IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA Plaintiff, v. BOUCHARD TRANSPORTATION COMPANY, INC., TUG EVENING TIDE CORPORATION, and B. NO. 120 CORPORATION, Defendants.	)	Civil Action No.
COMONWEALTH OF MASSACHUSETTS Plaintiff, v. BOUCHARD TRANSPORTATION COMPANY, INC., et al.,	)	**CONSENT DECREE**
STATE OF RHODE ISLAND and PROVIDENCE PLANTATIONS, Plaintiffs, v. BOUCHARD TRANSPORTATION COMPANY, INC., et al., Defendants.	)	

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I. BACKGROUND

A. The United States of America ("United States"), by the Attorney General, on behalf of the United States Department of the Interior ("DOI") and the United States Department of Commerce, National Oceanic and Atmospheric Administration ("NOAA"), has filed a complaint against Bouchard Transportation Co., Inc., Tug Evening Tide Corp., and B. No. 120 Corp. ("Defendants") in this Court alleging that the Defendants are liable to the United States under Section 1002(a) and (b) of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2702 (a) and (b), for damages for injury to, destruction of, loss of, or loss of use of, certain Natural Resources, including the reasonable cost of assessing the damages, resulting from an oil spill that occurred in the vicinity of Buzzards Bay, off the shores of the Commonwealth of Massachusetts and the State of Rhode Island and Providence Plantations, on April 27, 2003 (the "Oil Spill").

B. The Commonwealth of Massachusetts ("Commonwealth" or "Massachusetts") has also filed a complaint on behalf of the Secretary for the Executive Office of Energy and Environmental Affairs against the Defendants in this Court alleging that the Defendants are liable to the Commonwealth under Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702 (a) and (b), and Section 5(a)(ii) of the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E, § 5(a)(ii), for damages for injury to, destruction of, loss of, or loss of use of, certain Natural Resources, including the reasonable cost of assessing the damages, resulting from the Oil Spill.

C. The State of Rhode Island and Providence Plantations ("State" or "Rhode Island") has also filed a complaint against the Defendants in the United States District Court for the District of Rhode Island (the "Rhode Island Action") alleging that the Defendants are liable to

the State under Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702 (a) and (b), and Rhode Island Gen. Laws Section 46-12.5.7, for damages for injury to, destruction of, loss of, or loss of use of, certain Natural Resources, including the reasonable cost of assessing the damages, resulting from the Oil Spill.

D. Rhode Island intends to file a motion pursuant to 28 U.S.C. § 1404(a), or otherwise, to transfer the Rhode Island Action from the United States District Court for the District of Rhode Island to the United States District Court for the District of Massachusetts, as to which the Parties do not object.

E. The Plaintiffs intend to file a joint motion to consolidate the separate actions noted above in the United States District Court for the District of Massachusetts, as to which the Defendants do not object.

F. The complaints allege that the Oil Spill occurred when the tugboat Evening Tide, owned and/or operated by the Defendant Tug Evening Tide Corp., a wholly-owned subsidiary of Defendant Bouchard Transportation Co., Inc., was towing the unmanned tank barge, Bouchard No. 120, owned and/or operated by B. No. 120 Corp., also a wholly-owned subsidiary of Defendant Bouchard Transportation Co., Inc., in the vicinity of Buzzards Bay. The complaints further allege that: (1) up to 98,000 gallons of oil were spilled or leaked as a result of the incident; (2) the Oil Spill caused injury to, destruction of, loss of, or loss of use of, certain Natural Resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, the Commonwealth, and the State; and (3) the United States, the Commonwealth, and the State have incurred costs in assessing the nature and extent of these injuries.

G. The United States, the Commonwealth, and the State share trusteeship of the Natural Resources alleged in the complaints to be injured and are coordinating assessment and restoration efforts.

H. The Parties agree and this Court finds that settlement of this matter without further litigation is in the public interest and that the entry of this Consent Decree is the most appropriate means of resolving these matters.

I. The Parties agree and this Court, by entering this Consent Decree, finds that: (1) this Consent Decree has been negotiated by the Parties in good faith, following the Defendants' participation in a cooperative natural resource damage assessment with the Trustees, pursuant to the Memorandum of Agreement entered into by the Trustees and Bouchard Transportation Co., Inc. on October 12, 2006 ("Trustee and RP Memorandum of Agreement") that is available in the administrative record for this matter; (2) settlement of this matter will avoid prolonged and complicated litigation; and (3) this Consent Decree is fair, reasonable, and in the public interest.

J. The Defendants do not admit any liability arising out of the transactions or occurrences alleged in this action.

NOW, THEREFORE it is Adjudged, Ordered and Decreed:

II. JURISDICTION

1. The Parties agree and this Court concludes that it has jurisdiction over the subject matter of this action pursuant to Section 1017(b) of OPA, 33 U.S.C. § 2717(b), and 28 U.S.C. §§ 1331 and 1345. Venue lies in this District pursuant to Section 1017(b) of OPA, 33 U.S.C. § 2717(b), and 28 U.S.C. 1391(b). This Court has pendent jurisdiction over the state law claims. This Court has, and the Defendants consent to, the Court's personal jurisdiction over them in

connection with this action. Solely for the purposes of this Consent Decree and the underlying complaints, the Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Defendants shall not challenge 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, on behalf of NOAA and DOI, as designated federal trustees for Natural Resources, including those Natural Resources at, in the vicinity of, or affected by the Oil Spill; the Commonwealth, on behalf of the Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs (EOEEA), and the State, on behalf of the Rhode Island Department of Environmental Management (RIDEM), as designated state trustees for Natural Resources, including those Natural Resources at, in the vicinity of, or affected by the Oil Spill; and, the Defendants, including, without limitation, their successors and assigns, or other entities or persons otherwise bound by law. Any change in ownership or corporate status of the Defendants including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the Defendants' or their successors' and assigns' rights or responsibilities under this Consent Decree. In any action to enforce this Consent Decree, the Defendants shall not raise as a defense the failure by any of their officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in OPA or in the regulations promulgated by NOAA under OPA, 15 C.F.R.

Part 990, shall have the meaning assigned to them in OPA or in such regulations, as applicable. Whenever the following terms are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the definition specified hereinafter shall apply.

a. "Aquatic Resources" shall mean: aquatic habitats in certain intertidal sediment areas (other than those intertidal habitats addressed as "Shoreline Resources"), the water column, and subtidal sediment areas; any and all living organisms that reside in or utilize those aquatic habitats; and the services provided by those habitats and living organisms. References to Aquatic Resources shall include Aquatic Resources of Ram Island, except when otherwise noted.

b. "Bouchard B.120 Oil Spill Restoration Account" shall mean a separate project numbered account to be established within DOI's Natural Resource Damage Assessment and Restoration Fund ("DOI NRDAR Fund"), which will be funded by the Defendants in accordance with Section VI (Payments by Defendants) of this Consent Decree and jointly administered by the Trustees in accordance with Section VIII (Bouchard B. 120 Oil Spill Restoration Account) of this Consent Decree and the Trustee Memorandum of Agreement, identified in paragraph bb of this Section.

c. "Commonwealth" shall mean the Commonwealth of Massachusetts.

d. "Consent Decree" shall mean this Decree and appendices attached hereto. In the event of a conflict between this Consent Decree and any appendix, this Consent Decree shall control.

e. "Costs of Assessment" shall mean all costs within the meaning of Sections 1002(b)(2)(A) and 1006(d)(1)(C) of OPA, 33 U.S.C. §§ 2702(b)(2)(A), 2706 (d)(1)(C), Section

5(a)(ii) of M.G.L. c. 21E, and Rhode Island Gen. Laws Section 46-12.5.1 et seq., incurred by the Trustees on or before December 31, 2009, including, but not limited to, direct, indirect, and administrative costs in assessing the alleged injury to, destruction of, loss of, or loss of use of, all Natural Resources at or in connection with the Oil Spill (not just Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers) and/or directly or indirectly related to negotiating this Consent Decree, and all Trustee costs of approving this Consent Decree.

f. "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.

g. "Defendants" shall mean Bouchard Transportation Co., Inc., Tug Evening Tide Corp., and B. No. 120 Corp.

h. "DOI" shall mean the United States Department of the Interior.

i. "EOEEA" shall mean the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts.

j. "Fund" shall mean the Oil Spill Liability Trust Fund established pursuant to 26 U.S.C. §§ 4611 and 9509.

k. "Interest," as that term is used in Section VI (Payments by Defendants) of this Consent Decree, shall mean interest at the rate provided in 28 U.S.C. § 1961. Interest shall be simple interest calculated on a daily basis.

l. "M.G.L. c. 21E" shall mean the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Mass. Gen. Laws ch. 21E, §§ 1-19.

m. "Natural Resources" shall have the meaning provided in Section 1001(20) of OPA, 33 U.S.C. § 2701(20).

n. "Natural Resource Damages" shall mean the damages described at Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), Section 5(a)(ii) of M.G.L. c. 21E, and Rhode Island Gen. Laws Section 46-12.5.1-7.

o. "NOAA" shall mean the National Oceanic and Atmospheric Administration.

p. "Oil Spill" shall mean the oil spill that occurred on April 27, 2003, when the tugboat Evening Tide was towing the unmanned tank barge, Bouchard No. 120, in the vicinity of Buzzards Bay off the shores of the Commonwealth of Massachusetts and the State of Rhode Island.

q. "OPA" shall mean the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484, 33 U.S.C. §§ 2701-2761.

r. "Parties" shall mean the Plaintiffs and the Defendants.

s. "Piping Plovers" shall mean a small North American shorebird, *Charadrius melodus,* that breeds on beaches along the Atlantic Coast, including beaches in the Commonwealth of Massachusetts and the State of Rhode Island. The Atlantic Coast Piping Plover population is designated as threatened under the Endangered Species Act of 1973, as amended, the Massachusetts Endangered Species Act, Mass. Gen. Laws ch. 131A, §§ 1-6, and

Chapter 20-37 of the Rhode Island Gen. Laws, relating to Endangered Species of Animals and Plants.

t. "Plaintiffs" shall mean the United States, the Commonwealth of Massachusetts, and the State of Rhode Island.

u. "Ram Island" shall mean the island located in Buzzards Bay off the coast of Massachusetts, approximately one-half mile south of Antassawamock, in the Town of Mattapoisett. The island, approximately three acres in size, is owned by the Commonwealth of Massachusetts, Division of Fisheries and Wildlife and managed as a Wildlife Sanctuary.

v. "Recreational Resources" shall mean the human use of Natural Resources by all members of the public for recreational activities and includes shellfishing, general shoreline use, and boating as determined by the Trustees in the Bouchard B-120 Oil Spill Buzzards Bay, Massachusetts Lost Use Valuation Report, dated March 31, 2009 (cooperatively prepared by the Bouchard B-120 Oil Spill Lost Use Technical Working Group).

w. "Restoration Plan(s)" shall mean a plan or plans developed by the Trustees in accordance with OPA and its underlying regulations at 15 C.F.R. §§ 990.53 – 990.56.

x. "RIDEM" shall mean the State of Rhode Island, Department of Environmental Management.

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

z. "Shoreline Resources" shall mean: intertidal habitats including marshes, sand beaches, and coarse substrates (except those intertidal habitats addressed as "Aquatic Resources"); any and all non-avian living organisms that reside in or utilize those intertidal

habitats ("non-avian intertidal organisms"); and the services provided by those intertidal habitats and non-avian intertidal organisms. References to Shoreline Resources shall include Shoreline Resources of Ram Island, except when otherwise noted.

aa. "State" shall mean the State of Rhode Island and Providence Plantations.

bb. "Trustee Memorandum of Agreement" shall mean the Memorandum of Agreement entered into by the Trustees, as well as any amendments thereof. A copy of the Memorandum of Agreement is attached hereto as Appendix A.

cc. "Trustees" shall mean the designated federal and state officials, and their designees, who act on behalf of the public as trustees for the Natural Resources, including those at, in the vicinity of, or affected by the Oil Spill: DOI, represented by the United States Fish and Wildlife Service ("USFWS"), and NOAA are the federal trustees for Natural Resources related hereto; the Secretary of EOEEA, and the Director of RIDEM are the state trustees for Natural Resources related hereto.

dd. "United States" shall mean the United States of America, on behalf of the DOI and NOAA, including all agencies, bureaus, administrations or departments of DOI and NOAA.

ee. "Unpaid Costs of Assessment" shall mean all Costs of Assessment, as defined in paragraph e, that the Trustees have not received from the Defendants as of the date of lodging of this Consent Decree including, but not limited to, Costs of Assessment disputed by the Defendants and Costs of Assessment for which a request for payment has not been submitted to the Defendants by such date.

ff. "Unreimbursed Costs of Assessment" shall mean all costs within the meaning of Sections 1002(b)(2)(A) and 1006(d)(1)(C) of OPA, 33 U.S.C. §§ 2702(b)(2)(A), 2706 (d)(1)(C), Section 5(a)(ii) of M.G.L. c. 21E, and Rhode Island Gen. Laws Section 46-12.5.1 et seq., incurred by the Trustees after December 31, 2009, including, but not limited to: (i) direct, indirect, and administrative costs, in assessing the alleged injury to, destruction of, loss of, or loss of use of all Natural Resources at or in connection with the Oil Spill and/or directly or indirectly related to negotiating this Consent Decree, and all Trustee costs of approving this Consent Decree; and (ii) costs directly or indirectly related to negotiating and approving any subsequent Consent Decree(s) concerning alleged injury to, destruction of, loss of, or loss of use of, Natural Resources at or in connection with the Oil Spill, except that Unreimbursed Costs of Assessment shall not include any and all assessment costs necessary to prepare and implement a Restoration Plan(s) for Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers, as all such assessment costs are included in the amounts to be paid to the Trustees pursuant to Paragraph 6.a below.

gg. "Wildlife Resources" shall mean: animal species except for Piping Plovers; the habitats and other living organisms that support those species; and the ecological services provided by those species, habitats, and other living organisms.

V. GENERAL PROVISIONS

4. The Parties are entering into this Consent Decree to resolve certain claims of the United States, the Commonwealth, and the State against the Defendants attributable to the Oil Spill, based on the Defendants' agreement to: (a) reimburse the Trustees for the Costs of Assessment of damages to Natural Resources resulting from the Oil Spill incurred by the

Trustees; and (b) provide compensation for alleged injury to Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers, including any assessment costs necessary to prepare and implement a Restoration Plan(s) for such resources, to the extent provided in Paragraph 6.a below, but not for alleged injury to Wildlife Resources, and/or other potential non-Piping Plover, non-Recreational, non-Aquatic, and non-Shoreline Natural Resource injuries resulting from the Oil Spill, which will be addressed separately in the future.

VI. PAYMENTS BY DEFENDANTS

5. Acknowledgment of paid Costs of Assessment dating from April 27, 2003 through December 31, 2009.

a. NOAA acknowledges its receipt of payment from the Defendants in the amount of $ 298,312 in partial reimbursement of NOAA's Costs of Assessment which have arisen from the Oil Spill and reserves all rights regarding the Unpaid Costs of Assessment.

b. DOI acknowledges its receipt of payment from the Defendants in the amount of $ 989,812.23 in partial reimbursement of DOI's Costs of Assessment which have arisen from the Oil Spill and reserves all rights regarding the Unpaid Costs of Assessment.

c. The Commonwealth acknowledges its receipt of payment from the Defendants in the amount of $ 285,405.89 in reimbursement of the Commonwealth's Costs of Assessment which have arisen from the Oil Spill.

d. The State acknowledges its receipt of payment from the Defendants in the amount of $ 0 in reimbursement of the State's Costs of Assessment which have arisen from the Oil Spill and reserves all rights regarding the Unpaid Costs of Assessment.

6. Payment of the Plaintiffs' Claims for Injury to Aquatic Resources, Shoreline Resources, Recreational Resources and Piping Plovers.

a. Within thirty (30) days of the effective date of this Consent Decree, the Defendants shall pay $6,076,393 plus Interest as provided in Paragraph 7 (if any), to DOI on behalf of the Plaintiffs, as follows:

i. Defendants shall pay $1,522,000 to DOI on behalf of the Plaintiffs, as monetary compensation for injury to Aquatic Resources and Shoreline Resources (except Ram Island Shoreline Resources) alleged to have arisen from the Oil Spill;

ii. Defendants shall pay $534,000 to DOI on behalf of the Plaintiffs, as monetary compensation for injury to Ram Island Shoreline Resources alleged to have arisen from the Oil Spill;

iii. Defendants shall pay $3,305,393 to DOI on behalf of the Plaintiffs, as monetary compensation for injury to Recreational Resources alleged to have arisen from the Oil Spill; and

iv. Defendants shall pay $715,000 to DOI on behalf of the Plaintiffs, as monetary compensation for injury to Piping Plovers alleged to have arisen from the Oil Spill.

b. The funds paid pursuant to Paragraph a shall be used jointly by the Trustees in accordance with Section VIII (Bouchard B.120 Oil Spill Restoration Account) of this Consent Decree and the Trustee Memorandum of Agreement. The Defendants shall transfer these funds to the Bouchard B.120 Oil Spill Restoration Account via an Electronic Funds Transfer ("EFT") through the U.S. Treasury's Automated Clearing House (ACH)/Remittance Express program in accordance with instructions to be provided by DOI within 15 days of the

date of the entry of the Consent Decree. Payment shall be deemed to have been made upon receipt of these funds by EFT. A copy of the paperwork documenting the EFT and any accompanying correspondence shall be sent by the Defendants to the persons listed in Section XIII (Notices) of this Consent Decree for notices to the Trustees, as well as to:

Natural Resource Damage Assessment and Restoration Program
Attn: Restoration Fund Manager
Mail Stop 4449
1849 C Street, N.W.
Washington, D.C. 20240

NOAA/NOS/OR&R
ATTN: Kathy Salter, DARRF Manager
1305 East West Highway
SSMC4, Room 9331
Silver Spring, Maryland 20910-3281

Notices shall reference the DOJ Case Number (#90-5-1-1-08159), spill name, location, and name of paying responsible party.

c. Because the jurisdiction, trusteeships, and restoration goals of the Trustees for injured Natural Resources may overlap, monies paid to DOI on behalf of all of the Plaintiffs and placed in the DOI NARDAR Fund pursuant to this paragraph shall be jointly administered, in accordance with the Trustee Memorandum of Agreement, as agreed by the Plaintiffs.

d. The Defendants are jointly and severally liable for such payment.

7. Interest.

a. In addition to the payment to be made pursuant to Paragraph 6, Defendants shall pay Interest on the amount due pursuant to that Paragraph, as set forth herein. Interest shall be calculated as follows:

i. if the Defendants execute and return this Consent Decree to the

United States, with copies to the Commonwealth and the State, within thirty (30) days of the Defendants' receipt of this Consent Decree by certified mail, as determined by the date of the signature provided by the Defendants' authorized representative or agent acknowledging receipt of the document, no Interest shall accrue;

ii. if the Defendants execute and return this Consent Decree to the United States, with copies to the Commonwealth and the State within thirty (30) days of the Defendants' receipt of this Consent Decree by certified mail, as determined by the date of the signature provided by the Defendants' authorized representative or agent acknowledging receipt of the document, but payment is not timely, Interest shall be calculated from the date thirty (30) days after the effective date of this Consent Decree until the date of payment; and

iii. if the Defendants execute and return this Consent Decree to the United States, with copies to the Commonwealth and the State, more than thirty (30) days from the date of the Defendants' receipt of this Consent Decree by certified mail, as determined by the date of the signature provided by the Defendants' authorized representative or agent acknowledging receipt of the document, Interest shall be calculated from the date thirty (30) days after the Defendant's receipt of this Consent Decree until the date of payment.

b. Interest on any unpaid balance due under Paragraph 6 shall be paid to the DOI in the manner set forth in Paragraph 6. The Defendants are jointly and severally liable for any such interest payment.

c. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Defendants' failure to make timely payments under this Consent Decree.

VII. STIPULATED PENALTIES

8. Assessment of Stipulated Penalties.

The Defendants shall pay a stipulated penalty to the United States, the Commonwealth, and the State for failure to make any payment in Paragraphs 6 or 7, at the rate of two thousand dollars ($2,000) per day for each day of non-compliance up to the first thirty (30) days of non-compliance. After thirty (30) days of failure to make any payment in Paragraphs 6 or 7, the Defendants shall pay a stipulated penalty to the United States, the Commonwealth, and the State at the rate of four thousand dollars ($4,000) per day for each day of non-compliance after the first thirty (30) days of non-compliance.

a. Stipulated penalties shall begin to accrue on the day after payment is due and continue to accrue until the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

b. Any stipulated penalty payments shall be divided equally among the United States, the Commonwealth, and the State.

c. The Defendants are jointly and severally liable for payment of such stipulated penalties.

d. The United States, the Commonwealth, and/or the State may give the Defendants written notification that they have failed to make a payment as required by Paragraphs 6 or 7. Such notice shall describe the noncompliance and make a demand for the payment of the stipulated penalties. However, stipulated penalties shall accrue as provided in Paragraph 8.a regardless of whether the Defendants have been notified of a violation. The Defendants shall pay stipulated penalties within thirty (30) days of receipt of written demand

for such stipulated penalties by certified mail, as determined by the date of the required signature by the Defendants' authorized representative or agent acknowledging receipt of the written demand.

e. If the Defendants fail to pay stipulated penalties when due, the United States, the Commonwealth, and/or the State may institute proceedings to collect the stipulated penalties, as well as Interest as provided in Paragraph 8.f below.

f. Interest on Stipulated Penalties.

The Defendants shall pay Interest on the unpaid balance of any stipulated penalties due, which shall begin to accrue on the date thirty (30) days past the demand therefor. The Interest on the unpaid balance of stipulated penalties due pursuant to Paragraph 8.a shall be divided equally among the United States, the Commonwealth, and the State. The Defendants are jointly and severally liable for such interest payments.

g. Notwithstanding any other provision of this Section, the United States, the Commonwealth, and/or the State may, in their unreviewable discretion, waive any portion of its share of the stipulated penalties that have accrued pursuant to this Consent Decree.

h. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States, the Commonwealth, and/or the State to seek any other remedies or sanctions available by virtue of Defendants' violation of this Consent Decree or of the statutes and regulations upon which it is based.

9. Payment Instructions for Stipulated Penalties.

Any stipulated penalty payment shall be accompanied by a reference to this Consent Decree, be identified as "Stipulated Penalties," and reference "the Bouchard B.120 Oil Spill." Notice of

payment of a stipulated penalty shall be made to the Trustees in the manner specified in Section XIII (Notices).

a. Stipulated penalty payments to the United States shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to Defendants by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Massachusetts. At the time of payment, Defendants shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for stipulated penalties owed pursuant to the Consent Decree, and shall reference the case name, civil action number, DOJ Case Number (#90-5-1-1-08159), and the violations for which the stipulated penalties are being paid to the United States, in accordance with Section XIII of this Decree (Notices).

b. Stipulated penalty payments to the Commonwealth shall be made by certified check made payable to the Commonwealth of Massachusetts and sent to:

Executive Office of Energy and Environmental Affairs
Attn: Chief Financial Officer
100 Cambridge Street, Suite 900
Boston, MA 02114

Copies of the check shall be sent to:

MA Department of Environmental Protection
Bureau of Waste Site Cleanup
NRD Program
One Winter Street, 8th Floor
Boston, MA 02108 (Attn: Karen Pelto)

Office of the Attorney General
Environmental Protection Division
One Ashburton Place
Boston, MA 02108 (Attn: Seth Schofield)

Payments made pursuant to this Paragraph shall be credited to the Natural Resource Damages Trust (established by 1998 Mass. Acts ch. 194, sec. 317, as amended by 2004 Mass. Acts ch. 149, sec. 222). The Defendants shall note the following on the face of the check: Natural Resources Damages Trust, Account Number, 2000-6020.

c. Stipulated penalty payments to the State shall be made by certified check made payable to the RI Department of Environmental Management, OSPAR FUND, and sent to the Department of Environmental Management, 235 Promenade Street, Providence, RI 02908 (Attn: Mary E. Kay).

VIII. BOUCHARD B.120 OIL SPILL RESTORATION ACCOUNT

10. At no further cost to the Defendants, except as provided by Paragraph 15.g below, the Trustees will prepare a Restoration Plan(s) for Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers and jointly, as provided in the Trustee Memorandum of Agreement, approve expenditures from the Bouchard B.120 Oil Spill Restoration Account consistent with the Restoration Plan(s) for the resources identified in this paragraph and pursuant to the terms of the Trustee Memorandum of Agreement. If the funds in the Bouchard B.120 Oil Spill Restoration Account are not sufficient to complete the activities in the Restoration Plan(s) for Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers, neither the Defendants nor the Trustees shall be required to expend additional funds to complete the activities in the Restoration Plan(s).

11. All funds for Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers in the Bouchard B.120 Oil Spill Restoration Account, including any interest or return on investment thereon, shall be held in the Bouchard B.120 Oil Spill Restoration

Account solely for use by the Trustees to jointly plan, implement, oversee, or monitor the restoration of Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers in accordance with the Restoration Plan(s) prepared pursuant to Paragraph 10. DOI shall, in accordance with law, pursuant to the terms of the Trustees' Memorandum of Agreement, and for the benefit of the Trustees, manage and invest the funds in the Bouchard B.120 Oil Spill Restoration Account on behalf of the Trustees. Upon receipt of the funds for Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers DOI will establish a distinct and project specific account number within the DOI NRDAR Fund to allow the funds to be maintained as a segregated account within the DOI Natural Resource Damage Assessment and Restoration Fund. DOI shall not make any charge against the Bouchard B.120 Oil Spill Restoration Account for investment, management, or any other services provided with respect to operation of the account.

IX. COVENANT NOT TO SUE BY PLAINTIFFS

12. In consideration of the payments and actions that have been and will be made by the Defendants under this Consent Decree, the United States covenants not to sue or take administrative action against the Defendants pursuant to Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702(a) and (b), for (1) Costs of Assessment (except with respect to the Unpaid Costs of Assessment) and (2) damages for injury to, destruction of, loss of, or loss of use of Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers, related to the Oil Spill. This covenant not to sue is conditioned upon receipt by the United States of all payments required by Section VI (Payments by Defendants) and, as applicable, Section VII (Stipulated Penalties) of this Consent Decree.

13. In consideration of the payments and actions that have been and will be made by the Defendants under this Consent Decree, the Commonwealth covenants not to sue the Defendants pursuant to Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702(a) and (b) and M.G.L. c. 21E § 5(a)(ii), for (1) Costs of Assessment (except with respect to the Unpaid Costs of Assessment, if any) and (2) damages for injury to, destruction of, loss of, or loss of use of Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers, related to the Oil Spill. This covenant not to sue is conditioned upon receipt by the Commonwealth of all payments required by Section VI (Payments by Defendants) and, as applicable, Section VII (Stipulated Penalties) of this Consent Decree.

14. In consideration of the payments and actions that have been and will be made by the Defendants under this Consent Decree, the State covenants not to sue the Defendants pursuant to Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702(a) and (b) and Rhode Island Gen. Laws Section 46-12.5.7, for (1) Costs of Assessment (except with respect to the Unpaid Costs of Assessment) and (2) damages for injury to, destruction of, loss of, or loss of use of Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers, related to the Oil Spill. This covenant not to sue is conditioned upon receipt by the State of all payments required by Section VI (Payments by Defendants) and, as applicable, Section VII (Stipulated Penalties) of this Consent Decree.

15. Reservations of rights. Notwithstanding any other provision of this Consent Decree, the United States, the Commonwealth, and the State reserve, and this Consent Decree is without prejudice to, all rights against the Defendants with respect to all matters other than those

expressly specified in the covenants not to sue set forth in Paragraphs 12, 13, and 14 of this Section, including, but not limited to:

a. claims against the Defendants for their failure to meet a requirement of this Consent Decree;

b. claims against the Defendants for damages, including assessment costs, under OPA and any other applicable law, for injury to, destruction of, loss of, or loss of use of, Natural Resources that are not related to the Oil Spill;

c. any criminal liability;

d. subrogated claims under Section 1015 of OPA, 33 U.S.C. § 2715, for any amounts paid or to be paid by the Fund in connection with the Oil Spill;

e. claims, other than claims for Natural Resource Damages related to the Oil Spill, against the Defendants that the Commonwealth, the State, or the United States on behalf of the United States Environmental Protection Agency, and/or the United States Coast Guard, may have under any applicable law;

f. claims against the Defendants for injuries to Natural Resources other than those for Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers, including but not limited to, injuries to Wildlife Resources; and

g. claims against the Defendants for Unreimbursed Costs of Assessment and Unpaid Costs of Assessment.

h. Special Reservations Regarding Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the United States, the Commonwealth, and the State reserve the right to institute proceedings against the Defendants in

this action or in a new action seeking recovery of Natural Resource Damages for Aquatic Resources, Shoreline Resources, Recreational Resources, and/or Piping Plovers, based on:

i. conditions caused by the Oil Spill, unknown by the Trustees as of the date of the lodging of this Consent Decree, that cause new or additional injury to, destruction of, loss of, or loss of use of such Aquatic Resources, Shoreline Resources, Recreational Resources, and/or Piping Plovers; or

ii. information received by the Trustees after the date of lodging of this Consent Decree indicating that the Oil Spill has resulted in new or significant additional injury to, destruction of, loss of, or loss of use of, such Aquatic Resources, Shoreline Resources, Recreational Resources, and/or Piping Plovers which injury is of a type that was unknown or a magnitude greater than was known by the Trustees as of the date of lodging of this Consent Decree.

X. COVENANT BY THE DEFENDANTS

16. The Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States, the Commonwealth, or the State, and their employees, agents, contractors, departments, agencies, administrations and bureaus, related to Natural Resource Damages arising from the Oil Spill, including, without limitation, any potential or pending claims against the Fund relating to the Oil Spill.

17. The Defendants further agree that in any subsequent administrative or judicial proceeding initiated by the United States, the Commonwealth, or the State for: injunctive relief; recovery of Unreimbursed Costs of Assessment or Unpaid Costs of Assessment; or other relief relating to the Oil Spill, Defendants shall not assert, and may not maintain, any defense or claim

based upon the principles of waiver, res judicata, statute of limitations, collateral estoppel, issue preclusion, claim-splitting, the entire controversy doctrine, or other defenses with respect to claims for injury to Natural Resources, including claims brought under Paragraph 15.h and claims for destruction of, loss of, or loss of use of, Wildlife Resources, based upon any contention that the claims raised by the United States, the Commonwealth, or the State 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 IX (Covenant Not To Sue by Plaintiffs) or Paragraph 16 of this Section X. The time between the lodging of this Consent Decree and the date of completion of the Natural Resource Damage assessment under Section 1006(c) of OPA, 33 U.S.C. § 2706(c), shall not be counted in relation to the computation of any applicable statute of limitations.

XI. EFFECT OF SETTLEMENT

18. 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. In addition, nothing in this Consent Decree shall limit, enlarge, or otherwise affect, the private rights or claims of any person not a Party to this Consent Decree, except as may be determined otherwise by a court of competent jurisdiction. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right of contribution), defenses, claims, demands, and causes of action which each Party may have with respect to the Oil Spill against any person not a Party hereto. The Trustees, who are authorized to act on behalf of the public with respect to Natural Resources, are entering into this Consent Decree solely to settle all claims relating to injury to, destruction of, loss of, or loss of use of Aquatic Resources, Shoreline Resources, Recreational Resources, and

Piping Plovers resulting from the Oil Spill that arise under or may be brought pursuant to Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702(a) and (b), M.G.L. c. 21E, § 5(a)(ii), and Rhode Island Gen. Laws Section 46-12.5.7, to the extent specified in Paragraphs 12, 13, and 14 above (Covenant Not to Sue by Plaintiffs).

19. This Consent Decree shall not bar any action by the United States, the Commonwealth, or the State with respect to any matters other than those expressly specified in the covenants not to sue set forth in Paragraphs 12, 13, and 14 of Section IX.

20. This Consent Decree shall not preclude the United States, the Commonwealth, or the State from instituting a separate or ancillary action to enforce the terms of this Consent Decree.

XII. MODIFICATION

21. a. Material Modifications. Material modifications to the Consent Decree may be made only by written approval of the Parties and the approval of the Court.

b. Non-Material Modifications. Non-material modifications of the Consent Decree may be made only by written approval of the Parties, and will become effective upon their filing with the Court.

c. Modifications to the Trustee Memorandum of Agreement. Notwithstanding Paragraph 21.a, any modifications to the Trustee Memorandum of Agreement may be made only in accordance with the terms of that agreement.

XIII. NOTICES

22. Whenever under the terms of this Consent Decree notice is required to be given by one Party to another, it shall be directed to the following individuals at the addresses and

facsimile numbers specified below, unless it is otherwise specifically provided in this Consent Decree. Any change in the individuals designated by any Party must be made in writing to the other Parties. Any correspondence submitted to the Plaintiffs shall include a reference to the case caption and civil action number of this action. All notices shall be sent by first-class mail and facsimile.

As to the United States:

Chief
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Facsimile: (202) 514-0097

Branden Blum
United States Department of Commerce
NOAA Office of General Counsel
1315 East-West Highway
Silver Spring, MD 20910
Facsimile: (301) 713-1229

Mark Barash
United States Department of the Interior
Office of the Solicitor
One Gateway Center
Suite 612
Newton, MA 02458
Facsimile: (617) 527-6848

As to the Commonwealth:

Matthew Brock
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
1 Ashburton Place, 18th Flr.
Boston, MA 02108
Facsimile: (617) 727-9665

Margaret Callanan
Deputy General Counsel
Executive Office of Energy and Environmental Affairs
100 Cambridge Street
Boston, MA 02114
Facsimile: (617) 262-1095

As to the State:

Mary E. Kay
State of Rhode Island
Department of Environmental Management
Office of Legal Services
235 Promenade Street
Providence, Rhode Island 02908
Facsimile: (410) 222-3378

As to Bouchard Transportation Co., Inc.:

Austin P. Olney
Dewey & LeBoeuf LLP
260 Franklin Street
Boston, MA 02110
Fax: (617) 439-0341

Andrew N. Davis
Dewey & LeBoeuf LLP
225 Asylum Street
Hartford, CT 06103
Fax: (617) 897-9026

XIV. RETENTION OF JURISDICTION

23. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or material modification of this Consent Decree, or to effectuate or enforce compliance with its terms. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce this Consent Decree.

XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

24. a. This Consent Decree shall be lodged with the Court and subject to public notice and comment in accordance Section 1006(c)(5) of OPA, 33 U.S.C. § 2706(c)(5) and 28 C.F.R. § 50.7.

b. The United States reserves the right to withdraw or withhold its consent to the Consent Decree if comments received regarding the Consent Decree disclose facts or considerations which indicate the Consent Decree is inappropriate, improper or inadequate. In addition, in the event of the Commonwealth's and/or the State's withdrawal from this Consent Decree, the United States reserves its right to withdraw from this Consent Decree.

c. The Commonwealth and/or the State reserve the right to withdraw or withhold their consent to the Consent Decree if comments received regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. In addition, in the event of the United States' withdrawal from this

Consent Decree, the Commonwealth and/or the State reserve their right to withdraw from this Consent Decree.

d. The Defendants consent to the entry of this Consent Decree without further notice, and agree not to withdraw or oppose entry of the Consent Decree or to challenge any provision of the Consent Decree.

25. 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.

XVI. FINAL JUDGMENT

26. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the Parties for only the Natural Resource Damages settled herein. The Court finds that there is no just reason for delay and therefore enters this as a final judgment under Fed. R. Civ. P. 54 and 58.

XVII. ACTIONS OF TRUSTEES

27. All actions taken by the Trustees pursuant to this Consent Decree shall be in accordance with the terms of their Trustee Memorandum of Agreement, attached hereto at Appendix A.

XVIII. APPENDICES

28. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A is the Trustee Memorandum of Agreement into which the Trustees have entered.

XIX. EFFECTIVE DATE

29. The effective date of this Consent Decree shall be the date this Consent Decree is entered by the Court.

XX. COSTS AND ATTORNEYS FEES

30. a. If the Defendants fail to make any payment required under Section VI of this Consent Decree when due, including stipulated penalties under Section VII, and the United States, the Commonwealth, and/or the State file(s) with the Court either a motion to enforce this Consent Decree, a complaint, or any other application for such payment, and: (1) the United States, the Commonwealth, and/or the State thereafter receives a payment; or (2) an order is issued directing payment of any portion of the amount sought by the United States, the Commonwealth, and/or the State; or (3) the action is settled in a manner in which the United States, the Commonwealth, and/or the State receive(s) any portion of the amount sought, the Defendants shall reimburse the United States, the Commonwealth, and/or the State for all costs arising from such motion, complaint or application, including but not limited to costs of attorney time.

b. The Trustees will use best efforts to coordinate among each other in any action to enforce this Consent Decree.

c. The Defendants are entitled to assert any arguments or defenses available to them by law in an effort to mitigate such costs or fees.

XXI. SIGNATORIES/SERVICE

31. The undersigned representative of the Defendants 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 parties to this document.

32. The Defendants shall identify on the attached signature page the name, address, telephone number and facsimile number of an agent who is authorized to accept service of process, if served by both mail and facsimile, on behalf of such Defendants with respect to all matters arising under or relating to this Consent Decree. The Defendants hereby agree to accept service in this 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.

SO ORDERED THIS 17th DAY OF May, 2011 ~~2010~~.

/s/ Nathaniel M. Gorton
UNITED STATES DISTRICT JUDGE
District of Massachusetts