

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

In the matter of:
NSTAR Electric Company d/b/a
Eversource Energy

Mystic River

Release Tracking No. 3-0034883

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. NSTAR Electric Company d/b/a Eversource Energy ("Eversource" or Respondent") is a Massachusetts corporation with a principal Massachusetts office located at 800 Boylston Street, 17th Floor, Boston, Massachusetts 02199, which is also Respondent's mailing address for purposes of this Administrative Consent Order. The Respondent operates and maintains a large system of pipe type cable transmission lines within the Commonwealth of Massachusetts.
3. Unless otherwise indicated, the terms used herein shall have the meaning given to them by M.G.L. ch. 21E and/or the Massachusetts Contingency Plan ("MCP"). In addition, the term "Site" shall also mean (i) the waterway and immediately adjacent shoreline of the Mystic River from the Amelia Earhart dam in Somerville and Everett to the confluence of the Chelsea River in Chelsea and Charlestown; (ii) the point of dielectric fluid discharge from Eversource Pipe Type Cable electrical transmission line No. 358 beneath Alfred A. Lombardi Way near the intersection with Mystic Avenue; and (iii) 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") 3-0034883.
4. On behalf of the Secretary, and pursuant to c. 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, Eversource 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. Eversource agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Settlement Agreement.

FINDINGS

7. Eversource is the owner and/or operator of Pipe Type Cable electrical transmission line No. 358 in Somerville, Massachusetts, from or at which there has been a release of dielectric fluid. Eversource also caused, or is legally responsible, for the release of the dielectric fluid.
8. The following facts and allegations have led the Secretary to enter into this Settlement Agreement:
- a. On April 4, 2018, MassDEP received an email from a resident of Somerville expressing concern over the recurring presence of "a thin coating of some oily substance...in fairly large patches" on the surface of the Mystic River, in an area "opposite the Eversource substation, Exxon Mobil fuel storage facility, and scrap metal yard on the Everett/Chelsea side of the river...."
 - b. On April 13, 2018, following a series of additional complaints and inspections, MassDEP Emergency Response personnel observed a dull-gray oil sheen on the surface of the Mystic River at the Exxon Mobil bulk oil facility near the Tobin bridge. This finding precipitated a series of upstream inspections, which confirmed the presence of the same dull-gray oil sheen at the confluence of the Island End River and the Mystic River,

and, further upstream, at and inside the Encore Casino cove in Everett. Ultimately, the oil was observed to have impacted approximately 1.8 miles of the Mystic River, from the Amelia Earhart Dam in Somerville and Everett to the confluence with the Chelsea River in Chelsea and Charlestown, with impacts noted to the surface water, intertidal zone sediment, and man-made structures including sea walls and rip-rap.

c. On April 13, 2018, at 3:50 PM, Eversource notified MassDEP that (i) the dull-gray oil sheen on the Mystic River was a dielectric pipe-type cable fluid ("dielectric fluid") that is used in Pipe Type Cable electrical transmission lines, (ii) approximately 4,000 gallons of Soltex DF-100 cable oil was unaccounted for at Eversource Substation 250 in Charlestown, and (iii) the sheen on the Mystic River was likely associated with a cable oil leak somewhere in a Pipe Type Cable electrical transmission line connected to Eversource Substation 250.

d. On April 13, 2018, Eversource agreed to conduct an Immediate Response Action in accordance with 310 CMR 40.0400 of the MCP to assess and remediate the release of the dielectric fluid to the environment. Initial and continuing efforts to contain and remove the dielectric fluid from the Mystic River were undertaken by Clean Harbors Environmental Services ("Clean Harbors") under contract to Eversource. The progress of assessment, containment and recovery actions were detailed by Eversource in a series of regular email reports to MassDEP between April and October of 2018.

e. On or about April 13, 2018, Eversource provided to MassDEP a Safety Data Sheet ("SDS") for its Soltex DF-100 dielectric fluid, to aid in the Department staff's understanding of the physical and toxicological properties of this material and facilitate MassDEP oversight of the Immediate Response Action being undertaken by Eversource. Section 12 of the SDS stated that "Aquatic toxicity is unlikely due to low solubility." However, in section 9 of the SDS, the dielectric fluid's solubility was listed as "not available," a response given to 18 of the 26 physical properties listed in this section. A similar lack of information and metrics existed in the Toxicological and Ecological Information sections of the SDS, including no information on acute toxicity, toxicity to aquatic invertebrates, and bioaccumulative potential.

f. On May 1, 2018, a considerable amount of dielectric fluid and sheen was observed to be discharging from a storm drain outfall just downstream of the Amelia Earhart Dam at low tide. This discharge was contained and removed by Clean Harbors.

g. On May 6, 2018 - 32 days after the initial report of the sheen on the Mystic River, and 23 days after reporting the release - Eversource, using perfluorocarbon tracers injected into the transmission pipeline, discovered the dielectric fluid leak location along Pipe Type Cable electrical transmission line No. 358, beneath Alfred A. Lombardi Way in Somerville, near the intersection with Mystic Avenue. Subsurface dielectric fluid at this location had infiltrated into a storm drain system and traveled more than 1 mile to an

outfall on the Mystic River immediately downstream of the Amelia Earhart dam - the outfall from which the dielectric fluid discharge was noted on May 1, 2018.

h. On May 6, 2018, Eversource placed a temporary clamp on Pipe Type Cable electrical transmission line No. 358, followed by a permanent repair three days later. Fluid recovery operations at the point of leakage and at the storm drain outfall were initiated by Clean Harbors.

i. On June 12, 2018, Eversource reported that an estimated 6,870 gallons of dielectric fluid had been released from its Pipe Type Cable electrical transmission pipeline system, and that approximately 2,600 gallons of it had been recovered to date from the point of leakage and the Mystic River.

j. On October 13, 2018, Eversource reported that approximately 4,400 gallons of dielectric fluid had been recovered to date from the point of leakage and the Mystic River.

k. The Massachusetts Clean Waters Act states at M.G.L. c. 21, §42 that,

Any person who, directly or indirectly, throws, drains, runs, discharges or allows the discharge of any pollutant into water of the commonwealth . . . or who violates any provision of this chapter, any valid regulation . . . issued by the director thereunder . . . (a) shall be punished by a fine of not less than two thousand five hundred dollars nor more than twenty-five thousand dollars for each day such violations occurs or continues, or by imprisonment for not more than one year, or by both; or (b) shall be subject to a civil administrative penalty not to exceed twenty-five thousand dollars per day of such violations, which may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction.

l. M.G.L. c. 21, §43(2) states that “[n]o person shall engage in any other activity that may reasonably be expected to result, directly or indirectly, in discharge of pollutants into waters of the commonwealth”

m. 314 CMR 3.03 states that, “[n]o person shall discharge pollutants to surface waters of the Commonwealth without a currently valid permit from the Department pursuant to M.G.L. c. 21, §43 and 314 CMR 3.00”

n. By discharging approximately 6,870 gallons of pipe-type dielectric fluid into the environment and an unknown amount of dielectric fluid into proximate underground stormwater drains leading directly to the Mystic River, dielectric fluid was discharged into the Mystic River, in an amount that the Respondent calculated may have been up to 907 gallons, in violation of M.G.L. c. 21, §43 and 310 CMR 3.03.

- o. M.G.L. c. 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 dielectric fluid from Pipe Type Cable electrical transmission line No. 358 has injured natural resources of the Mystic River and the services they provide, from the Amelia Earhart dam to the confluence with Chelsea River, a segment of the Mystic River codified as MA 71-03 by the MassDEP Bureau of Water Resources. The injured natural resources of this segment of the Mystic River and the services provided to the aquatic ecosystem include, but are not limited to, surface water, shoreline, and biota and 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. c. 21, §1.

11. "Natural Resources Damages" ("NRD") as used in this Settlement Agreement includes all claims arising from Eversource's April 2018 through July 2018 release of cable 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. c. 21E, §5(a)(ii), and ch.149, Section 222 of the Acts of 2004, codified at M.G.L. c. 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 the dielectric fluid;

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- 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
- 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**, Eversource shall pay to the Commonwealth of Massachusetts the sum of **fifty-eight thousand, one hundred, thirty-seven dollars (\$58,137.00)** 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 MA 71-03) from the MWRA Outfall at the Amelia Earhart Dam and the MBTA Bridge to the bridge adjacent to the Admiral's Hill Marina. Payment shall be made in accordance with Paragraphs 25 and 26 (Notices and Submissions).

13. **Covenant Not to Sue**

- a. In consideration of and (a) upon receipt by MassDEP of the **fifty-eight thousand, one hundred, thirty-seven dollars (\$58,137.00)**, and (b) upon satisfactory completion of all of Eversource's other obligations under this Settlement Agreement, the Secretary hereby agrees and covenants not to sue or take enforcement or administrative action against Eversource 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 Eversource and its successors and assigns.
- b. If Eversource 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 21 through 23 (Reservation of Rights).

GENERAL PROVISIONS

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

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

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

17. 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 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.

18. Failure on the part of MassDEP to complain of any action or inaction on the part of Eversource 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.

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

20. Eversource 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.

21. Reservation of Rights

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 Eversource for:

i. Natural Resource Damages against Eversource in the event that Eversource fails to comply with all terms of this Settlement Agreement, specifically the payment of the sum of \$58,137.00 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.

22. 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 Eversource, in connection with response actions at the Site.

23. 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 Eversource 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.

24. Notices and Submissions

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:

John Fitzgerald
Department of Environmental Protection-Northeast Regional Office
205B Lowell Street
Wilmington, MA 01887
Email: John.J.Fitzgerald@Mass.gov

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

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

Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108
Attn: Kristin LaCroix
Chief Financial Officer

Copies of the check shall be sent to:

Karen I. Peltó
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, Eversource 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) 556-1049 or via mail to:

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

When making payment by electronic funds transfer, the transmission should be directed to Valerie Walker, Director of the Fiscal Management Division – Revenue, and contain Eversource's full name, the file number appearing on the first page of this Settlement Agreement, Eversource's Federal Employer Identification Number, with a reference to the "Natural Resource Damages Trust – Account 2200-2676."

26. To the extent authorized by the current owner(s), Eversource 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.

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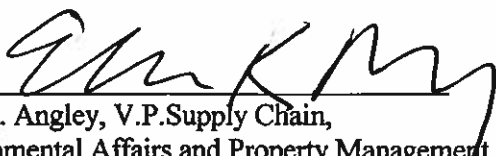
27. This Settlement Agreement may be executed in one or more counterpart originals, all of which when executed shall constitute a single Settlement Agreement.

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

29. 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.


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

Consented To:
EVERSOURCE ENERGY

By: 
Ellen K. Angley, V.P. Supply Chain,
Environmental Affairs and Property Management
NSTAR Electric Company d/b/a Eversource Energy
247 Station Drive
Westwood, MA 02090
Federal Employer Identification No.: T00010890

Date: _____

Issued By:
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

By: 
Kathleen Theoharides
Secretary
100 Cambridge Street, Suite 900
Boston, MA 02114

Date: 8/29/19