

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

In the matter of:

REVERE: Brown Circle Rotary
Release Tracking No. 3-0037123

Goguen Transportation, Inc.

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 (a) Massachusetts General Laws (“M.G.L.”) Chapter (“ch.”) 21E, (b) M.G.L. ch. 21A, § 2A, and (c) § 22 of ch. 9 of the Acts of 2011, amending § 222 of ch. 149 of the Acts of 2004, amending § 317 of ch. 194 of the Acts of 1998, by which the Secretary was made the Commonwealth Natural Resource Trustee and the Natural Resource Damages Trust was established.

2. Goguen Transportation, Inc. (“Goguen” or “Respondent”) is a Massachusetts corporation with a principal Massachusetts office located at P.O. Box 718, 100R Baker Street, Gardner, MA 01440, which is also Respondent’s mailing address for purposes of this Settlement Agreement. Respondent is a licensed and bonded freight shipping and trucking company running a freight hauling business from Gardner, 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 Brown Circle Rotary in Revere, MA; (ii) the storm drain that discharges into the nearby Rumney Marsh and associated surface waters via the Ward Street outfall; (iii) the point of #2 heating fuel oil discharge from the Ward Street outfall into the Diamond Creek and the Pine River; and (iv) any other place or area where oil and/or hazardous material has come to be located, to which the Massachusetts Department of Environmental Protection (“MassDEP”) has assigned Release Tracking Number (“RTN”) 3-0037123.

4. On behalf of the Secretary, and pursuant to the aforementioned § 22 of ch. 9 of the Acts of 2011, MassDEP is authorized to administer 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 Massachusetts Attorney General has approved in writing, pursuant to M.G.L. ch. 21A, § 2A, the Secretary's settlement and compromise of Natural Resource Damages contained in this Settlement Agreement.
6. 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.
7. By entering into this Settlement Agreement, Respondent 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. Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Settlement Agreement.

FINDINGS

8. Respondent is an interstate carrier overseen by the Federal Motor Carrier Safety Administration. Respondent caused or is legally responsible for the release of the #2 heating fuel.
9. The following facts and allegations have led the Secretary to enter into this Settlement Agreement:
- A. On October 13, 2021, MassDEP received a report of a release of 10,000 gallons of #2 heating fuel oil from an overturned tanker truck at the Brown Circle Rotary at the Sunoco Station in Revere. The #2 heating fuel oil entered a rotary storm drain and discharged to the nearby Rumney Marsh, ultimately impacting the Diamond Creek and the Pine River. Non-aqueous phase liquid and a sheen were present on surface water and a condition posing an Imminent Hazard was present due to the potential for fire or explosion. MassDEP assigned Release Tracking Number 3-0037123 to the reported release.
 - B. On November 17, 2021, MassDEP issued a Notice of Responsibility to Respondent.

C. On December 13, 2021, Respondent submitted a Release Notification Form to MassDEP confirming the release of 10,000 gallons of #2 heating fuel oil.

D. On December 13, 2021, Respondent also submitted an Immediate Response Action (“IRA”) Plan to MassDEP.

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

(a)ny person who, directly or indirectly, throws, drains, runs, discharges or allows the discharge of any pollutant into waters of the commonwealth, except in conformity with a permit issued under section 27 or 43; or who violates any provision of this chapter, any valid regulation, order or permit prescribed or issued by the director thereunder; or who knowingly makes any false representation in an application, record, report or plan, or falsifies, tampers with or renders inaccurate a monitoring device or method, required under this chapter, (a) shall be punished by a fine of not less than two thousand five hundred dollars nor more than \$50,000 for each day such violation occurs or continues, or by imprisonment for not more than one year, or by both

F. M.G.L. ch. 21, § 43 (2) states that, “[n]o person shall discharge pollutants into waters of the commonwealth . . . without a currently valid permit issued by the director. No 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”

G. 314 CMR 3.03 states that, “No person shall discharge pollutants to surface waters of the Commonwealth without a currently valid permit from the Department pursuant to M.G.L. ch. 21, § 43 and 314 CMR 3.00”

H. Respondent did not hold a valid permit to discharge pollutants to surface waters of the Commonwealth issued by MassDEP pursuant to M.G.L. ch. 21, §§ 27 or 43.

I. By discharging 10,000 gallons of #2 heating fuel oil from an overturned tanker truck at the Brown Circle Rotary in Revere, which fuel entered a rotary storm drain and discharged to the nearby Rumney Marsh, ultimately impacting the Diamond Creek and the Pine River, MassDEP estimated that an area in excess of 47 acres were impacted in violation of M.G.L. ch. 21, §43 and 310 CMR 3.03.

J. M.G.L. ch. 21E, §5(a)(5) states, in relevant part, that,

. . . any person who otherwise caused or is legally responsible for 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

10. The Secretary alleges that the release of 10,000 gallons of #2 heating fuel oil from an overturned tanker truck at the Brown Circle Rotary in Revere, which fuel entered a rotary storm drain and discharged to the nearby Rumney Marsh, ultimately impacting the Diamond Creek and the Pine River, has injured natural resources of the Rumney Marsh, the Diamond Creek, and the Pine River. The injured natural resources of the Rumney Marsh, the Diamond Creek, and the Pine River and the services they each provide to the aquatic ecosystem include, but are not limited to, surface water, shoreline, and biota and are the subject of this Settlement Agreement.

11. “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.

12. “Natural Resources Damages” (“NRD”) as used in this Settlement Agreement includes all claims arising from Respondent’s October 13, 2021 release of #2 heating 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 the #2 heating fuel oil;
- 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.

13. **Within thirty (30) days from the effective date of this Settlement Agreement,** Respondent shall pay to the Commonwealth of Massachusetts the sum of **one hundred and sixteen thousand four hundred and fifty-eight dollars and fifty cents (\$116,458.50)** for Natural Resource Damages (“Settlement Amount”). Said money will be directed to and held by the Natural Resource Damages Trust to be dispersed for the restoration of the natural resources that were injured by the release. Payment shall be made in accordance with Paragraph 26 of this Settlement Agreement.

14. Subject to the reservations of rights contained in Paragraphs 21, 22 and 23 of this Settlement Agreement and provided Respondent otherwise satisfies the terms and conditions of this Settlement Agreement, effective upon payment by Respondent of the Settlement Amount in accordance with Paragraph 13 of this Settlement Agreement, the Secretary settles and compromises the Commonwealth's claim for Natural Resource Damages incurred or suffered as a result of the release of #2 heating fuel oil described in Paragraph 9(A) of this Settlement Agreement and accordingly will not seek to collect Natural Resource Damages from Respondent beyond what Respondent agrees to pay as the Settlement Amount pursuant to this Settlement Agreement.

GENERAL PROVISIONS

15. This Settlement Agreement shall be binding upon Respondent and upon Respondent's successors and assigns. Respondent shall not violate this Settlement Agreement and shall not allow or suffer Respondent's directors, officers, employees, agents, contractors or consultants to violate this Settlement Agreement. Until Respondent has fully complied with this Settlement Agreement, Respondent 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 Respondent 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 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 the Secretary shall have the discretion to void this Settlement Agreement in the event of any such invalidity.

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

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

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21. Respondent 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 Secretary or MassDEP.

22. 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 Respondent for:

i. Natural Resource Damages against Respondent in the event that Respondent fails to comply with all terms of this Settlement Agreement, specifically the payment of the Settlement Amount to the Commonwealth in accordance with Paragraph 13 of this Settlement Agreement;

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

iii. any and all criminal liability.

b. The Secretary 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 the Secretary or 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 the Secretary or MassDEP to pursue any other claim, action, suit, cause of action, or demand which the Secretary or 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. The Secretary reserves, and this Settlement Agreement is without prejudice to, the Secretary's and 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 Secretary or MassDEP on the effective date of the Settlement Agreement.

23. The Secretary 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 the Secretary or MassDEP to recover costs incurred by the Secretary or MassDEP, or to issue orders or seek injunctive relief against Respondent, in connection with response actions at the Site.

24. The Secretary reserves, and nothing in this Settlement Agreement shall be construed or operate as barring, diminishing, adjudicating or in any way affecting, the Secretary's or MassDEP's authority to (a) perform response actions at the Site or (b) require Respondent to

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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.

25. 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:

Stephen M. Johnson
Department of Environmental Protection-Northeast Regional Office
150 Presidential Way
Woburn, MA 01801
Email: Stephen.johnson@Mass.gov

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

26. Respondent shall make payment pursuant to Paragraph 13 of this Settlement Agreement by certified check, cashier's check or electronic transfer made payable to the Commonwealth of Massachusetts.

If payment is made by certified check or cashier's check, Respondent shall clearly print on the face of its payment Respondent's full name, the file number appearing on the first page of this Settlement Agreement, the Respondent'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
100 Cambridge Street, Suite 900
Boston, MA 02114
Attn: Chief Financial Officer

Copies of the check shall be sent to:

Michelle L. Craddock
NRD Coordinator
Massachusetts Department of Environmental Protection
Bureau of Waste Site Cleanup
100 Cambridge Street, Suite 900
Boston, MA 02114

If payment is made by electronic funds transfer, Respondent must complete the attached form "Electronic Funds Transfer Request" and, within 10 days of the effective date of this Settlement

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Agreement, submit it to Valerie Walker, Director of the Fiscal Management Division – Revenue via Facsimile at the MassDEP Revenue Fax Number: (617) 556-1049 or via mail to:

Massachusetts Department of Environmental Protection
100 Cambridge Street, Suite 900
Boston, MA 02114
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 Respondent's full name, the file number appearing on the first page of this Settlement Agreement, Respondent's Federal Employer Identification Number, with a reference to the "Natural Resource Damages Trust – Account 2200-2676."

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 Respondent'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.

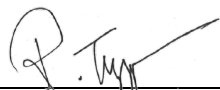
GOGUEN TRANSPORTATION, INC.

By: Joanne Goguen
Joanne Goguen, President
Goguen Transportation, Inc.
P.O. Box 718, 100R Baker Street
Gardner, MA 01440
Federal Employer Identification No.: 202059062

Date: 9/25/23

COMMONWEALTH OF MASSACHUSETTS

By:



Rebecca L. Tepper
Secretary of Energy and Environmental Affairs
Commonwealth of Massachusetts
100 Cambridge Street, Suite 900
Boston, MA 02114

Date: _____

ATTACHMENT

Department of Environmental Protection
Attn: Revenue Unit
100 Cambridge Street, Suite 900
Boston, MA 02114
Revenue Number: 617-292-5668
Fax number: 617-556-1049

RE: Electronic Funds Transfer Request
[Respondent fills in Enforcement Document Number]

Director, BAS Division of Fiscal Management:

In order to complete a wire transfer for payment of the penalty assessed under (list enforcement number here), (put Respondent name here) requests the following information:

DEP's legal address,
DEP's Federal Tax Identification Number,
The name and address of DEP's bank,
DEP's account name and number, and
The ABA/routing number for DEP's account.

Please mail or fax this information to:
Respondent's contact name:
Address:

Revenue Number: 617-292-5668
Fax number: 617-556-1049

Sincerely,

Signed:
Print name:
Title:
Work number:

Date: