

9-24-99

Check issued + sent  
to EDEA 9-27-99

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO. 99-4612-G

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

HALLMARK HEALTH SYSTEM, INC.,  
d/b/a Lawrence Memorial Hospital

Defendant.

SETTLEMENT AGREEMENT

This agreement is made this 24 day of September, 1999, between the Commonwealth of Massachusetts (the Commonwealth) and Hallmark Health System, Inc., d/b/a Lawrence Memorial Hospital ("LMH") (the Commonwealth and LMH are referred to collectively as the Parties). The Parties recite that:

Whereas, the Commonwealth initiated this action against LMH ("Action") by filing a complaint (the "Complaint") alleging, among other things, that LMH violated the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Mass. G.L. c. 21E ("G.L. c. 21E"), and the Massachusetts Clean Waters Act, Mass. G.L. c. 21, §§ 26-53 ("Clean Waters Act"), and as a result, is liable to the Commonwealth for up to three times the amount of certain response costs incurred by the Commonwealth in connection with the alleged release of oil at or from property LMH owned and operated, located at 170 Governor's Avenue in Medford,

Massachusetts, and any other area or place where the alleged release of oil came to be located (collectively, "Site");

Whereas, the Commonwealth is seeking (1) recovery of up to three times certain response costs incurred by the Commonwealth in connection with the Site; (2) recovery of the actual amount of certain other response costs incurred by the Commonwealth in connection with the Site; (3) damages for the alleged injury to, and for destruction or loss of, natural resources, including the costs of assessing and evaluating the injury, destruction or loss, incurred or suffered as a result of a release of oil at the Site ("Natural Resource Damages" or "NRD"), and; (4) civil penalties for alleged violations of environmental laws and regulations resulting from such release;

Whereas, the Parties wish to avoid the expense and disruption of litigation and have entered into this agreement (the "Settlement Agreement") that resolves the claims at issue in this Action;

Whereas, resolution of this Action through this Settlement Agreement is consistent with the purposes of G.L. c. 21E and the Clean Waters Act, is based on good faith negotiations, and is in the public interest;

Now, therefore, the Parties agree as follows:

A. BACKGROUND

1. The Superior Court has jurisdiction over the subject matter of this Action and over the Parties to this Action. Venue is appropriate in Suffolk County.

2. Unless otherwise expressly provided, terms used in this Settlement Agreement that are defined in the Clean Waters Act, G.L. c. 21E or in the Massachusetts Contingency Plan (“MCP”), 310 C.M.R. §§ 40.0000 et seq., shall have the meaning assigned to them in such statutes and regulations.

3. The Parties explicitly acknowledge and agree that by entering into this Settlement Agreement, LMH is not admitting or acknowledging any liability to the Commonwealth of any kind whatsoever, or the veracity of any allegation in the Complaint.

4. The Parties agree that this Settlement Agreement shall not be used as evidence of any matter of law or fact in any proceeding other than a proceeding to enforce its terms. This Settlement Agreement is between the Parties and is not made for the benefit of any third party not specifically mentioned in this agreement.

#### B. PAYMENT

5. LMH agrees to pay to the Commonwealth \$250,000. The Commonwealth will allocate that amount as follows:

a. \$105,100.38 is two times the response costs incurred by the Commonwealth to hire contractors to perform necessary response actions at the Site that the Commonwealth alleges LMH unreasonably or in bad faith refused to perform, and which LMH previously refused to pay;

b. \$59,437.38 is the actual amount of the remaining response costs incurred by the Commonwealth in this case;

c. \$8,660.27 is interest that accrued from July 22, 1997 through November 22, 1998 on the amount (\$52,550.19) that LMH had previously refused to pay, accruing at the rate of twelve percent (12%) per annum, as set forth in G.L. c. 21E, § 13;

d. \$50,000.00 is for civil penalties; and

e. \$26,801.97 is for Natural Resource Damages.

LMH shall make payment by two certified checks or cashiers' checks made payable to the Commonwealth of Massachusetts and shall deliver the two checks at the time of execution of this Settlement Agreement, to:

Office of the Attorney General  
Environmental Protection Division  
200 Portland Street, Third floor  
Boston, Massachusetts 02114  
Attention: Richard Hecht, Assistant Attorney General

LMH shall deliver one check, in the amount of \$223,198.03, for payment pursuant to clauses a.-d. LMH shall deliver a second check, in the amount or the sum of \$26,801.97, for payment pursuant to clause e. The second check shall refer on its face to the "Natural Resource Damages Trust Fund."

#### C. RELEASES FROM LIABILITY/COVENANTS NOT TO SUE

6. In consideration of the payments to be made by LMH, and pursuant to G.L. c. 21E, § 3A (j)(1), the Commonwealth covenants not to sue or to take administrative action, except as provided in Paragraphs 8 and 11-14, below, against LMH, its officers, directors, trustees, employees, agents, representatives, contractors, subcontractors, attorneys, servants, successors, and assigns, for claims or actions arising from the allegations in the Complaint, or

from information or conditions at the Site known to the Commonwealth on the date of this Settlement Agreement, pursuant to the statutes and common law theories listed in Paragraph 7, below, seeking:

- (1) to compel LMH to implement, comply with, or fund response actions, corrective actions or measures, or similar judicial or administrative response-type injunctive relief;
- (2) recovery, reimbursement, contribution, or equitable share of response costs or natural resource damages; or
- (3) civil penalties for violations that occurred prior to the execution of this Settlement Agreement.

(The Commonwealth's covenant in this paragraph is known as "The Covenant.") The Covenant is not a "Brownfields" covenant not to sue pursuant to G.L. c. 21E, § 3A (j)(3) and 940 C.M.R. 23.00. The Covenant shall take effect upon the complete and satisfactory performance of the payment obligations set forth in Paragraph 5 of this Settlement Agreement, in accordance with the applicable terms and conditions set forth in this agreement.

7. The statutes and common law theories subject to The Covenant, and to the limitations set forth in the Covenant, are:

- a) Sections 107 and 310 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended; Sections 1002, 1005, 1006, 1008, and 1009 of the Oil Pollution Act; Section 505 of the Clean Water Act; Section 7002 of the Resource Recovery and Conservation Act; G.L. c. 21E; G.L. c. 21H; Sections 5, 7, and 11D of G.L. c. 12; Sections 42, 44, 46, and 53 of G.L. c. 21; Sections 9 and 10 of G.L. c. 21C; Sections 142A, 142B, 160, 160B, and 162 of G.L. c. 111; Section 169 of G.L. c. 111 for violation of Section 167; Sections 40, 40A, 42, and 90 of G.L. c. 131; Section 7A of G.L. c. 214; Section 39G of G.L. c. 40; Sections 59 and 59A of G.L. c. 91; Sections 9 and 11 of G.L. c. 93A for violation of Section 2; and the implementing regulations of all such listed statutes; and

b) the common law theories of nuisance, trespass, negligence, strict liability, and restitution.

8. The Covenant shall not apply to any liability of Cyn Environmental Services, or any of its employees, agents, representatives, contractors, subcontractors, attorneys, servants, successors, and assigns, for any violation of G.L. c. 21A, §§ 19-19J, or regulations promulgated under those statutes at 309 C.M.R. 1.00 et seq. The Commonwealth expressly reserves the right to file a complaint alleging such violations with the Board of Registration of Hazardous Waste Site Cleanup Professionals (the "Board"). Nothing in this Settlement Agreement shall be construed or operate to bar, diminish, waive, or in any way affect the authority of the Board to conduct any disciplinary proceeding or to assess any penalty or other censure for any such violations.

9. Upon receipt by the Commonwealth of the payments to be made by LMH, the Parties shall cause the attached Stipulation of Dismissal, which is incorporated by reference in this agreement, to be executed and filed with the appropriate court.

10. LMH covenants not to sue and agrees not to assert any claims or causes of action against the Commonwealth, including the Department of Environmental Protection ("the Department"), and its employees, agents, representatives, contractors, subcontractors, attorneys, servants, successors, and assigns for any and all liability arising from the claims resolved by this Settlement Agreement. LMH's covenant not to sue the Commonwealth shall be effective simultaneously with the Commonwealth's Covenant not to sue LMH.

D. RESERVATIONS OF RIGHTS

11. The releases from liability and covenants not to sue set forth above do not pertain to any matters other than those expressly specified. The Parties reserve all rights any Party may have with respect to all other matters.

12. The releases from liability and covenants not to sue set forth above shall not preclude the Commonwealth from instituting a separate or ancillary action to enforce the terms of this Settlement Agreement.

13. The Commonwealth retains all authority and reserves all rights to take any and all response actions at the Site as authorized by law. The Commonwealth further reserves the right to institute proceedings in a new action under G.L. c. 21E or at common law seeking to compel LMH to perform additional response actions in connection with the Site or to reimburse the Commonwealth for response costs or NRD in connection with the Site if:

- (a) conditions at the Site, unknown to the Commonwealth on the date of this Settlement Agreement, are discovered or become known to the Commonwealth, or
- (b) information unknown to the Commonwealth on the date of this Settlement Agreement is received by the Commonwealth, in whole or in part,

and the Commonwealth determines, based on these previously unknown conditions or information together with any other relevant information, that an Imminent Hazard exists at the Site, pursuant to G.L. c. 21E and the MCP.

14. For purposes of Paragraphs 6 and 13 of this Settlement Agreement, the information and conditions at the Site known to the Commonwealth on the date of this Settlement Agreement

shall include all information contained on the date that the Settlement Agreement is signed by both Parties in the files and records of the Department, the Office of the Attorney General, and the Executive Office of Environmental Affairs, which relate to the Site.

F. MISCELLANEOUS

15. Nothing in this Settlement Agreement shall relieve LMH of existing obligations to comply with all applicable federal, state, and local laws and regulations.


16. Each of the Parties to this Settlement Agreement represents, warrants, and agrees that each party or its responsible officer or representative has read this Settlement Agreement and understands the contents of this agreement. Each of the officers or representatives executing this Settlement Agreement on behalf of his/her respective corporation or entity is empowered to do so and hereby binds his/her respective corporation or entity.

Agreed to:

Hallmark Health System, Inc.  
By its attorney,

COMMONWEALTH OF MASSACHUSETTS  
By its attorney,

THOMAS F. REILLY  
ATTORNEY GENERAL

  
Richard D. Hecht, BBO #630365  
Assistant Attorney General  
Environmental Protection Division  
200 Portland Street  
Boston, MA 02114  
(617) 727-2200



Timothy J. Hinkle  
R. Daniel O'Connor  
ROPES & GRAY  
One International Place  
Boston, MA 02110-2624  
(617) 951-7000

Date: 9/24/99

Date: 9/24/99