

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

In the matter of: _____)

ARLINGTON: 188 Medford Street

_____)
J. P. Noonan Transportation, Inc.)
_____)

Release Tracking No. 3-0031576

NATURAL RESOURCE DAMAGES SETTLEMENT AGREEMENT

1. The Secretary of the Executive Office of Energy and Environmental Affairs ("Secretary") enters into this Natural Resources Damages Settlement Agreement (hereinafter, "Settlement Agreement") pursuant to the authority vested in the Secretary by Massachusetts General Laws ("M.G.L.") Chapter ("ch.") 21E, § 5(a)(ii) and by Ch. 149, Section 222 of the Acts of 2004, codified at M.G.L. ch. 21A, § 2A, to assess natural resource damages and to bring natural resource damages claims, and by ch. 9 of the Acts of 2011, amending ch. 194, Section 22, of the Acts of 1998 by which the Natural Resource Damages Trust was established and for which the Secretary was made the Commonwealth Natural Resource Trustee.

2. The Massachusetts Department of Environmental Protection ("MassDEP") is responsible for the implementation and enforcement of the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. ch. 21E, and the Massachusetts Contingency Plan ("MCP") at 310 CMR 40.0000 *et seq.*

3. Unless otherwise indicated, the terms used herein shall have the meaning given to them by M.G.L. ch. 21E and/or the MCP. In addition, the term "Site" or "Sites" shall also mean the real property located in the area of 188 Medford Street, Arlington, Massachusetts at the rotary intersecting with Mystic Valley Parkway ("Property"), and any other place or area where oil and/or hazardous material has come to be located, to which MassDEP has assigned Release Tracking Number ("RTN") 3-0031576.

4. On behalf of the Secretary, and pursuant to ch. 9 of the Acts of 2011, amending ch. 194, Section 22, of the Acts of 1998, MassDEP administers the Natural Resource Damages Trust, subject to written approval of the Secretary, which is used to assess and recover natural resource damages resulting from releases of oil or hazardous materials within the Commonwealth and to restore injured resources to functional ecological systems. Accordingly, MassDEP is authorized, to:

- a. Assess injury to natural resources, which includes, but is not limited to, pre-assessment screening, identifying natural resources that have been lost, destroyed, or injured by oil, and determining the spatial and temporal extent of injuries;
- b. Recover natural resource damages, which includes, but is not limited to, identifying and evaluating feasible and cost-effective alternatives to restore resources to a

baseline condition and seeking appropriate compensation from polluters in the form of monetary damages or restoration actions; and

c. Restore natural resources including, but not limited to, the development of restoration plans that consider reasonable alternatives and public comment, and the implementation, oversight and monitoring of restoration actions.

5. The parties have agreed to enter into this Settlement Agreement because they agree that it is in their own interests, and in the public interest, to proceed promptly with the action called for herein rather than to expend additional time and resources litigating these matters.

6. By entering into this Settlement Agreement, J. P. Noonan Transportation, Inc. ("J. P. Noonan") neither admits nor denies any of the findings of the Secretary. This Settlement Agreement shall not constitute, or be interpreted or used as an admission of fault, liability, law or fact, nor shall it be admissible in any proceeding as such, except to the limited extent necessary to enforce the provisions of this Settlement Agreement. J. P. Noonan agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Settlement Agreement.

FINDINGS

7. J. P. Noonan is a Massachusetts corporation with its principal office located at 415 West Street, West Bridgewater, Massachusetts 02379-1030. J. P. Noonan is the owner and/or operator of a motor vehicle, from or at which there has been a release of oil. J. P. Noonan also caused, or is legally responsible, for the release of oil.

8. The following facts and allegations have led the Secretary to enter into this Settlement Agreement:

a. On May 31, 2013, at approximately 4:15 p.m., a 10,000 gallon capacity J. P. Noonan tanker truck overturned in the area of the Property. The tanker truck was traveling westbound on Route 60 at the time of the crash.

b. The crash resulted in a breach of the tanker compartment and the release of approximately 9,600 gallons of No. 2 fuel oil. The oil impacted adjacent soil and a number of storm water catch basins leading directly to the Mystic River.

c. First responders deployed granular absorbents to the roadway and multiple lines of containment boom in the river. The oil was ultimately contained to an approximate half-mile stretch of the Mystic River between the Route 60 and the River Street bridges.

d. Oil recovery efforts were implemented by MassDEP and its contractor, Moran Environmental Recovery, LLC, as well as by the contractor hired by J. P. Noonan, Clean Harbors Environmental Services, Inc. Oil recovery efforts and all remediation costs were paid for by J. P. Noonan and/or its insurer.

e. On April 4, 2014, J. P. Noonan submitted a Class A-2 Response Action Outcome Statement as required by the Massachusetts Contingency Plan ("MCP") at 310 CMR 40.1000 *et seq.* to document that all necessary response actions at the Property have been completed in accordance with the MCP and that a Permanent Solution has been achieved.

f. M.G.L. ch. 21E, § 5(a) states, in relevant part, that "the owner or operator of a [] site from or at which there is or has been a release or threat of release of oil or hazardous material . . . , shall be liable, without regard to fault . . . to the commonwealth for all damages for injury to and for destruction or loss of natural resources, including the costs of assessing and evaluating such injury, destruction or loss, incurred or suffered as a result of such release or threat of release"

NATURAL RESOURCE DAMAGES

9. As the Commonwealth Natural Resource Trustee, the Secretary alleges that the release of No. 2 fuel oil from the tanker truck has injured natural resources and the services they provide. The injured natural resources of the Mystic River and its surrounding resource areas including, but not limited to, shoreline habitat, wildlife, biota, air, surface waters, and other such resources are the subject of this Settlement Agreement.

10. "Natural Resources" as used in this Settlement Agreement, shall be "held to include ocean, shellfish and inland fisheries; wild birds, including song and insectivorous birds; wild mammals and game; sea and fresh water fish of every description; forests and all uncultivated flora, together with public shade and ornamental trees and shrubs; land, soil and soil resources, lakes, ponds, streams, coastal, underground and surface waters; minerals and natural deposits," as set forth in M.G.L. ch. 21 § 1.

11. "Natural Resources Damages" ("NRD") as used in this Settlement Agreement includes all claims arising from J. P. Noonan's May 31, 2013 release of No. 2 fuel oil at the Site that occurred prior to the effective date of this Settlement Agreement and that are recoverable by the Secretary as natural resource damages for injuries to Natural Resources under M.G.L. ch. 21E, § 5(a)(ii), and Ch.149, Section 222 of the Acts of 2004, codified at M.G.L. ch. 21A, § 2A, and include:

a. The amount of the injury that has occurred to the Natural Resources at the Site and to the services which those Natural Resources provide as a result of the release of No. 2 fuel oil from the tanker truck;

b. The costs of assessing injury to Natural Resources and natural resource services incurred by the Commonwealth, including oversight costs and interest incurred prior to the effective date of this Settlement Agreement; and

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c. The compensation for restoration of, the lost value of, injury to, or destruction of Natural Resources and natural resource services.

12. Within thirty (30) days from the effective date of this Settlement Agreement, J. P. Noonan shall pay to the Commonwealth of Massachusetts the sum of Fifty-Five Thousand One Hundred Dollars (\$55,100.00) for Natural Resource Damages. Said money will be directed to and held by the Natural Resource Damages Trust to be dispersed for the restoration of the Mystic River (Segment MA71-02) from the Outlet of Lower Mystic Lake (Segment MA71027) to the confluence with Alewife Brook (Segment MA71-04). Payment shall be made in accordance with Paragraphs 25 and 26 (Notices and Submissions).

Covenant Not to Sue

13. In consideration of and (a) upon receipt by MassDEP of the Fifty-Five Thousand One Hundred Dollars (\$55,100.00), and (b) upon satisfactory completion of all of J. P. Noonan's other obligations under this Settlement Agreement, the Secretary hereby agrees and covenants not to sue or take enforcement or administrative action against J. P. Noonan for any and all civil judicial or administrative claims for Natural Resource Damages pursuant to M.G.L. ch. 21E §5(a)(ii) at the Site. This covenant not to sue extends only to J. P. Noonan and its successors and assigns.

14. If J. P. Noonan fails to comply with any provision of this Settlement Agreement, the Secretary, in his sole discretion, may terminate this Settlement Agreement and/or may pursue other legal actions including, without limitation, enforcement of this Settlement Agreement and as otherwise provided in Paragraphs 22 through 24 (Reservation of Rights).

GENERAL PROVISIONS

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

16. This Settlement Agreement shall not be construed as, nor operate as, relieving J. P. Noonan or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

17. This Settlement Agreement may be modified only by written agreement of the parties hereto.

18. The provisions of this Settlement Agreement are severable, and if any provision of this Settlement Agreement or the application thereof is held invalid, such invalidity shall not affect

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the validity of other provisions of this Settlement Agreement, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Settlement Agreement in the event of any such invalidity.

19. Failure on the part of MassDEP to complain of any action or inaction on the part of J. P. Noonan shall not constitute a waiver by MassDEP of any of its rights under this Settlement Agreement. Further, no waiver by MassDEP of any provision of this Settlement Agreement shall be construed as a waiver of any other provision of this Settlement Agreement.

20. MassDEP hereby determines, and J. P. Noonan hereby agrees, that the deadline set forth in this Settlement Agreement constitute a reasonable period of time for J. P. Noonan to take the action herein described.

21. J. P. Noonan understands, and hereby waives, its right, if any, to an adjudicatory hearing on, and administrative or judicial review of, the issuance and terms of this Settlement Agreement and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.

Reservation of Rights

22. a. The Secretary reserves, and nothing in this Settlement Agreement is intended to be, nor shall be construed as, a release or covenant not to sue for any claim or cause of action, administrative or judicial, against J. P. Noonan for:

i. Natural Resource Damages against J. P. Noonan in the event that J. P. Noonan fails to comply with all terms of this Settlement Agreement, specifically the payment of the sum of \$55,100.00 to the Commonwealth in accordance with Paragraph 12;

ii. Natural Resource Damages resulting from future releases, discharges, or spills, that occur after the effective date of this Settlement Agreement;

iii. any and all criminal liability; and

iv. any matter not expressly included in the Covenant Not to Sue for Natural Resource Damages set forth in Paragraph 13 of this Settlement Agreement.

b. Except as provided in Paragraph 13 (Covenant Not to Sue) and subject to the conditions therein, MassDEP reserves, and nothing in this Settlement Agreement shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any order or to seek any other relief with respect to the subject matter covered by this Settlement Agreement or the Site, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of

action, or demand which MassDEP may have with respect to the subject matter covered by this Settlement Agreement or the Site, including, without limitation, any action to enforce this Settlement Agreement in an administrative or judicial proceeding.

c. Notwithstanding any other provision of this Settlement Agreement, including Paragraph 13, MassDEP reserves, and this Settlement Agreement is without prejudice to, MassDEP's right to institute a new NRD action for injury to, destruction of, or loss of Natural Resources that was unknown or of a magnitude greater than was known to the Commonwealth Natural Resource Trustee on the effective date of the Settlement Agreement.

23. MassDEP reserves, and nothing in this Settlement Agreement shall be construed or operate as barring, diminishing, adjudicating or in any way affecting any legal or equitable right of MassDEP to recover costs incurred by MassDEP, or to issue orders or seek injunctive relief against J. P. Noonan, in connection with response actions at the Site.

24. MassDEP reserves, and nothing in this Settlement Agreement shall be construed or operate as barring, diminishing, adjudicating or in any way affecting, MassDEP's authority to (a) perform response actions at the Site or (b) require J. P. Noonan to conduct response actions at the Site or take other actions in order to comply with all applicable laws and regulations including, without limitation, M.G.L. ch. 21E and the MCP.

Notices and Submissions

25. Unless submitted via eDEP or except as otherwise provided herein, any reports, notices, submittals and any other communications required by this Settlement Agreement shall be directed to:

Stephen M. Johnson, Deputy Regional Director
Department of Environmental Protection
205B Lowell Street
Wilmington, MA 01887

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

26. J. P. Noonan shall pay the NRD costs as described in Paragraph 12, above, by certified check, cashier's check, or money order made payable to the Commonwealth of Massachusetts, or by electronic funds transfer. If payment is made by certified check, cashier's check, or money order, J. P. Noonan shall clearly print on the face of its payment J. P. Noonan's full name, the file number appearing on the first page of this Settlement Agreement, the J. P. Noonan's Federal Employer Identification Number, with a reference to the "Natural Resource Damages Trust – Account 2200-2676." The payment shall be sent to:

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Massachusetts Department of Environmental Protection
Attn: Kristin LaCroix
Chief Financial Officer
P.O. Box 4062
Boston, MA 02211

Copies of the check shall be sent to:

Karen I. Pelto
NRD Coordinator
Massachusetts Department of Environmental Protection
Bureau of Waste Site Cleanup
One Winter Street, 6th Floor
Boston, MA 02108

If payment is made by electronic funds transfer, J. P. Noonan must complete the attached form "Electronic Funds Transfer Request" and, within 10 days of the effective date of this Settlement Agreement, submit it to Director, BAS Division of Fiscal Management via Facsimile at the MassDEP Revenue Fax Number 617-292-5824 or via mail to:

Department of Environmental Protection
Attn: Revenue Unit
1 Winter Street, 4th Floor
Boston, MA 02108

When making payment by electronic funds transfer, the transmission should be directed to Kristin LaCroix, Chief Financial Officer, and contain J. P. Noonan's full name, the file number appearing on the first page of this Settlement Agreement, J. P. Noonan's Federal Employer Identification Number, with a reference to the "Natural Resource Damages Trust – Account 2200-2676."

27. To the extent authorized by the current owner(s), J. P. Noonan agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to the Site for purposes of conducting any activity related to its oversight of this Settlement Agreement. Notwithstanding any provision of this Settlement Agreement, MassDEP retains all of its access authorities and rights under applicable state and federal law.

28. This Settlement Agreement may be executed in one or more counterpart originals, all of which when executed shall constitute a single Settlement Agreement.

29. This Settlement Agreement does not relieve J. P. Noonan's obligation to pay Annual Compliance Assurance Fees, if any, pursuant to 310 CMR 4.00 *et. seq.*

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

31. This Settlement Agreement shall become effective on the date that it is executed by the Secretary.

Consented To:

J. P. NOONAN TRANSPORTATION, INC.

By: 

J. Peter Noonan, Sr.
President

415 West Street

West Bridgewater, MA 02379-1030

Federal Employer Identification No.: 04-2443727

Date: 10/6/2014

Issued By:

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

By: 

Maeve Valley Bartlett

Secretary of the Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Date: 10/16/14