be deemed to excuse compliance by the Defendants or any successor or assign with any law; or (c) shall preclude a separate or ancillary action by the Commonwealth to enforce the terms of this Settlement Agreement, the Final Judgment, any permit or other approval issued to either or both Defendants or any successor or assign by MassDEP. The Commonwealth expressly reserves all claims for injunctive relief for violations of G.L. c. 21, §§ 26-53; 314 C.M.R. 1.00 *et seq.* through 15.00 *et seq.*; G.L. c. 21E; and the MCP, and for all claims of any nature under any other applicable environmental laws and regulations.

27. The Defendants and any successors or assigns waive any rights to administrative or judicial review of this Settlement Agreement and the Final Judgment.

### **Contempt**

28. In addition to any relief specifically provided for herein, the Defendants understand and agree that violations of the Final Judgment may be punishable by contempt.

### **The Court's Retained Jurisdiction**

29. The parties agree that the Court, subject to its approval, may retain jurisdiction to enforce the Settlement Agreement and the Final Judgment.

### **Force Majeure**

30. Before a delay in performance of a requirement of the Settlement Agreement occurs, the Defendants may request of MassDEP, in writing, additional time to achieve compliance with said requirement, and MassDEP may, in its discretion, grant additional time if persuaded that the delay in performance is the result of circumstances beyond the Defendants' control. The Defendants shall bear the burden of demonstrating that a delay in performance is the result of circumstances beyond the Defendants' control, could not have been prevented or avoided by the reasonable exercise of due care, foresight, or due diligence on the part of the Defendants, and that MassDEP's determination not to grant additional time for performance is clearly erroneous. In its written notice of delay to MassDEP, the Defendants shall state the anticipated length of the delay, the known cause of the delay, and the steps or measures to be taken by the Defendants to prevent or minimize the delay. The Defendants shall adopt all reasonable measures to avoid or minimize the delay. Failure by the Defendants to comply with the notice requirements of this Paragraph shall constitute a waiver of the Defendants' right to request an extension of time with regard to any delay, and a waiver of any right to relief from any provision of this Settlement Agreement. MassDEP shall not unreasonably withhold approval of additional time, and stipulated penalties shall not accrue for an approved period of delay. Except as excused by MassDEP pursuant to this Paragraph, delay on the part of the

Defendants' contractors, subcontractors, or consultants shall be attributable to the Defendants. Financial inability or increased costs shall not constitute a force majeure condition. If the parties are unable to reach agreement on differences about a delay by informal negotiation or other mutually agreeable means of dispute resolution, then they may seek review of MassDEP's determination from the Superior Court.

### **Miscellaneous**

31. The titles in this Settlement Agreement have no independent legal significance and are used merely for the convenience of the parties.

32. The Defendants agree that the Civil Penalty, any stipulated penalties they may be required to pay, and the costs of performing the SEP all are obligations not subject to discharge in bankruptcy pursuant to 11 U.S.C. § 523(a)(7).

33. Massachusetts law shall govern the interpretation and enforcement of this Settlement Agreement.

34. Except as expressly set forth in this Settlement Agreement, this Settlement Agreement and the Final Judgment set forth all of the obligations of the parties, and any other representations, communications or agreements by or between the parties shall have no force and effect. The parties further agree that there shall be no modifications of this Settlement Agreement unless the modification is reduced to writing and signed by all parties.

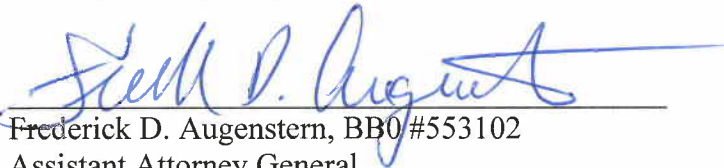
35. The person signing this Settlement Agreement on behalf of a Defendant acknowledges: that he or she has personally read and understands each of the numbered Paragraphs of this Settlement Agreement and the Final Judgment; that he or she is an officer of



the Defendant; and that he or she is authorized to sign and bind that Defendant to the terms of this Settlement Agreement and the Final Judgment.

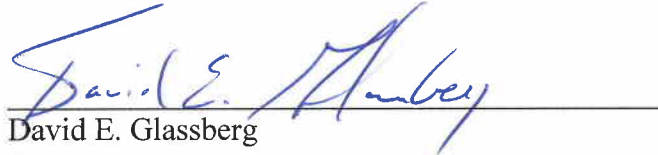
STIPULATED AND AGREED TO THIS 17<sup>th</sup> DAY OF October, 2008.

FOR THE COMMONWEALTH OF MASSACHUSETTS  
MARTHA COAKLEY  
ATTORNEY GENERAL



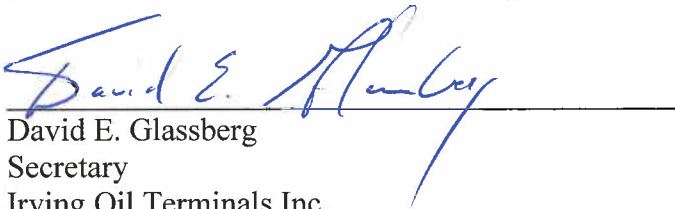
Frederick D. Augenstein, BB0 #553102  
Assistant Attorney General  
Environmental Protection Division  
1 Ashburton Place, 18th Floor  
Boston, MA 02108  
(617) 727-2200, x. 2427

FOR IRVING OIL CORPORATION:



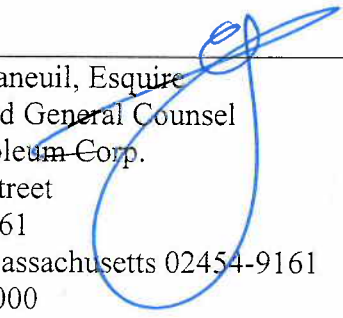
David E. Glassberg  
Secretary  
Irving Oil Corporation  
190 Commerce Way  
Portsmouth, New Hampshire 03801-3242  
(603) 559-8718

FOR IRVING OIL TERMINALS INC.:



David E. Glassberg  
Secretary  
Irving Oil Terminals Inc.  
190 Commerce Way  
Portsmouth, New Hampshire 03801-3242  
(603) 559-8718

FOR GLOBAL PETROLEUM CORPORATION:



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Edward J. Faneuil, Esquire  
Secretary and General Counsel  
Global Petroleum Corp.  
800 South Street  
P.O. Box 9161  
Waltham, Massachusetts 02454-9161  
(781) 398-4000

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO.

COMMONWEALTH OF MASSACHUSETTS,	)	
	)	
	)	
Plaintiff,	)	
v.	)	
	)	
IRVING OIL CORPORATION; IRVING OIL	)	
TERMINALS INC.; and; GLOBAL	)	
PETROLEUM CORP.,	)	
	)	
Defendants.	)	

**JOINT MOTION FOR THE ENTRY OF FINAL JUDGMENT**

Plaintiff Commonwealth of Massachusetts and Defendants Irving Oil Corporation, Irving Oil Terminals Inc., and Global Petroleum Corp. jointly move for entry of Final Judgment in the form submitted with this Motion. Also being submitted with this motion is the Settlement Agreement among the Parties. Because this is a joint motion, Superior Court Rule 9A does not apply.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS  
MARTHA COAKLEY  
ATTORNEY GENERAL

\_\_\_\_\_  
Frederick D. Augenstern (BB0 # 553102)  
Assistant Attorney General  
Environmental Protection Division  
1 Ashburton Place, 18th Floor  
Boston, MA 02108  
(617) 963-2427

FOR IRVING OIL CORPORATION AND  
IRVING OIL TERMINALS INC.:

Susan M. Cooke, P.C. (BBO# 097820)  
McDermott Will & Emery LLP  
28 State Street  
Boston, Massachusetts 02109-1775  
(617) 535-4012

FOR GLOBAL PETROLEUM CORPORATION:

Mark W. Roberts, Esquire (BBO# 554038)  
McRoberts & Roberts L.L.P.  
15 Broad Street, Suite 240  
Boston, Massachusetts 02109  
(617) 722-8222

Dated: \_\_\_\_\_, 2008

CERTIFICATE OF SERVICE

I, Frederick D. Augenstern, hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, I served a copy of the foregoing Joint Motion for Entry of Final Judgment upon each of the parties to this case by sending it by first class mail, postage prepaid, or by hand delivery or fax, to:

Susan M. Cooke, P.C.  
McDermott Will & Emery LLP  
28 State Street  
Boston, Massachusetts 02109-1775

Mark W. Roberts, Esquire  
McRoberts & Roberts L.L.P.  
15 Broad Street, Suite 240  
Boston, Massachusetts 02109

Frederick D. Augenstern  
Assistant Attorney General

**EXHIBIT B**

**(FINAL JUDGMENT WITH CONSENTS - FOLLOWING PAGES)**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO.

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

IRVING OIL CORPORATION; IRVING OIL  
TERMINALS INC.; and GLOBAL  
PETROLEUM CORP;

Defendants.

**FINAL JUDGMENT**

This matter came before the Court on the Joint Motion of the Commonwealth of Massachusetts ("Commonwealth"), and of Defendants Irving Oil Corporation and Irving Oil Terminals, Inc. (together, "Irving"), and of Defendant Global Petroleum Corp. ("Global") (collectively, the "Defendants"), for Entry of Final Judgment, and the Settlement Agreement among the Commonwealth and the Defendants (the "Settlement Agreement"), whereupon, after consideration of the same, and the Defendants having expressly consented hereto, it is hereby **ORDERED** and **ADJUDGED** as follows:

**Payment of Civil Penalties and Natural Resource Damages**

1. Within ten (10) days of the entry of this 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 which 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 which is for the Defendants' alleged violations of

G.L. c. 21E and the regulations found at 310 C.M.R. 40.0000 *et seq.*, known as the Massachusetts Contingency Plan ("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 (assigned Release Tracking Number ("RTN") 3-25720 by MassDEP) from an open pipeline on a petroleum product transfer dock (the "Irving/Global Dock") in Revere, Massachusetts, that the Defendants jointly own and operate and that connects Irving's and Global's tank farms adjacent thereto (the "Tank Farms"), to the Chelsea River (also known as Chelsea Creek) and its tributary, Mill Creek (together, 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."

#### **Interest and Collections**

2. If any payment required pursuant to this 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 Final Judgment, including reasonable attorneys' fees and costs of collection incurred by the Commonwealth.

**Affirmative Relief Under the MCP.**

3. The Defendants shall 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 shall thereafter file a new Response Action Outcome ("RAO") that complies with the MCP.

4. If not already done by the Entry Date, within fifteen (15) days after the Entry Date the Defendants shall submit to MassDEP a Phase I Report and Tier Classification for the Site in accordance with the requirements of 310 CMR 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.

5. 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.

6. 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.



7. 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.

8. 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, MassDEP 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 and 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.

### **MassDEP's Right of Access**

9. MassDEP shall have the right to enter the Defendants' premises, in Revere, Massachusetts, including without limitation the Irving/Global Dock or the associated piping known as the "Bull Pen", at reasonable times, without prior notice and without securing any judicial or administrative warrants or other process, to monitor the Defendants' compliance with this Final Judgment. MassDEP personnel making any such inspection shall report their arrival and departure at the reception area of Irving's or Global's Tank Farm. The Defendants shall have the right to assign an employee to accompany MassDEP personnel during the inspection, and the Defendants shall make the assignment and allow each inspection to begin promptly, but in any case, within thirty (30) minutes of MassDEP's arrival at either of the Tank Farms. The thirty-minute time limitation set forth in the preceding sentence shall not prevent immediate access by MassDEP personnel to the Defendants' premises in the event that MassDEP has obtained information of an ongoing or recent release or threat of release of oil or hazardous material to the environment at or from the Defendants' premises. During any such inspections, MassDEP personnel may take videos or photographs of anything at the Defendants' premises, may obtain copies of any record or other documentary evidence kept at the Defendants' premises, and may take samples of any waste, product, or other materials at the Defendants' premises. Any of the foregoing information, documents, samples, visual and recorded evidence, and other materials gathered by MassDEP during any such inspection may be used for any purpose by the Commonwealth in any other civil or criminal prosecution against either or both Defendants, as well as in this action to enforce the Settlement Agreement and this Final Judgment.

### **Contempt**

10. In addition to any relief specifically provided for herein, violations of this Final

Judgment may be punishable by contempt.

**Retained Jurisdiction and Modification**

11. This Court shall retain jurisdiction to enforce this Final Judgment.

12. This Final Judgment may be modified for the same reasons as a litigated judgment.

13. This Final Judgment shall cease to have any force or effect upon payment by the Defendants of all sums due hereunder, and either: (a) four (4) years after submission of an RAO demonstrating attainment of a permanent solution at the Site for Release RTN 3-25720, or (b) successful resolution of MassDEP's audit of that RAO where such audit is instituted within two (2) years of the RAO's submission to MassDEP. If, at the time of the triggering events just described, an action brought by the Commonwealth to enforce the terms of the Settlement Agreement or this Final Judgment is pending to address non-compliance by either or both Defendants or any successor or assign, then this Final Judgment shall cease to have any force or effect when the non-complying Defendant(s) or such successor or assign returns to compliance with the terms of the Settlement Agreement and the Final Judgment and such action is fully resolved.

**BY THE COURT:**

\_\_\_\_\_  
Justice, Superior Court

\_\_\_\_\_  
Date

**Attest:**

\_\_\_\_\_  
Assistant Clerk

\_\_\_\_\_  
Date

## CONSENT

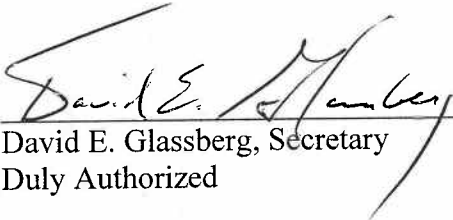
Defendant Irving Oil Corporation admits to the continuing jurisdiction of the Superior Court as to the personal and subject matter jurisdiction of this action, and hereby consents to the entry of the Final Judgment to which this Consent form is attached. In so consenting, the person signing on behalf of Irving Oil Corporation states that he has personally read and understands each of the numbered paragraphs of the Final Judgment to which this Consent form is attached, and also states that he is authorized to sign this Consent on behalf of Irving Oil Corporation and to bind Irving Oil Corporation to the terms of the Final Judgment.

Irving Oil Corporation waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure.

Irving Oil Corporation further understands that any violation of the Final Judgment may result in its being adjudged in contempt of court.

ASSENTED TO, WAIVING ALL RIGHTS TO APPEAL:

IRVING OIL CORPORATION

  
\_\_\_\_\_  
David E. Glassberg, Secretary  
Duly Authorized

Date: October 7, 2008

### CONSENT

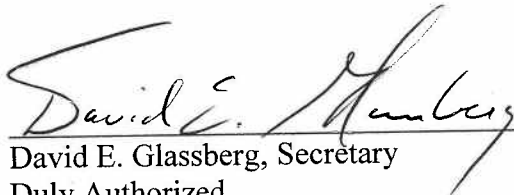
Defendant Irving Oil Terminals Inc. admits to the continuing jurisdiction of the Superior Court as to the personal and subject matter jurisdiction of this action, and hereby consents to the entry of the Final Judgment to which this Consent form is attached. In so consenting, the person signing on behalf of Irving Oil Terminals Inc. states that he has personally read and understands each of the numbered paragraphs of the Final Judgment to which this Consent form is attached, and also states that he is authorized to sign this Consent on behalf of Irving Oil Terminals Inc. and to bind Irving Oil Terminals Inc. to the terms of the Final Judgment.

Irving Oil Terminals Inc. waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure.

Irving Oil Terminals Inc. further understands that any violation of the Final Judgment may result in its being adjudged in contempt of court.

ASSENTED TO, WAIVING ALL RIGHTS TO APPEAL:

IRVING OIL TERMINALS INC.

  
\_\_\_\_\_  
David E. Glassberg, Secretary  
Duly Authorized

Date: October 7, 2008

## CONSENT

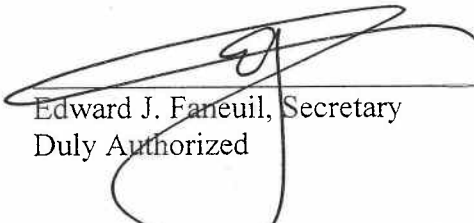
Defendant Global Petroleum Corp. ("Global") admits to the continuing jurisdiction of the Superior Court as to the personal and subject matter jurisdiction of this action, and hereby consents to the entry of the Final Judgment to which this Consent form is attached. In so consenting, the person signing on behalf of Global states that he has personally read and understands each of the numbered paragraphs of the Final Judgment to which this Consent form is attached, and also states that he is authorized to sign this Consent on behalf of Global and to bind Global to the terms of the Final Judgment.

Global waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure.

Global further understands that any violation of the Final Judgment may result in its being adjudged in contempt of court.

ASSENTED TO, WAIVING ALL RIGHTS TO APPEAL:

GLOBAL PETROLEUM CORP

  
\_\_\_\_\_  
Edward J. Faneuil, Secretary  
Duly Authorized  
Date: Oct. 6, 2008