

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA
Plaintiff,

v.

COMMONWEALTH OF
MASSACHUSETTS,
MASSACHUSETTS STATE
POLICE and MASSACHUSETTS
DEPARTMENT OF
CONSERVATION AND
RECREATION

Defendants.

CIVIL ACTION NO. 1:09-cv-117

BEEDE WASTE OIL SUPERFUND SITE CONSENT DECREE

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606, 9607, as amended (“CERCLA”), seeking, *inter alia*, injunctive relief and reimbursement of response costs incurred and to be incurred for response actions taken or to be taken in connection with the release or threatened release of hazardous substances at or in connection with the Beede Waste Oil Superfund Site (“Site”) in Plaistow, New Hampshire.

B. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New Hampshire (the “State”) on May 16, 2005, of negotiations with potentially responsible parties regarding the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

C. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Department of Interior, and the United States National Oceanic and Atmospheric Administration, and the New Hampshire Department of Environmental Services by letter dated May 16, 2005, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under State and Federal trusteeship and encouraged the trustees to participate in Consent Decree negotiations.

D. The defendants that have entered into this Consent Decree (“Settling Defendant” and “De Minimis Settling Defendant”) do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint.

E. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on December 23, 1996, 61 Fed. Reg. 247.

F. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, including a Time Critical Removal Action and Non-Time Critical Removal Action.

G. In response to a release or a substantial threat of a release of a hazardous substances at or from the Site, the State, under a cooperative agreement with EPA, commenced a Remedial Investigation and Feasibility Study (“RI/FS”) for the Site on September 27, 1996, pursuant to 40 C.F.R. § 300.430.

H. The State, under a cooperative agreement with EPA, completed a Remedial Investigation (“RI”) Report and completed a Feasibility Study (“FS”) Report.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on June 17, 2002, in major local newspapers of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of

the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

J. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision (“ROD”), executed on January 9, 2004, on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

K. To date, EPA and/or the State have entered into four separate final administrative cashout settlements with eligible de minimis parties under the authority of Section 122(g) of CERCLA. These settlements, memorialized in four individual administrative orders on consent, are: 1) the Early De Minimis Settlement of 2001, U.S. EPA Docket No. CERCLA 01-2000-0041; 2) the Second De Minimis Settlement of 2002, U.S. EPA Docket No. CERCLA 01-2002-0025; 3) the Third De Minimis Settlement of 2003, U.S. EPA Docket No. CERCLA 01-2003-0038; and 4) the Fourth De Minimis Settlement of 2004, U.S. EPA Docket No. CERCLA 01-2004-0012. Each settling de minimis party participating in one of the four administrative settlements referenced above certified that it contributed no more than a total of the following gallons of materials containing hazardous substances to the Site: between 276 and 1,000 gallons for the first settlement; between 276 and 5,000 gallons for the second and third settlements; and between 276 and 20,000 for the fourth settlement. In addition, each settling party certified that such hazardous substances are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site. The four de minimis settlements allowed the settlors to make a cash payment to EPA, including a premium, to resolve their alleged civil

liability under Sections 106, 107 and 113(f)(1) of CERCLA, 42 U.S.C. §§ 9606, 9607 and 9613(f)(1), and for the second, third and fourth de minimis settlements, to make a cash payment to the State to resolve their alleged civil liability pursuant to New Hampshire Revised Statutes Annotated 147-B:10 for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site. These settlements provided for full and complete contribution protection for each settling de minimis party.

L. On April 16, 2007, the United States Department of Justice (“DOJ”) lodged a Remedial Design/Remedial Action Consent Decree (“Beede RD/RA Consent Decree”) with this Court United States, et al. v. ExxonMobil Corporation, et. al., Civ. No. 1:07-cv-00060-WES) which includes settlement terms between the United States, the State, and 101 Potentially Responsible Parties (“PRPs”) at the Site. The Order granting the United States’ Motion for Entry of the Beede RD/RA Consent Decree was entered by the Court on July 22, 2008. The Beede RD/RA Consent Decree includes settlement provisions for performance of the Beede Site remedy selected in the January 2004 ROD, as well as cashout settlement terms for participating de minimis parties and settling federal agencies.

M. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the work to be performed by the settling parties shall constitute a response action taken or ordered by the President.

N. The United States, the Settling Defendant and the De Minimis Settling Defendant agree, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will avoid

prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, 9613(b) and 6973. This Court also has personal jurisdiction over the De Minimis Settling Defendant and the Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaints, the De Minimis Settling Defendant and the Settling Defendant waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The De Minimis Settling Defendant and the Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon the De Minimis Settling Defendant and the Settling Defendant. Any change in legal status--including, but not limited to, any transfer of assets or real or personal property--shall in no way alter the status or responsibilities of Settling Defendant or De Minimis Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

b. "Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XIII). In the event of conflict between this Decree and any appendix, this Decree shall control.

c. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

d. "De Minimis Settling Defendant" shall mean the Massachusetts Department of Conservation and Recreation, by and through the Commonwealth of Massachusetts.

e. "DOJ" shall mean the United States Department of Justice.

f. "Effective Date" shall be the effective date of this Consent Decree as provided in Paragraph 39.

g. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

h. "Interest," shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

j. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

k. "Parties" shall mean the United States, the "De Minimis Settling Defendant" and the "Settling Defendant."

l. "Performing Party Trust Account" shall mean the Beede Waste Oil Superfund Site Settlement Trust established pursuant to a Declaration of Trust with an effective date of July 22, 2008, for the purposes of funding the performance of the cleanup of the Beede Waste Oil Superfund Site.

m. "Plaintiff" shall mean the United States.

n. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.

§§ 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

o. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on January 9, 2004, by the Regional Administrator, EPA Region 1, or his/her delegate and all attachments thereto.

p. "Response Costs" shall include all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

q. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

r. "Settling Defendant" shall mean the Massachusetts State Police, by and through the Commonwealth of Massachusetts.

s. "Site" shall mean the Beede Waste Oil Superfund Site, encompassing two parcels totaling approximately 40 acres, located at 11 Kelley Road and 42 Old County Road, Plaistow, Rockingham County, New Hampshire.

t. "State" shall mean the State of New Hampshire.

u. "Trustee" shall mean the Trustee identified in Appendix B to the Declaration of Trust implementing the Performing Party Trust Account.

v. “United States” shall mean the United States of America, including all of its departments, agencies, and instrumentalities.

w. “Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (4) any “hazardous waste” or “hazardous materials” under New Hampshire Revised Statutes Annotated 147-B:2, VII or VIII; and (5) any “hazardous waste” under New Hampshire Revised Statutes Annotated 147-A:2, VII.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the objectives of the Parties are: (1) for Settling Defendant to make a cash payment, which includes a premium, to address its liability for the Site as provided in the Covenant Not to Sue by Plaintiffs in Section VIII, and subject to the Reservation of the Rights by the United States in Section IX; and (2) to allow De Minimis Settling Defendant to pay its appropriate share of response costs incurred and to be incurred at or in connection with the Site by EPA and the private parties as provided in the Covenant Not to Sue by Plaintiffs in Section VIII, and subject to the Reservation of Rights by the United States in Section IX.

VI. PAYMENTS FOR RESPONSE COSTS BY THE DE MINIMIS SETTLING DEFENDANT AND THE SETTLING DEFENDANT

5. Payment by the De Minimis Settling Defendant. As soon as reasonably practicable after entry of this Consent Decree the De Minimis Settling Defendant shall pay the full

settlement amount of \$344,626.21 to the Performing Party Trust Account, as directed below in Subparagraph 5.a.

a. The De Minimis Settling Defendant's total payment of \$344,626.21 shall be made payable to the "Beede Waste Oil Superfund Site Settlement Trust," and sent by wire transfer or automated clearing house ("ACH") to:

Pinnacle National Bank, Nashville, TN 37201,
ABA: 064008637,
A/C: 5116710.

Simultaneously, a notification letter identifying the name and address of the party making payment, the Site name (Beede Waste Oil Superfund Site), the EPA Region and Site Spill ID Number 01-IT, the Docket Number assigned to this matter, and including a copy of the electronic payment information, shall be sent to EPA, DOJ, and to the contact for the parties performing response work pursuant to the Beede RD/RA CD, in accordance with Paragraph 8. The total amount of \$344,626.21 to be paid by the De Minimis Settling Defendant pursuant to this Subparagraph shall be used by the Trustee of this account to finance and perform the Site remedy pursuant to the terms of the Beede RD/RA Consent Decree.

b. The De Minimis Settling Defendant's payment includes an amount for: a) past response costs incurred at or in connection with the Site by the United States; b) projected future oversight costs to be incurred at or in connection with the Site by the United States; and c) expected costs to be incurred by the private parties in performance of the remedy under the terms of the Beede RD/RA Consent Decree, including a premium to cover the risk that total response

costs incurred or to be incurred at or in connection with the Site will exceed the estimated total response costs upon which the De Minimis Settling Defendant's payment is based.

6. Payment by the Settling Defendant. As soon as reasonably practicable after entry of this Consent Decree the Settling Defendant shall pay the full settlement amount of \$2,510,740.14, to EPA and to the Performing Party Trust Account in two disbursements, as directed below in Paragraphs 6.a and 6.b.

a. Of the total amount to be paid by the Settling Defendant, \$188,423.39 shall be paid directly to EPA. This total payment shall be made by electronic payment FedWire Electronic Funds Transfer ("EFT") to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
33 Liberty Street
New York, NY 10045

(Field Tag 4200 of the FedWire message should read "D 68010727 Environmental Protection Agency.")

Simultaneously, a notification letter identifying the name and address of the party making payment, the Site name (Beede Waste Oil Superfund Site), the EPA Region and Site Spill ID Number 011T, DOJ Case Number 90-11-3-07039/12 , as well as the Docket Number assigned to this Consent Decree, shall be sent to:

U.S. Environmental Superfund Payments
EPA Cincinnati Financial Office
26 Martin Luther King Drive
Cincinnati, OH 45268

A copy of the notification letter and attachments simultaneously shall be sent to EPA and DOJ in accordance with Paragraph 8. The total amount of \$188,423.39 to be paid by the Settling Defendant pursuant to this Paragraph shall be deposited by EPA in the Beede Waste Oil Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

b. Of the total amount to be paid by the Settling Defendant, \$2,322,316.75 shall be paid directly to the Performing Party Trust Account. This total amount of \$2,322,316.75 shall be made payable to the "Beede Waste Oil Superfund Site Settlement Trust," and sent by wire transfer or automated clearing house ("ACH") to:

Pinnacle National Bank, Nashville, TN 37201,
ABA: 064008637,
A/C: 5116710.

Simultaneously, a notification letter identifying the name and address of the party making payment, the Site name (Beede Waste Oil Superfund Site), the EPA Region and Site Spill ID Number 01-IT, the Docket Number assigned to this Consent Decree, and a including a copy of the electronic payment information, shall be sent to EPA, DOJ, and to the contact for the parties performing response work pursuant to the Beede RD/RA CD, in accordance with Paragraph 8. The total amount of \$2,322,316.75 to be paid by the Settling Defendant pursuant to this Paragraph shall be used by the Trustee of this account to finance and perform the Site remedy pursuant to the terms of the Beede RD/RA Consent Decree.

c. The Settling Defendant's payment includes an amount for: a) past response costs incurred at or in connection with the Site by the United States; b) projected future oversight costs to be incurred at or in connection with the Site by the United States; and c) expected costs to be incurred by the private parties in performance of the remedy under the terms of the Beede RD/RA Consent Decree.

7. The parties to this Consent Decree recognize and acknowledge that the payment obligations of both the De Minimis Settling Defendant and the Settling Defendant under this Consent Decree can only be paid from appropriated funds legally available for such purpose.

8. Each time a payment is made, or whenever notice is required under the terms of this Decree, the De Minimis Settling Defendant and the Settling Defendant shall simultaneously send notice to:

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611 Washington, D.C. 20044-7611
Re: DJ # 90-11-3-07039/9

As to EPA:

Director, Office of Site Remediation and Restoration - Beede Waste Oil Superfund Site
United States Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (HIO)
Boston, MA 02114

and

EPA Remedial Project Manager - Beede Waste Oil Superfund Site
United States Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (HBO)
Boston, MA 02114

and

EPA Site Attorney/Senior Enforcement Counsel - Beede Waste Oil Superfund Site
United States Environmental Protection Agency, Region I
One Congress Street, Suite 1100 (SES)
Boston, MA 02114

As to the Parties performing response work pursuant to the Beede RD/RA CD:

John V. Dwyer, Esquire
Winer and Bennett, LLP
111 Concord Street, P.O. Box 488
Nashua, New Hampshire 03061-2694

Notice to the contacts identified above shall include a copy of the transmittal letter and a copy of each payment or other required documentation.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

9. Interest. In the event that the payment required by Paragraph 5 is not made within 120 days of the Effective Date, the De Minimis Settling Defendant shall pay Interest on the unpaid balance until such time as the full amount due is paid. In the event that the payments required by Paragraph 6 are not made within 120 days of the Effective Date, the Settling Defendant shall pay Interest on the unpaid balance(s) until such time as the full amount due is paid. The De Minimis Settling Defendant and the Settling Defendant shall make all payments required by this Paragraph in the manner described in Paragraph 8.

10. If the United States brings an action to enforce this Consent Decree, De Minimis Settling Defendant and Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

11. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's or De Minimis Settling Defendant's failure to comply with the requirements of this Consent Decree.

VIII. COVENANT BY PLAINTIFF

12. Covenant by Plaintiff to the De Minimis Settling Defendant. In consideration of the payments that will be made by the De Minimis Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or take administrative action against the De Minimis Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon receipt by EPA of all payments required by Paragraph 5 of Section VI (Payments for Response Costs by De Minimis Settling Defendant and Settling Defendant) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant is conditioned upon the satisfactory performance by the De Minimis Settling Defendant of its obligations under this Consent Decree. With respect to the De Minimis Settling Defendant, this covenant not to sue is conditioned upon the accuracy of the information provided to EPA by the De Minimis Settling Defendant relating to the De Minimis Settling Defendant's involvement with the Site. This covenant extends only to the De Minimis Settling Defendant and does not extend to any other person.

13. Covenant by Plaintiff to the Settling Defendant. In consideration of the payments that will be made by the Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Section IX (Reservation of Rights), EPA covenants not to sue or to take administrative action against the Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon receipt by EPA of all payments required by Paragraph 6 of Section VI (Payments for Response Costs by De Minimis Settling Defendant and Settling Defendant) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant shall take effect upon receipt of the full payments required pursuant to Paragraph 6 of Section VI (Payments for Response Costs by De Minimis Settling Defendant and Settling Defendant). EPA's covenant is conditioned upon the satisfactory performance by the Settling Defendant of its obligations under this Consent Decree. This covenant extends only to the Settling Defendant and does not extend to any other person.

IX. RESERVATION OF RIGHTS BY UNITED STATES

14. United States' Pre-certification Reservations of Rights as to the Settling Defendant.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Settling Defendant,

- a. to perform further response actions relating to the Site, or
- b. to reimburse the United States for additional costs of response if, prior to

Certification of Completion of the Remedial Action:

(1) conditions at the Site, previously unknown to EPA, are discovered,

or

(2) information, previously unknown to EPA, is received, in whole or

in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

15. United States' Post-certification Reservations as to the Settling Defendant.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Settling Defendant,

a. to perform further response actions relating to the Site, or

b. to reimburse the United States for additional costs of response if,

subsequent to Certification of Completion of the Remedial Action:

(1) conditions at the Site, previously unknown to EPA, are discovered,

or

(2) information, previously unknown to EPA, is received, in whole or

in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

16. For purposes of Paragraph 14 (United States' Pre-certification Reservations of Rights as to the Settling Defendant), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the Record of Decision was signed and set forth in the Record of Decision for the Site, the administrative record supporting the Record of Decision, the EPA Action Memorandum for the Site Non-Time Critical Removal Action (dated September 30, 1998), the Administrative Record for such Action Memorandum, and reports submitted to the public by EPA pursuant to such Action Memorandum. For purposes of Paragraph 15 (United States' Post-certification Reservations as to the Settling Defendant), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, the EPA Action Memorandum for the Site Non-Time Critical Removal Action, the Administrative Record for such Action Memorandum, and reports submitted to the public by EPA pursuant to such Action Memorandum, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to the date of Certification of Completion of the Remedial Action.

17. General Reservation of Rights as to the De Minimis Settling Defendant. The United States reserves, and this Consent Decree is without prejudice to, all rights against the De Minimis Settling Defendant with respect to all matters not expressly included in Covenant Not to Sue by

United States in Paragraph 12. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against the De Minimis Settling Defendant with respect to:

a. liability for failure of De Minimis Settling Defendant to meet a requirement of this Consent Decree;

b. criminal liability;

c. liability based upon the De Minimis Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of Waste Material at or in connection with the Site, after the signature of this Consent Decree by the De Minimis Settling Defendant; and

d. liability for damages for injuries to, destruction of, or loss of natural resources, and for the cost of any natural resource damage assessments.

18. Nothing in this Consent Decree constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States to seek or obtain further relief from the De Minimis Settling Defendant if information not currently known to the United States is discovered which indicates that the De Minimis Settling Defendant contributed Waste Material to the Site in such greater amounts or of such greater toxic or other hazardous effect such that the De Minimis Settling Defendant no longer qualifies as a de minimis party at the Site. In such case, the covenant not to sue under this Section and the contribution protection afforded by Section VIII are null and void as to the De Minimis Settling Defendant.

19. General Reservation of Rights as to the Settling Defendant. The United States reserves, and this Consent Decree is without prejudice to, all rights against the Settling Defendant, with respect to all matters not expressly included within Plaintiff's covenants. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, all rights against the Settling Defendant, with respect to all other matters including but not limited to, the following:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability based upon the Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site after signature of this Consent Decree by the Settling Defendant;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

20. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

X. COVENANTS BY SETTLING DEFENDANT AND DE MINIMIS SETTLING DEFENDANT

21. Covenant Not to Sue by Settling Defendant. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States, pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site;

c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. §2412, as amended, or at common law; or

d. any direct or indirect claim for disbursement from the Beede Waste Oil Superfund Site Special Account.

Except as provided in Paragraph 24 (Waiver of Claims Against De Micromis Parties), Paragraph 25 (Waiver of Claims Against De Minimis Parties), and Paragraph 34 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 19 and 20, but only to the extent that the Settling Defendant's claims arise from the

same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

22. Covenant Not to Sue by De Minimis Settling Defendant. De Minimis Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States, pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, related to the Site;

c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

d. any direct or indirect claim for disbursement from the Beede Waste Oil Superfund Site Special Account.

Except as provided in Paragraph 26 (Waiver of Claims) and Paragraph 34 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in

Paragraphs 17 and 18, but only to the extent that the De Minimis Settling Defendant's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

23. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

24. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to the Settling Defendant with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 275 gallons of liquid materials or 200 pounds of solid materials. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that the Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against the Settling Defendant.

25. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any

person that has entered into a final CERCLA § 122(g) *de minimis* settlement with EPA with respect to the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that the Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against the Settling Defendant.

26. The De Minimis Settling Defendant agrees not to assert any claims or causes of action (including claims for contribution under CERCLA) that it may have for all matters relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that the De Minimis Settlor may have against any person if such person asserts or has asserted a claim or cause of action relating to the Site against the De Minimis Settlor.

XI. CERTIFICATION BY THE DE MINIMIS SETTLING DEFENDANT

27. Information currently known to EPA indicates that the amount of hazardous substances contributed to the Site by the De Minimis Settling Defendant is minimal in comparison to other hazardous substances at the Site, and that the toxic or other hazardous effects of the hazardous substances contributed to the Site by the De Minimis Settling Defendant do not contribute disproportionately to the cumulative toxic or other hazardous effects of the hazardous substances at the Site. Accordingly, pursuant to 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A), EPA has determined that the amount and the toxic or other hazardous effects of the substances contributed by the De Minimis Settling Defendant is minimal in comparison to other hazardous substances contributed to the Site. EPA has also determined that this settlement involves only a minor portion of the Plaintiff's response costs at the Site with respect to the De Minimis Settling Defendant.

28. By signing this Consent Decree, the De Minimis Settling Defendant certifies that, to the best of its knowledge and belief, it:

a. has conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its parents, predecessors, successors, officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contamination at or in connection with the Site;

b. has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site;

c. has and will comply fully with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e) and Section 3007 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6927;

d. has provided information in Paragraph 27 that is materially true and correct with respect to the amount of Waste Material(s) that the De Minimis Settling Defendant or may have shipped to the Site; with respect to the chemical nature and constituents of such Waste Material(s); and with respect to the toxic or other hazardous effects of such Waste Material(s);

e. neither possesses nor knows of other documents or information which would suggest::

(1) that the De Minimis Settlor has arranged for the disposal of a higher volume of Waste Material(s) that were delivered to the Site than is indicated by this information;

or

(2) that the De Minimis Settlor has arranged for the disposal of Waste Material(s) that were delivered to the Site possessing different chemical natures or constituents or possessing more toxic or other hazardous effects than are indicated by this information.

XII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

29. With respect to the Settling Defendant, except as provided in Paragraph 24 (Waiver of Claims Against De Micromis Parties), and Paragraph 25 (Waiver of Claims Against *De Minimis* Parties), and Paragraph 34 (Waiver of Claim-Splitting Defenses), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. With respect to the De Minimis Settling Defendant, except as provided in Paragraph 26 (Waiver of Claims) and Paragraph 34 (Waiver of Claim-Splitting Defenses), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentences shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. In addition, each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto, except as provided in Paragraphs 24, 25, 26, and 34, as set forth above.

30. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendant is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. “Matters addressed” in this Consent Decree with respect to the Settling Defendant are all Response Costs incurred or to be incurred and all response actions taken or to be taken in connection or with respect to the Site by the United States or any other person. The “matters addressed” in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendant coming within the scope of such reservations.

31. Subject to the reservations of rights in Section IX, the United States agrees that by entering into and carrying out the terms of this Consent Decree, the De Minimis Settlor will have resolved its liability to the United States as set forth in Sections VI and XI, and, that with regard to claims for contribution against the De Minimis Settlor for “matters addressed” in this Consent Decree, the Parties hereto agree and, by entering this Consent Decree, the Court finds that the De Minimis Settlor is entitled to such protection from contribution actions or claims as is provided by CERCLA, Sections 113(f)(2) and 122(g)(5), 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5). “Matters addressed” in this Consent Decree with respect to the De Minimis Settlor are all Response Costs incurred or to be incurred and all response actions taken or to be taken in connection or with respect to the Site by the United States or any other person. The “matters addressed” in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply

with this Decree), in the event that the United States asserts rights against De Minimis Settling Defendant coming within the scope of such reservations.

32. The Settling Defendant and the De Minimis Settling Defendant agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

33. The Settling Defendant and the De Minimis Settling Defendant also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendant and the De Minimis Settling Defendant shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

34. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant and the De Minimis Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section VII (Covenants by Plaintiffs).

XIII. RETENTION OF RECORDS

35. Until ten (10) years after the entry of this Consent Decree, the Settling Defendant and De Minimis Settling Defendant shall preserve and retain all records now in their possession or control, or which come into their possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

36. After the conclusion of the document retention period in the preceding paragraph, the Settling Defendant and De Minimis Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, the Settling Defendant and De Minimis Settling Defendant shall deliver any such records to EPA. The Settling Defendant or the De Minimis Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendant or the De Minimis Settling Defendant assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

37. The Settling Defendant and the De Minimis Settling Defendant each certify individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the

United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIV. NOTICES AND SUBMISSIONS

38. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, DOJ, EPA, Settling Defendant, and De Minimis Settling Defendant, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-07039/9)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Director, Office of Site Remediation and Restoration - Beede Waste Oil Superfund Site
United States Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (HIO)
Boston, MA 02114

and

EPA Remedial Project Manager - Beede Waste Oil Superfund Site
United States Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (HBO)
Boston, MA 02114

and

EPA Site Attorney/Senior Enforcement Counsel - Beede Waste Oil Superfund Site
United States Environmental Protection Agency, Region I
One Congress Street, Suite 1100 (SES)
Boston, MA 02114

As to Settling Defendants:

Chief, Trial Division, *or* the Attorney General's designee
Massachusetts Attorney General's Office
1 Ashburton Place, 18th Floor
Boston, MA 02114

XV. EFFECTIVE DATE

39. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XVI. RETENTION OF JURISDICTION

40. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

41. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. The De Minimis Settling Defendant and the Settling Defendant consent to entry of this Decree without further notice, and the United States reserves the right to oppose an attempt by any person to intervene in this civil action.

42. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVIII. SIGNATORIES/SERVICE

43. Each undersigned representative of the De Minimis Settling Defendant and the Settling Defendant to this Consent Decree, and the United States certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

44. The De Minimis Settling Defendant and the Settling Defendant hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the De Minimis Settling Defendant and the Settling Defendant in writing that it no longer supports entry of the Consent Decree.

45. The De Minimis Settling Defendant and the Settling Defendant shall each identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. The De Minimis Settling Defendant and the Settling Defendant hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The parties agree that the De Minimis Settling Defendant and the Settling Defendant need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XIX. FINAL JUDGMENT

46. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

47. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the De Minimis Settling Defendant and the Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, 20__.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Commonwealth of Massachusetts relating to the Beede Waste Oil Superfund Site.

FOR THE UNITED STATES OF AMERICA

3/26/09

Date


JOHN C. CRUDEN

Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

March 26, 2009

Date


JEFFREY K. SANDS

Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-3908
(202) 616-2427 (fax)

THOMAS P. COLANTUONO
United States Attorney
District of New Hampshire

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Commonwealth of Massachusetts relating to the Beede Waste Oil Superfund Site.

2/19/09
Date

IRA W. LEIGHTON /
Deputy Regional Administrator, Region I
U.S. Environmental Protection Agency
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

2/12/09
Date

CYNTHIA A. LEWIS
Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region I
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Commonwealth of Massachusetts, relating to the Beede Waste Oil Superfund Site.

Name of PRP: Massachusetts State Police

Party Identification Number: GRP 114

FOR _____

2 JAN 09
Date

Signature
Name (print): MARK F. DELANEY
Title: Captain / SUPERINTENDENT
Address: 470 Worcester Rd
Framingham, Ma
01702

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): _____
Title: _____
Address: _____

Ph. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Commonwealth of Massachusetts, relating to the Beede Waste Oil Superfund Site.

Name of PRP: Department of Conservation + Recreation
Party Identification Number: 1419

FOR Department of Conservation + Recreation

Date

~~Signature: _____~~
Name (print): Richard K. Sullivan, Jr.
Title: Commissioner
Address: 251 Causeway Street
Boston, MA. 02114
Suite 900

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): _____
Title: _____
Address: _____

Ph. Number: _____