

**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. 3-0036234

P. J. Murphy 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 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. P. J. Murphy Transportation, Inc. (“P. J. Murphy” or “Respondent”) is a Massachusetts corporation with a principal Massachusetts office located at 65 Hale Street, Haverhill, MA 01830, which is also Respondent’s mailing address for purposes of this Natural Resource Damages Settlement Agreement. Respondent is a licensed and bonded freight shipping and trucking company running a freight hauling business from Methuen, 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 gasoline and diesel fuel discharge from the Ward Street outfall into the Diamond Creek, the Pines River and the Atlantic Ocean; and (iv) 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”) 3-0036234.

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:

Page 2

- 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, 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

7. Respondent is an interstate carrier overseen by the Federal Motor Carrier Safety Administration. Respondent caused or is legally responsible for the release of the gasoline and diesel fuel.
8. The following facts and allegations have led the Secretary to enter into this Settlement Agreement:
- A. On April 17, 2020, at 2:20 PM, MassDEP received a report of a sudden release of 10,000 gallons of gasoline and 1,000 gallons of diesel fuel from an overturned tanker truck at the Brown Circle Rotary in Revere. The fuel entered a storm drain and was discharged to the nearby Rumney Marsh and associated surface waters via the Ward Street outfall. The gasoline and diesel fuel were able to migrate downstream to Diamond Creek, the Pines River, and the Atlantic Ocean. 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 3-0036234 to the reported release.
 - B. On May 27, 2020, MassDEP issued a Notice of Responsibility to Respondent.

Page 3

C. On June 16, 2020, Respondent submitted a Release Notification Form to MassDEP confirming the release of 10,000 gallons of gasoline and 1,000 gallons of diesel fuel.

D. On June 19, 2020, respondent 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 gasoline and 1,000 gallons of diesel fuel from an overturned tanker truck at the Brown Circle Rotary in Revere, which fuel entered a storm drain and discharged to the nearby Rumney Marsh and associated surface waters via the Ward Street outfall and which then was able to migrate downstream to Diamond Creek, the Pines River, and the Atlantic Ocean, MassDEP estimated that an area in excess of fifteen acres were impacted in violation of M.G.L. ch. 21, §43 and 310 CMR 3.03.

Page 4

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

9. As the Commonwealth Natural Resource Trustee, the Secretary alleges that the release of 10,000 gallons of gasoline and 1,000 gallons of diesel fuel from an overturned tanker truck at the Brown Circle Rotary in Revere, which fuel entered a storm drain and discharged to the nearby Rumney Marsh and associated surface waters via the Ward Street outfall and which then was able to migrate downstream to Diamond Creek, the Pine River, and the Atlantic Ocean, has injured natural resources of the Rumney Marsh, the Diamond Creek, the Pine River, and the Atlantic Ocean. The injured natural resources of the Rumney Marsh, the Diamond Creek, the Pine River, the Atlantic Ocean 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.

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 Respondent’s April 17, 2020 release of gasoline and diesel fuel 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 gasoline and diesel fuel;
- 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

Page 5

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,** Respondent shall pay to the Commonwealth of Massachusetts the sum of **fifty-two thousand, seven hundred, and forty-six dollars (\$52,746.00)** 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 Rumney Marsh, the Diamond Creek, the Pine River, and the Atlantic Ocean. 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 of **fifty-two thousand, seven hundred, and forty-six dollars (\$52,746.00)** and (b) upon satisfactory completion of all of Respondent's other obligations under this Settlement Agreement, the Secretary hereby agrees and covenants not to sue or take enforcement or administrative action against Respondent 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 Respondent and its successors and assigns.

b. If Respondent fails to comply with any provision of this Settlement Agreement, the Secretary, in her 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 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.

15. 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.

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

Page 6

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 Respondent 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 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.

20. 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 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 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 sum of **fifty-two thousand, seven hundred, and forty-six dollars (\$52,746.00)** 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 Respondent, 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 Respondent 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:

Stephen M. Johnson
Department of Environmental Protection-Northeast Regional Office
205B Lowell Street
Wilmington, MA 01887
Email: Stephen.johnson@Mass.gov

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

25. Respondent shall pay the NRD costs as described in Paragraph 12, above, by certified check, cashier's check or electronic transfer made payable to the Commonwealth of Massachusetts.

Page 8

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
One Winter Street
Boston, MA 02108
Attn: Steven McCurdy
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
One Winter Street, 6th Floor
Boston, MA 02108

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 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
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 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."

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

27. 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.*

In the Matter of P. J. Murphy Transportation, Inc.
Release Tracking No. 3-0036234


Page 9

28. 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.

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

Consented To:
P. J. MURPHY TRANSPORTATION, INC.

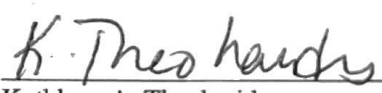
By: _____


Joseph Alves, President
P. J. Murphy Transportation, Inc.
65 Hale Street
Haverhill, MA 01830
Federal Employer Identification No.: 043088684

Date: 5/21/2021

Issued By:
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

By: _____


Kathleen A. Theoharides
Secretary
100 Cambridge Street, Suite 900
Boston, MA 02114

Date: 6/11/21

Page 10

ATTACHMENT

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