

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

	)	RE: CARVER – BWSC
In the matter of:	)	Release Tracking Numbers: 4-17582, 4-17825,
	)	4-13333 & 4-12848
<i>Eagle Gas, Inc.</i>	)	Eagle Gas, Inc.
<i>131 Main Street</i>	)	131 Main Street
<i>Carver, Massachusetts 02330</i>	)	<b>ADMINISTRATIVE CONSENT ORDER</b>
	)	<b>WITH PENALTY AMENDMENT</b>
	)	<b>ACOP-SE-07-3R-003 AMENDMENT #1</b>

The Department and the Respondent agree to amend and incorporate the following changes into this Consent Order:

1. Section III. Disposition and Order, Paragraph 8F, 8G, 8H and 8I, which in the original Administrative Consent Order with Penalty ACOP-SE-07-3R-003 stated:

8. Respondent shall perform the following actions:

- F. By April 1, 2008, the Respondent shall submit to MassDEP a Final Inspection Report and Phase IV Completion Statement, prepared in full accordance with the provisions of 310 CMR 40.0879.
- G. By April 1, 2008, if at the conclusion of Phase IV, a Response Action Outcome has not yet been achieved, the Respondent shall conduct Phase V Operation, Maintenance and/or Monitoring of Comprehensive Response Actions in accordance with 310 CMR 40.0890 and, if applicable, shall submit a Remedy Operation Status Opinion in accordance with the provisions of 310 CMR 40.0893.
- H. By October 25, 2010, if a Response Action Outcome has not yet been achieved, the Respondent shall submit to MassDEP a Periodic Review Opinion of the Temporary Solution (Class C-1 RAO) for RTNs: 4-13333 and 4-12848 in accordance with the provisions of 310 CMR 40.1051.
- I. If at any time before April 1, 2008, documentation is submitted to MassDEP sufficient to support the conclusion that a Class A RAO has been achieved at the Site (including RTNs 4-13333, 4-12848, 4-17582 and 4-17825) in full accordance with the MCP, the Respondent does not need to continue with Comprehensive Response Actions at the Site, pursuant to 310 CMR 40.0560(3).


Is hereby amended to:

8. Respondent shall perform the following actions:

- F. By October 1, 2008, the Respondent shall submit to MassDEP a Final Inspection Report and Phase IV Completion Statement, prepared in full accordance with the provisions of 310 CMR 40.0879.

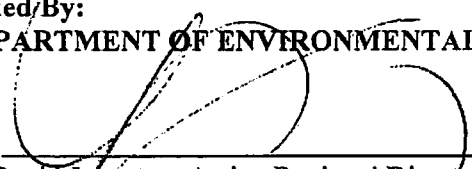
- G. By October 1, 2008, if at the conclusion of Phase IV, a Response Action Outcome has not yet been achieved, the Respondent shall conduct Phase V Operation, Maintenance and/or Monitoring of Comprehensive Response Actions in accordance with 310 CMR 40.0890 and, if applicable, shall submit a Remedy Operation Status Opinion in accordance with the provisions of 310 CMR 40.0893.
- H. By October 25, 2010, if a Class A Response Action Outcome has not yet been achieved, the Respondent shall submit to MassDEP a Periodic Review Opinion of the Temporary Solution (Class C-1 RAO) for RTNs: 4-13333 and 4-12848 in accordance with the provisions of 310 CMR 40.1051.
- I. If at any time before October 1, 2008, documentation is submitted to MassDEP sufficient to support the conclusion that a Class A RAO has been achieved at the Site (including RTNs: 4-13333, 4-12848, 4-17582 and 4-17825) in full accordance with the MCP, the Respondent does not need to continue with Comprehensive Response Actions at the Site, pursuant to 310 CMR 40.0560(3).
2. The remaining provisions of this Consent Order, specifically Section III, which addresses the terms and conditions for imposing stipulated penalties, remain in full force and effect.
3. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order Amendment and to legally bind the party on whose behalf they are signing this Consent Order Amendment.
4. This Consent Order Amendment shall become effective on the date that it is executed by MassDEP.

Consented To:  
Eagle Gas, Inc.

By:   
Najib Badaoui, President  
Eagle Gas, Inc.  
131 Main Street  
Carver, MA 02330  
Federal Employer Identification No.: 43337165

Date: 4-1-08

Issued/By:  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By:   
David Johnston, Acting Regional Director  
MassDEP-SERO  
20 Riverside Drive  
Lakeville, MA 02347

Millie Garcia-Servano  
for David Johnston  
acting IRO

Date: April 1, 2008

*file*



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
SOUTHEAST REGIONAL OFFICE  
20 RIVERSIDE DRIVE, LAKEVILLE, MA 02347 508-946-2700

**COPY**

DEVAL L. PATRICK  
Governor

IAN A. BOWLES  
Secretary

TIMOTHY P. MURRAY  
Lieutenant Governor

ARLEEN O'DONNELL  
Commissioner

May 3, 2007

Shephard S. Johnson, Esq.  
Shephard S. Johnson, Jr. & Associates,  
Attorneys at Law  
628 Pleasant Street, Suite 428  
New Bedford, Massachusetts 02740

RE: CARVER—BWSC/RR  
RTNs: 4-17582, 4-17825, 4-13333 & 4-12848  
Eagle Gas, Inc.  
131 Main Street  
**ADMINISTRATIVE CONSENT ORDER  
WITH PENALTY  
ACOP-SE-07-3R-003**

Dear Attorney Johnson:

Please find enclosed a signed copy of the Administrative Consent Order with Penalty ("Consent Order") that the Department of Environmental Protection (MassDEP) has negotiated with Eagle Gas, Inc.

The Consent Order was executed on May 3, 2007, with MassDEP's signature. The terms and conditions of the Consent Order now apply and are binding. The Consent Order contains a schedule of actions and deadlines which, if not adhered to, could render Eagle Gas, Inc. liable for suspended and stipulated penalties as described therein.

If you have any questions regarding this Consent Order or any of the requirements contained in it, please contact Cynthia Baran at the letterhead address or by calling (508) 946-2887. MassDEP appreciates your cooperation in this matter.

Sincerely,

*[Signature]*  
for Gary S. Moran  
Regional Director

M/CAB/re  
P:\cbaran\Eagle Gas Enforcement\Final ACOP Cover Letter

Enclosure: Copy of Administrative Consent Order with Penalty ACOP-SE-07-3R-003  
CERTIFIED MAIL # 7007 0220 0003 2864 4546

fc: Board of Health  
Board of Selectmen

cc: Mr. Najib Badaoui, President  
Eagle Gas, Inc.  
131 Main Street  
Carver, Massachusetts 02330

ec: DEP-SERO  
Attn: Millie Garcia-Serrano, Deputy Regional Director  
Gerard M.R. Martin, Chief, Site Mgt. & Enforcement  
Kevin Kiernan, Senior Regional Counsel  
Lee MacEachern, Asst. to RD  
Theresa Barao, Public Affairs  
Deneen Simpson, REO  
Data Entry

cc: Regional Enforcement Office

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

**COPY**

In the matter of: )  
)

*Eagle Gas, Inc.* )

*131 Main Street* )

*Carver, Massachusetts 02330* )  
)

File No.: ACOP -SE-07-3R-003

**ADMINISTRATIVE CONSENT ORDER WITH PENALTY  
AND  
NOTICE OF NONCOMPLIANCE**

**I. THE PARTIES**

1. The Department of Environmental Protection ("Department" or "MassDEP") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Southeast Regional Office at 20 Riverside Drive, Lakeville, MA 02347.

2. Eagle Gas, Inc. ("Respondent") is a corporation with a place of business, principal offices and a mailing address of 131 Main Street, Carver, Massachusetts 02330. Mr. Najib Badaoui is President of Eagle Gas, Inc. Respondent's mailing address for purposes of this Consent Order is Shephard S. Johnson, Jr. & Associates, Attorneys at Law, 628 Pleasant Street, Suite 428, New Bedford, MA 02740.

**II. STATEMENT OF FACTS AND LAW**

3. MassDEP is responsible for the implementation and enforcement of M.G.L. c. 21E and the Massachusetts Contingency Plan (MCP) at 310 CMR 40.0000. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.

4. Respondent is the current owner and operator of the property located at 131 Main Street in Carver, Massachusetts at or from which there is or has been a release and/or threat of release of oil and/or hazardous material pursuant to M.G.L. c. 21E ("Property"). For purposes of this Consent Order, "Site" shall mean the Property, and any other place or area where the release of oil and/or hazardous material at or from the Property has come to be located to which MassDEP has assigned Release Tracking Numbers ("RTNs") 4-17582, 4-17825, 4-13333 and 4-12848.

5. The following facts have led MassDEP to issue this Consent Order:
- A. From September 1978 to November 18, 1996, Richard Nantias/Nantais Realty Trust owned and operated a gasoline service station at the Property.
  - B. On November 18, 1996, Richard Nantias leased the Property to Jean Ibrahim, who assumed operation of the gas station.
  - C. On January 2, 1997 Najib Badaoui became President and Clerk of Eagle Gas, Inc.
  - D. On February 14, 1997, MassDEP received notification of the presence of 14 ppb benzene in the private drinking water supply well serving the residence owned by William Holmes located at 132 Main Street, downgradient from the Property. MassDEP assigned RTN # 4-12848 to this release and issued a Notice of Responsibility ("NOR") to Richard Nantias/Nantais Realty Trust on August 11, 1997.
  - E. On September 8, 1997 MassDEP was notified of a release of gasoline (the detection of 93 ppb benzene, 4,000 ppb MtBE and 1.3 ppm Total Petroleum Hydrocarbons exceeding Reportable Concentrations in a monitoring well located within 500 feet of private water supply wells) at the Property and assigned RTN #4-13333 to this release.
  - F. On October 31, 1997, Richard Nantais sold the Property to Najib Badaoui.
  - G. On January 21, 2003, James Decoulos, Licensed Site Professional ("LSP") for Eagle Gas, Inc., notified the Department of the presence of 10" of LNAPL measured in an onsite monitoring well. The Department assigned this release RTN # 4-17582 and on February 12, 2003 issued an NOR to the Respondent.
  - H. On March 23, 2003, Decoulos, on behalf of the Respondent, submitted an IRA Plan for RTN 4-17582 proposing active NAPL recovery within 14 days (which was not implemented until January 23, 2007).
  - I. On May 16, 2003, James Decoulos, LSP for the Respondent, notified the Department of the presence of an oil sheen on the surface water of South Meadow Brook. The Department assigned this release RTN: 4-17825 and, on June 13, 2003, issued an NOR to the Respondent.
  - J. On November 24, 2004, MassDEP issued a Notice of Noncompliance (NON) to the Respondent for failure to submit a Release Notification Form and failure to submit an Immediate Response Action (IRA) Plan for RTN 4-17825.

- K. On January 28, 2004, Decoulos, on behalf of the Respondent, submitted an IRA Plan for RTN 4-17825 proposing reconstruction of the concrete pad around the gasoline pumps, installation of an overhead canopy, and installation of one oil/water separator in on-site catchbasin. To date, none of these activities have been completed.
- L. On April 5, 2004, MassDEP issued a Request for IRA Modification with an Interim Deadline to the Respondent, because the submitted IRA Plan did not address the Condition of Substantial Release Migration ("SRM") related to RTN 4-17825.
- M. On March 19, 2004, MassDEP issued a NON to the Respondent for failure to submit: (1) an IRA Plan Modification to conduct response actions to assess, eliminate and/or mitigate a SRM condition and Critical Exposure Pathways ("CEPs"), (2) a written IRA Status Report and (3) either a Response Action Outcome ("RAO") Statement, Tier Classification Submittal or Downgradient Property Status ("DPS") Submittal. The NON required the Respondent to submit the following reports to MassDEP on or before April 30, 2004: (1) an IRA Plan Modification to conduct response actions to assess, eliminate and/or mitigate a SRM condition and CEPs; (2) a written IRA Status Report; and (3) a RAO Statement, Tier Classification Submittal or DPS Submittal. The NON also required that the Respondent submit an IRA Status Report or IRA Completion Report for the required IRA Plan Modification by August 30, 2004. If an IRA Completions Statement was not submitted by August 30, 2004, IRA Status Reports were required to be submitted every six months thereafter until such time as an IRA Completion Statement was submitted. The Respondent failed to submit the required documents by the deadlines established. A copy of the NON is attached hereto and incorporated into this Consent Order.
- N. With particular reference to violation #1 contained in the March 19, 2004 NON, on June 17 2004, forty-eight (48) days after it was due, Decoulos, on behalf of the Respondent, submitted an IRA Plan Modification to MassDEP. The IRA Plan Modification did not address the SRM or CEP conditions as required in the NON. On July 7, 2004 MassDEP denied the IRA Plan Modification and required that an IRA Plan Modification be submitted within thirty (30) days of receipt of the IRA Plan Denial. The Respondent received the letter on July 12, 2004; therefore, the IRA Plan Modification was due on August 12, 2004. On November 8, 2004, eighty-eight (88) days after it was due, Decoulos, on behalf of the Respondent, submitted an IRA Plan Modification to MassDEP. On November 26, 2004, MassDEP denied the IRA Plan Modification and required that a revised IRA Plan Modification be submitted by December 24, 2004. On December 2, 2004, MassDEP personnel held a meeting with the Respondent and Decoulos to review and explain deficiencies previously identified by MassDEP. On January 7, 2005, fourteen (14) days after it was due, Decoulos, on behalf of the Respondent, submitted an incomplete IRA Plan Modification to MassDEP. MassDEP itemized the deficiencies in the IRA Plan Modification and required that a complete IRA Plan Modification be submitted. Environmental

Compliance Services, Inc. ("ECS") submitted a complete IRA Plan Modification for RTN 4-17582 on August 16, 2005. The implementation of the required active NAPL recovery system, catch basin treatment systems and the dike to mitigate the Condition of Substantial Release Migration and prevent/reduce continuing discharges to S. Meadow Brook were installed on or about January 23, 2007.

- O. With particular reference to violation #2 in the March 19, 2004 NON, on June 17, 2004, forty-eight (48) days after it was due, Decoulos, on behalf of the Respondent, submitted to MassDEP an IRA Status Report.
- P. With particular reference to violations # 3 in the March 19, 2004 NON, on May 25, 2004, twenty-five (25) days after it was due, Decoulos, on behalf of the Respondent, submitted to MassDEP an incomplete Tier Classification Package, consisting of a Phase I Report and a Numerical Ranking Scoresheet. The Incomplete Tier Classification Package Submittal did not include the Tier IA Initial Permit Application, Permit Fee and did not meet the performance standard for Tier Classification Public Involvement Activities required at 310 CMR 40.1403 (6). This Submittal was incomplete but did effectively link RTN: 4-17582 and 4-17825. On January 3, 2006, ECS, on behalf of the Respondent, submitted to MassDEP a Tier IA Permit Application without the required Phase II Scope of Work and proof of Notice published in the Environmental Monitor (310 CMR 40.0704). On May 18, 2006, seven hundred and forty-eight (748) days after it was due, ECS on behalf of the Respondent, submitted to MassDEP the Phase II Scope of Work to complete the Tier Classification Package.
- Q. With particular reference to violation #4 in the March 19, 2004 NON, on November 8, 2004, seventy (70) days after it was due and on May 13, 2005, seventy-four (74) days after it was due, Decoulos, on behalf of the Respondent, submitted incomplete IRA Status Reports. The submittals did not meet the requirements of 310 CMR 40.0425. Neither IRA Status Report addressed the Condition of Substantial Release Migration related to impacts to South Meadow Brook nor did the reports address management of remediation waste generated and stored at the site. (No IRA Status was submitted for the 8/30/05 status due date. ECS submitted an IRA Status Report for RTN 4-17582 on January 17, 2006. This report was therefore 139 days late.) Since the January 17, 2006 IRA Submittal, IRA Status reports for RTN 4-17582 and 4-17825 have been submitted quarterly. The most recent IRA Status Reports were submitted separately for RTN 4-17582 and 4-17825 on March 5, 2007.
- R. On May 7, 2004, Richard Nantais, in his individual capacity and Nantais Realty Trust, Richard Nantais, Trustee (collectively, "Nantais"), submitted a Tier II Extension to MassDEP and linked RTN# 4-12848 and RTN # 4-13333 (hereinafter "RTN 4-13333").



- S. On October 25, 2005, Nantais submitted a Class C-1 Response Action Outcome Statement (Temporary Solution) for RTN 4-13333.
- T. On December 5, 2005, Nantais entered into Administrative Consent Order ACO-SE-05-3R-005 ("Nantais Consent Order") with MassDEP, regarding, among other things, the performance of response actions at the Site for RTN 4-13333.
- U. On November 10, 2006, ECS, on behalf of the Respondent, submitted to MassDEP a Phase II Comprehensive Site Assessment for RTNs 4-17582 & 4-17825. The Phase II Report concluded that a condition of No Significant Risk has not been achieved at the Site and that additional Comprehensive Response Actions are required at the Site to achieve a Response Action Outcome.
- V. On November 13, 2006, ECS, on behalf of the Respondent, submitted to MassDEP a Phase III Modification, Evaluation and Selection of Comprehensive Remedial Response Alternatives for RTNs 4-17582 & 4-17825. The Phase III concluded that a combined approach of remedial alternatives would most effectively address site conditions and achieve a condition of No Significant Risk and a Permanent Solution. The Phase III presented two options for Remedial Response Alternatives: Option 1 included soil excavation and disposal with dewatering combined with activation of the existing groundwater interceptor trench, followed by chemical oxidation, surfactant injection, enhanced biodegradation and/or monitored natural attenuation. Soil and Sediment excavation from South Meadow Brook at the impacted stormwater outfall area is also proposed. Option 2 included installation and operation and maintenance of an Multi Phase Extraction System combined with activation of the existing groundwater interceptor trench, followed by chemical oxidation, surfactant injection, enhanced biodegradation and/or monitored natural attenuation. Soil and Sediment excavation from South Meadow Brook at the impacted stormwater outfall area is also proposed. The Phase III did not address Remedial Response Alternatives for the impacted outfall area at South Meadow Brook. The Phase III Report included a Projected Schedule of Implementation of Phase IV Activities including, installation of LNAPL-selective pumping system by December 2006, Submission of Phase IV: Remedy Implementation Plan by January 2007, Initiation of Soil Excavation Activities by April 2007 and Activation of Groundwater Pump & Treatment System by June 2007.
- W. On January 21, 2007, a Phase IV Report was due to be submitted to MassDEP by the Respondent. The Phase IV Remedy Implementation Plan has not been submitted to date.
- X. On January 31, 2007, Nantais and the Respondent submitted to MassDEP a Tier II Transfer Submittal Package, including transmittal forms BWSC-107A, BWSC-107B and BWSC-107C, which transferred obligations and full responsibility for the

performance of response actions under M.G.L. c. 21E and the MCP related to RTN 4-13333 to the Respondent.

- Y. On January 31, 2007, MassDEP and Nantais entered into a Stipulated Termination of Administrative Consent Order, voluntarily agreeing to the termination of the Nantais Consent Order and to the discharge of any remaining obligations and requirements under the Nantais Consent Order because the Parties agreed that it is in their interest, and in the public interest, to have the Respondent assume responsibility for the performance of response actions related to RTN 4-13333.

Based upon the above facts, MassDEP has determined Respondent violated M.G.L. c. 21E and the Massachusetts Contingency Plan regulations cited above.

### III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

6. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

7. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Part II of this Consent Order.

8. Respondent shall perform the following actions:

- A. By June 1, 2007, the Respondent shall submit to MassDEP a Phase III Report Addendum to address Remedial Response Alternatives related to RTN: 4-17825 for the outfall area of South Meadow Brook.
- B. By June 1, 2007, the Respondent shall submit to MassDEP individual IRA Status Reports for RTN 4-17582 and 4-17825 prepared in full accordance with the provisions of 310 CMR 40.0425. IRA Status Reports for each RTN shall be submitted quarterly thereafter (e.g., September 1, 2007, December 1, 2007, etc.), until an IRA Completion Statement has been submitted for each RTN.
- C. By July 2, 2007, the Respondent shall submit to MassDEP a Phase IV Remedy Implementation Plan, prepared in full accordance with the provisions of 310 CMR

40.0875. The Phase IV shall include Remedies for both the source area and remediation of South Meadow Brook at the stormwater outfall area.

- D. By January 2, 2008, the Respondent shall submit to MassDEP a Phase IV As-Built Construction Report, prepared in full accordance with the provisions of 310 CMR 40.0870. Phase IV As-Built Construction Plans shall be submitted for both the source area and remediation of South Meadow Brook at the stormwater outfall area.
- E. By February 1, 2008, or one month after initiation of Active Operation and Maintenance of the remedial action, whichever occurs earlier, if the selected remedy involves the Active Operation and Maintenance of the Comprehensive Remedial Action and is conducted prior to the submittal of a Final Inspection Report and Phase IV Completion Statement, the Respondent shall submit to MassDEP a Remedial Monitoring Report and a Phase IV Status Report prepared in full accordance with 310 CMR 40.0877.
- F. By April 1, 2008, the Respondent shall submit to MassDEP a Final Inspection Report and Phase IV Completion Statement, prepared in full accordance with the provisions of 310 CMR 40.0879.
- G. By April 1, 2008, if at the conclusion of Phase IV, a Response Action Outcome has not yet been achieved, the Respondent shall conduct Phase V Operation, Maintenance and/or Monitoring of Comprehensive Response Actions in accordance with 310 CMR 40.0890 and, if applicable, shall submit a Remedy Operation Status Opinion in accordance with the provisions of 310 CMR 40.0893.
- H. By October 25, 2010, if a Response Action Outcome has not yet been achieved, the Respondent shall submit to MassDEP a Periodic Review Opinion of the Temporary Solution (Class C-1 RAO) for RTNs: 4-13333 and 4-12848 in accordance with the provisions of 310 CMR 40.1051.
- I. If at any time before April 1, 2008, documentation is submitted to MassDEP sufficient to support the conclusion that a Class A RAO has been achieved at the Site (including RTNs 4-13333, 4-12848, 4-17582 and 4-17825) in full accordance with the MCP, the Respondent does not need to continue with Comprehensive Response Actions at the Site, pursuant to 310 CMR 40.0560(3).

If the Respondent requests an extension of a deadline contained in this Consent Order, and MassDEP determines that Respondent's request to extend such deadline is reasonable, it may, on its own initiative or upon a reasonable documented request from the Respondent, extend any deadline established in Paragraph 10 of this Consent Order through a written Amendment. If the Respondent has reason to know that any event has occurred or may occur which could cause delay of performance of the actions described in this Consent Order, the Respondent may submit

a written request to MassDEP to extend the deadlines for performing the actions described in this Consent Order. For MassDEP to consider the Respondent's request, the request must be submitted as soon as the Respondent learns of the delay, but not later than fourteen (14) days prior to the deadline. The request shall contain the following information: a) the anticipated length and cause of the delay; b) the measure(s) to be taken to minimize the delay; and c) a timetable for implementing those measures; and d) If the delay is due to a failure to obtain property access, the Respondent shall certify in writing that it has followed the requirements of 310 CMR 40.0173 that describe the procedure for obtaining property access when requesting the extension. MassDEP may unconditionally approve, disapprove, or approve the Respondent's request with necessary modifications.

9. Except as otherwise provided, all notices, submittals and other communications required by this Consent Order shall be directed to:

Cynthia A. Baran, Section Chief  
Risk Reduction Section  
MassDEP - SERO  
20 Riverside Drive  
Lakeville, MA 02347

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

10. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

11. For purposes of M.G.L. c. 21A, § 16, and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent's noncompliance with the requirements cited in Part II above. MassDEP hereby determines, and Respondent hereby agrees, that the deadlines set forth above constitute reasonable periods of time for Respondent to take the actions described.

12. Respondent shall pay to the Commonwealth the sum of ten thousand six hundred eighty seven and 50/100 dollars (\$10,687.50) as a civil administrative penalty for the violations identified in Part II above, according to the following schedule:

A. Within ninety (90) days of the effective date of this Consent Order, Respondent shall pay to the Commonwealth two thousand six hundred seventy-one and 87/100 dollars (\$2,671.87); and

B. Within one hundred and eighty (180) days of the effective date of this Consent Order, Respondent shall pay to the Commonwealth an additional two thousand six hundred seventy-one and 87/00 dollars (\$2671.87); and

C. Within two hundred and seventy (270) days of the effective date of this Consent Order, Respondent shall pay to the Commonwealth an additional two thousand six hundred seventy-one and 87/00 dollars (\$2671.87); and

D. Within three hundred and sixty (360) days of the effective date of this Consent Order, Respondent shall pay to the Commonwealth an additional two thousand six hundred seventy-one and 89/00 dollars (\$2671.89); and

E. MassDEP hereby agrees to suspend payment of the sum of ten thousand six hundred eighty seven and 50/00 dollars (\$10,687.50); provided, however, that if the Respondent violates any provision of this Consent Order, or further violates any of the provisions of Section III, Paragraph 10, of this Consent Order, or further violates any of the regulations cited in Part II above within 365 days of the effective date of this Consent Order, the Respondent shall pay to the Commonwealth the remaining amount of ten thousand six hundred eighty seven and 50/00 dollars (\$10,687.50) within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. This paragraph shall not be construed or operate to bar, diminish, adjudicate, or in any way affect, any legal or equitable right of MassDEP to assess Respondent additional civil administrative penalties, or to seek any other relief, with respect to any future violation of any provision of this Consent Order or any law or regulation.

This Consent Order establishes the schedule of payments, and constitutes notice that the payments are due as described above. Except for the first payment, and solely for Respondent's convenience, ~~billing notices may be sent to Respondent before each payment due date.~~ All payments must be made according to the schedule and terms agreed upon in this Consent Order, regardless of whether Respondent receives billing notices. All payments made after the first payment must include the billing stub from the billing notice (if received by Respondent). Failure to make timely payments in accordance with the foregoing payment plan shall result in revocation of the payment plan. In such event, the entire remaining penalty amount, plus interest dating back to the default date, shall become immediately due to the Commonwealth.

13. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by MassDEP.

14. This Consent Order may be modified only by written agreement of the parties hereto.

15. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.

16. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to: (a) enforce this Consent Order in an administrative or judicial proceeding; (b) recover costs incurred by MassDEP in connection with response actions conducted at the Site; and (c) recover damages for injury to and for destruction or loss of natural resources pursuant to M.G.L. c. 21E, § 5 or 42 U.S.C. 9601, et seq.

Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting MassDEP's authority to: (a) perform response actions at the Site or (b) require Respondent to conduct response actions at the Site or take other actions beyond those required by this Consent Order in order to comply with all applicable laws and regulations including, without limitation, M.G.L. c. 21E and the MCP.

17. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

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

19. In addition to the penalty set forth in this Consent Order (including any suspended penalty), if Respondent violates any provision of this Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in the amount of \$1,000.00 per day for each day, or portion thereof, each such violation continues.

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance.

All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If a court judgment is necessary to execute a claim for stipulated penalties under this Consent Order, Respondent agrees to assent to the entry of such judgment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty.

20. Respondent shall pay all civil administrative penalties due under this Consent Order, including suspended and stipulated penalties, by certified check, cashier's check, or money order made payable to the Commonwealth of Massachusetts. Respondent shall clearly print on the face of its payment Respondent's full name, the file number appearing on the first page of this Consent Order, and the Respondent's Federal Employer Identification Number, and shall mail it to:

Commonwealth of Massachusetts  
MassDEP  
Commonwealth Master Lockbox  
P.O. Box 3982  
Boston, Massachusetts 02241-3982

Respondent shall simultaneously mail a copy of the payment to:

Kevin John Kiernan  
Senior Regional Counsel  
MassDEP – SERO  
20 Riverside Drive  
Lakeville, MA 02347

In the event Respondent fails to pay in full any civil administrative penalty as required by this Consent Order, then pursuant to M.G.L. c. 21A, § 16, Respondent shall be liable to the Commonwealth for up to three (3) times the amount of the civil administrative penalty, together with costs, plus interest on the balance due from the time such penalty became due and

attorneys' fees, including all costs and attorneys' fees incurred in the collection thereof. The rate of interest shall be the rate set forth in M.G.L. c. 231, § 6C.

21. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

22. Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to the Property for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

23. This Consent Order does not relieve Respondent's obligation to pay Annual Compliance Assurance Fees pursuant to 310 CMR 4.00 et. seq.

24. All applicable transmittal fees shall accompany any submission(s) required by this Consent Order.

25. The Respondent shall comply with all applicable Public Involvement activities regarding the Site, as described in 310 CMR 40.1400.

26. Any deadline established pursuant to this Paragraph 10 of this Consent Order, and any amendment thereto, is an Interim Deadline pursuant to 310 CMR 40.0167 and is not subject to the seven (7) day grace period allowed by 310 CMR 40.0008(4). The submittals required by this Consent Order are due to MassDEP on or before the deadlines established herein.

27. Respondent's obligations under this Consent Order shall cease upon Respondent's completion of all actions and payments required pursuant to Paragraphs 10 through 14 of this Consent Order.

28. This Consent Order shall not be construed or operate as rendering MassDEP a party to any contract or other agreement entered into by Respondent to carry out Respondent's obligations under this Consent Order or as an assumption of any liability by MassDEP under any such contract or agreement.

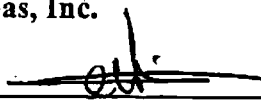
29. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.



30. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

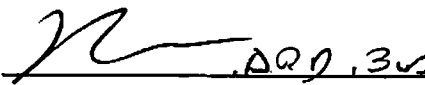
31. This Consent Order shall become effective on the date that it is executed by MassDEP.

**Consented To:**  
**Eagle Gas, Inc.**

By:   
Najib Badaoui, President  
Eagle Gas, Inc.  
131 Main Street  
Carver, MA 02330  
Federal Employer Identification No.: 43337165

Date: 5-1-07

**Issued By:**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

By:  D.S.M.  
for Gary S. Moran, Regional Director  
MassDEP-SERO  
20 Riverside Drive  
Lakeville, MA 02347

Date: 5-3-07