

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

In the matter of:

Richard D. Schiripo and Thomas W. Schiripo,
Trustees of F.P.R. Realty Trust;
Deloury Construction Company, Inc.; and
Agretech, Inc.

Enforcement Document Number
00010832
Issuing Bureau: BWSC
Issuing Region/Office: NERO
Issuing Program: BWSC
Primary Program Cited: BWSC
Subpgm(s) Cited: BAW

ADMINISTRATIVE CONSENT ORDER

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 Northeast Regional Office at 205B Lowell Street, Wilmington, Massachusetts 01887.
2. F.P.R. Realty Trust ("FPR Realty") is a Massachusetts Trust with its principal offices located at 479 Broadway Road, Dracut, MA 01826. FPR Realty's mailing address for the purpose of this Consent Order is the same. Richard D. Schiripo, whose mailing address is 3 Superior Ave., Dracut, MA 01826, and Thomas W. Schiripo, whose mailing address is 264 Parker Rd., Dracut, MA 01826, are the Trustees of FPR Realty.
3. Deloury Construction Company, Inc. ("Deloury Construction") is a Massachusetts Domestic Profit Corporation with its principal offices located at 100 Burt Road, Andover, MA 01810. David E. Deloury is the President and Registered Agent of Deloury Construction. His mailing address as the former is 46 Lowell Junction Rd., Andover, MA 01810; his mailing address as the latter is 437 South Main St., Andover, MA 01810.
4. Agretech, Inc. is a Massachusetts Domestic Profit Corporation with its principal offices located at 100 Burt Rd., Suite G01, Andover, MA 01810 and a mailing address, for the purposes of the Consent Order, of P.O. Box 35, Dracut, MA 01826. David E. Deloury is the President and Registered Agent of Agretech, Inc. His mailing address as the former is 46 Lowell Junction Rd., Andover, MA 01810; his mailing address as the latter is 437 South Main St., Andover, MA 01810.

5. FPR Realty, Deloury Construction, and Agretech, Inc. are collectively referred herein as the "Respondents."

II. STATEMENT OF FACTS AND LAW

6. MassDEP is responsible for the implementation and enforcement of M.G.L. c. 111, §§ 142A-142O and the associated Air Pollution Control Regulations at 310 CMR 6.00, 310 CMR 7.00, and 310 CMR 8.00; M.G.L. c. 131, § 40 and the associated Wetlands Regulations at 310 CMR 10.00; M.G.L. c. 111, §§ 150A and 150A1/2 and the associated Solid Waste Management Regulations at 310 CMR 19.000 and Site Assignment Regulations for Solid Waste Facilities at 310 CMR 16.00; and M.G.L. c. 21E and the Massachusetts Contingency Plan ("MCP") at 310 CMR 40.0000. MassDEP has authority under M.G.L. c. 21E, § 6 to specify reasonable requirements to regulate activities which may cause, contribute to, or exacerbate a release of oil or hazardous materials, to prevent and control and to counter the effects of such releases. MassDEP also 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.
7. FPR Realty is the current owner of approximately 22 acres of real property in Dracut, Massachusetts at 1100 Merrimack Avenue, as recorded at the Northern Middlesex Registry of Deeds in Book 1869, Page 383 (the "Property" or "Site"). The Property has been continuously and actively used as a sand and gravel pit and rock quarry, together with a stone-materials crushing and process operations, for decades. Current plans are to terminate the extraction of sand and gravel and fill and reclaim the quarry pit.
8. The following facts and allegations have led MassDEP to issue this Consent Order:
- A. The Respondents have proposed to import approximately 700,000 cubic yards of fill materials to reclaim the quarry and facilitate future development of the Property (the "Project").
 - B. MassDEP has authority under Section 277 of Chapter 165 of the Acts of 2014 to establish regulations, guidelines, standards or procedures for determining the suitability of soil used as fill material for the reclamation of quarries, sand pits and gravel pits. The regulations, standards or procedures shall ensure the reuse of soil poses no significant risk of harm to health, safety, public welfare or the environment considering the transport, filling operations and the foreseeable future use of the filled land.
 - C. Proposed fill materials at the Property will include soils contaminated by low concentrations of oils and/or hazardous material ("OHM"). The placement, dumping, disposing or reuse of soil containing OHM into the environment is a Release as that term is defined in M.G.L. c. 21E, § 2. Depending on the site-

specific conditions and the nature of the OHM present in the soil, such releases may have significant adverse human health and environmental effects.

- D. MassDEP has authority under M.G.L. c. 21E, §6 to specify reasonable requirements to regulate activities which may cause, contribute to, or exacerbate a release of oil or hazardous materials, to prevent and control and to counter the effects of such releases.
- E. MassDEP has authority under M.G.L. c. 21E, § 9 to order potentially responsible parties ("PRPs") to conduct assessment, containment and removal actions, or to require the production or analysis of samples or records, consistent with the requirements of the MCP and as MassDEP reasonably deems necessary. Issuance of an order pursuant to M.G.L. c.21E, § 9 does not preclude MassDEP from recovering damages, costs, civil penalties, criminal fines and sanctions, injunctive relief, or any action authorized by M.G.L. c. 21E, § 4.
- F. M.G.L. c. 21E, §5 sets out liability for the release or any threat of release of oil or hazardous material. This liability includes the owner or operator of a site from or at which there is a Release or Threat of Release of oil or hazardous material as well as any person who at the time of storage or disposal of any hazardous material owned or operated the site at or on which such hazardous material was stored or disposed of and from which there is or has been a Release or Threat of Release and any person who contracts to arrange for the transport, disposal, storage or treatment of hazardous material to or in a site from or at which there is a Release or Threat of a Release
- G. Pursuant to M.G.L. c. 21E, §3, MassDEP promulgated the regulations found at 310 CMR 40.0000, commonly known as the Massachusetts Contingency Plan ("MCP").
- H. 310 CMR 40.0032(3), known as the "similar soils" sections of the MCP, states:

Soils containing oil or waste oil at concentrations less than an otherwise applicable Reportable Concentration and that are not otherwise a hazardous waste, and soils that contain one or more hazardous materials at concentrations less than an otherwise applicable Reportable Concentration and that are not a hazardous waste, may be transported from a disposal site without notice to or approval from the Department under the provisions of...[MCP], provided that such soils:

- (a) are not disposed or reused at locations where the concentrations of oil or hazardous materials in the soil would be in excess of a release notification threshold applicable at the receiving site, as delineated in 310 CMR 40.0300 and 40.1600; and

- (b) are not disposed or reused at locations where existing concentrations of oil and/or hazardous material at the receiving site are significantly lower than the levels of those oil and/or hazardous materials present in the soil being disposed or reused.

I. 310 CMR 40.0006 contains the following useful definitions:

Contaminated soil means soil containing oil and/or hazardous material at concentrations equal to or greater than a release notification threshold established by 310 CMR 40.0300 and 40.1600.

Hazardous Material means material, including, but not limited to, any material in whatever form which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed. ... The term shall also include, but is not limited to, material regulated as hazardous waste or recyclable material under 310 CMR 30.000.

No Significant Risk means a level of control of each identified substance of concern at a site or in the surrounding environment such that no such substance of concern shall present a significant risk of harm to health, safety, public welfare or the environment during any foreseeable period of time.

Oil means insoluble or partially soluble oils of any kind or origin or in any form, including, without limitation, crude or fuel oils, lube oil or sludge, asphalt, insoluble or partially insoluble derivatives of mineral, animal or vegetable oils and white oil. The term shall not include waste oil, and shall not include those substances which are included in 42 U.S.C. §9601(14).

Reportable Concentration and RC each means the concentration of oil or hazardous material in soil or groundwater which requires notification to the Department under MGL c. 21E, § 7 and/or 310 CMR 40.0360 through 310 CMR 40.0362.

J. 310 CMR 40.0006 contains the following useful definitions

Asphalt Pavement, Brick, and Concrete Rubble means rubble that contains only weathered (cured) asphalt pavement, clay bricks and attached mortar

normally used in construction, or concrete that may contain rebar. The rubble shall not be painted, coated or impregnated with any substance. The rubble shall not be mixed with or contaminated by any other wastes or debris.

- K. On August 28, 2015, MassDEP issued the "Interim Policy on the Re-Use of Soil for Large Reclamation Projects" (COMM-15-01 or "Reclamation Soil Policy") pursuant to Section 277 of Chapter 165 of the Acts of 2014. The Reclamation Soil Policy describes MassDEP's intent to issue site-specific approvals, in the form of an Administrative Consent Order, to ensure the reuse of large volumes of soil for the reclamation of sand pits, gravel pits and quarries poses no significant risk of harm to health, safety, public welfare or the environment and will not create new releases or threats of releases of oil or hazardous materials.
- L. On or about March 11, 2021 Respondents submitted a Fill Management Plan ("FMP") to MassDEP, for MassDEP's review and approval. The FMP establishes the criteria for the acceptance of soil and other fill materials at the Property. The FMP also describes the protocols for monitoring and recording environmental conditions before, during and after Site activities and construction impact mitigation for the Project.
- M. The Project is intended to provide fill materials to raise the existing grade of the former quarry that is located on the Property. Reclamation of the quarry is proposed by importing fill material and grading the area. An estimated 700,000 cubic yards of fill are proposed for the Project. It is anticipated that the Project will take approximately 7 years to complete based upon the size of the area to be filled, projections of volumes of fill material likely available, and anticipated daily operations at the Property.

III. DISPOSITION AND ORDER

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

- 9. 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. Respondents enter into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondents agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.
- 10. MassDEP's authority to issue this Consent Order is conferred by the statutes and regulations cited in Part II of this Consent Order.

11. Respondents shall perform the following actions:

- A. Upon the effective date of this Consent Order and thereafter, Respondents shall perform any and all activities related to the Project in compliance with all applicable provisions of M.G. L. c.21E, the MCP, MassDEP's Reclamation Soil Policy, the March 2021 Fill Management Plan, and all other applicable local, state and federal laws and regulations.
- B. Upon the effective date of this Consent Order and thereafter, Respondents shall perform any and all activities related to the Project in compliance with the FMP, as amended from time to time with the written consent of all parties.
- C. Respondents shall ensure that Project activities do not result in a Condition of Air Pollution with respect to dust, noise and odors pursuant to 310 CMR 7.01. Upon notification by MassDEP that the Project activities create a Condition of Air Pollution, Respondents shall immediately cease all Project activities until nuisance conditions are resolved to the satisfaction of MassDEP.
- D. Respondents shall ensure that the Project activities do not result in the alteration of any Areas Subject to Protection under M.G.L. c 131, § 40, unless approved in accordance with M.G.L. c 131, § 40 and 310 CMR 10.00, the Wetlands Protection Act Regulations
- E. Respondents shall install and maintain groundwater monitoring wells and monitor the groundwater quality at these wells in accordance with the FMP to assess potential changes to groundwater quality at the Property from the Project during and after the Project.
 - i. Respondents shall submit to MassDEP the Annual Groundwater Monitoring results within thirty (30) days of sample collection.
 - ii. Respondents shall submit to MassDEP the Post Reclamation Groundwater Monitoring results within thirty (30) days of sample collection.
- F. Respondents shall not accept soil and fill materials that exceed or are inconsistent with the Acceptance Criteria defined in the approved FMP.
- G. Respondents shall ensure that all reasonable and appropriate steps are undertaken to adequately characterize soil and fill materials accepted and reused at the Property, to ensure compliance with the Acceptance Criteria, including, but not limited to, the testing and characterization regimen specified in the FMP.
- H. Respondents shall not accumulate any materials on Site for purposes of the Project that do not meet the Acceptance Criteria delineated in the FMP.

- I. Respondents shall ensure that soils and fill materials imported to the Property during the Project, with the exception of loads quarantined or rejected in accordance with the procedures articulated in the FMP, shall not be removed from the Property either during or at any time after completion of the Project without the prior written consent of MassDEP.
- J. Respondents shall cease accepting soil from a sending site when any load from such site is rejected as a result of field screening; visual or olfactory inspection by Respondents, as specified in the FMP; or soil testing conducted by site workers, the Project LSP (as defined below), or the Independent Third Party (as defined below), until Respondents receives a written explanation and assurance from the sending site that no additional similar loads will be transported to the Property.
- K. Pursuant to the FMP, Respondents shall ensure that soil and fill materials segregated for soil testing by site workers, the Project LSP (as defined below), or the Third Party Inspector (as defined below) are either accepted and reused, or rejected and removed from the Property, within thirty (30) days of deposition. Loads of soil or fill materials that are rejected as a result of field screening, visual or olfactory inspection by Respondents or by analytical testing data results ("Rejected Materials") shall be removed from the Property within seven (7) days after being rejected. The owner of the site from which any Rejected Materials was shipped shall be responsible for removing and disposing of such Rejected Materials in accordance with applicable regulatory requirements; however, if such owner fails to remove the Rejected Materials, Respondents shall dispose of the Rejected Materials in accordance with applicable regulatory requirements. Nothing in the Consent Order shall limit Respondents' right or ability to recover the costs it incurs rejecting and/or disposing of Rejected Materials from the parties responsible for shipping any such Rejected Materials. For each rejected load, Respondents shall collect the following information for reporting to MassDEP in the next Construction Status Report:
 - i. the reasons the load was rejected;
 - ii. the name and address of the hauler;
 - iii. the license plate number of the truck/tractor;
 - iv. the name and address of the generator; and
 - v. the corrective actions taken by Respondents.

- L. Respondents shall engage the services of a Licensed Site Professional ("Project LSP") to oversee the activities required by this Consent Order. The Project LSP shall, at a minimum:
- i. Oversee the work for compliance with the FMP and this Consent Order and provide recommendations for corrective actions to Respondents;
 - ii. Review all Soil Profile Packages, as that term is used in the FMP, and provide written recommendations to Respondents; and
 - iii. Perform the collection and analysis of groundwater samples pursuant to the FMP.
- M. Respondents shall comply with the following restrictions:
- i. Any soil and fill materials approved and brought onto the Site for use at the Project shall contain no more than a total of 5% (by volume) of Asphalt Pavement, Brick and Concrete Rubble ("ABC") material, determined by visual inspection. Any such ABC material must measure less than 6 inches in any dimension.
 - ii. Respondents may accept, store and place clean fill materials for uses, such as landscaping, other than quarry reclamation at the Project site, provided that all such materials shall be segregated from all reclamation soils at the Project site to prevent cross contamination.
 - iii. Soil and fill materials approved for use at the Property for the Project may contain only incidental, randomly dispersed, *de minimis* quantities of ash and/or Solid Waste (e.g. Municipal Solid Waste and/or Construction and Demolition Waste) as defined in 310 CMR 16.00 and 310 CMR 19.000, which collectively shall comprise less than 1% by volume of the soil and fill materials, determined by visual inspections.
 - iv. The acceptance of Remediation Waste, as defined at 310 CMR 40.0006, is prohibited.
 - v. This Consent Order shall serve to authorize Respondents only to fill the Property as described in the FMP, and no other area, parcel or section of the land beyond that.
- N. Respondents shall have an authorized representative on-site to observe all off-loading of trucks, and perform inspections of all soil and fill materials, for the Project as specified in the FMP.

- O. Respondents shall obtain all applicable local, state and federal permits or approvals that are required by the Project.
- P. Independent Third Party Inspections: Respondents shall engage the services of a qualified, independent individual (the "Independent Third Party") to perform monthly inspections of the Property for compliance with the requirements of this Consent Order including, but not limited to, the FMP, the National Pollution Discharge Elimination System ("NPDES") Multi-Sector Industrial Stormwater General Permit, and Grading Plan. The Independent Third Party must hold certification as a Massachusetts Registered Professional Engineer or as an LSP, and must be approved, in writing, by MassDEP prior to any activities being conducted at the Property. Respondents may replace the Independent Third Party so long as the replacement Independent Third Party meets the criteria in the foregoing sentence and provided that the termination of the Third Party Inspector does not result in any delay of the timely performance of the activities required of the Independent Third Party. Respondents shall be responsible for the timely performance of the activities required of the Independent Third Party in the FMP.
 - i. The Independent Third Party inspections shall be unannounced and randomly timed during normal operating hours.
 - ii. The service agreement with the Independent Third Party shall provide that the Independent Third Party has the authority and shall take the necessary steps to immediately stop work on the Project for any significant noncompliance with the approved FMP and immediately notify MassDEP.
 - iii. The Independent Third Party shall provide a monthly, written report (Third Party Inspector Report) containing, but not limited to, all items specified in the FMP.
- Q. Respondents shall submit to MassDEP each month a written status report ("Construction Status Report") on the status of the Project. The Construction Status Report shall notate the status of all activities overseen by the Project LSP. The initial Construction Status Report shall be submitted within thirty (30) days of the issuance of this Consent Order but not later than seven days before the date Respondents starts construction of the Project. The initial Construction Status Report shall include, without limitation:
 - i. The projected phasing for the Project, including, but not limited to:
 - a) Commencement of the Project construction,
 - b) Major Project milestones, and

c) Completion of the Project construction;

- ii. The name and contact information for an on-call Property contact; and
- iii. The results of the groundwater monitoring upgradient and downgradient to the reclamation area done prior to the commencement of the Project, including boring logs and well construction reports for all of the monitoring wells, well elevations, groundwater gauging measurements, tabulated analytical results and laboratory analysis reports with chains of custody.

R. After submittal of the initial Construction Status Report, Respondents shall submit each subsequent monthly Construction Status Report and the Third Party Inspector Report on or before the 21st day of the month until the Project is completed. Respondents shall submit a final Construction Completion Report after Respondents submit to MassDEP the Post Reclamation Groundwater Monitoring results.

- i. Each such Construction Status Report shall include, at a minimum, all items specified in the FMP for monthly reporting, excluding items contained within the Third Party Inspector Report, along with the results of any annual groundwater monitoring conducted during the reporting period and a copy of any correspondence or reports pertaining to the CMP issued for the site.
- ii. The Construction Status Report shall be signed by the Project LSP and shall include the following certification signed by Respondents:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties both civil and criminal for submitting false information.

- iii. The Third Party Inspector Report shall include the following certification signed by the Third Party Inspector:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware

that there are significant penalties both civil and criminal for submitting false information.

- iv. The Construction Status Report and Third Party Inspector Report shall be electronically submitted to MassDEP using eDEP Transmittal Form BWSC 126, Section B(2), under a Release Tracking Number that will be issued by MassDEP for the site.
- S. Respondents shall notify MassDEP, in writing, no later than six (6) months prior to the date that Project-related filling activities will be terminated, including, without limitation, if Respondents intends to terminate the Project before achieving the maximum finish grading shown in the Final Grading Plan. Respondents may only terminate the Project provided that all capping and groundwater monitoring activities specified in this Consent Order and FMP are implemented.
- T. Respondents' failure to perform Project related filling activities pursuant to this Consent Order for any consecutive 6-month period shall be deemed by MassDEP to be Respondents' termination of the Project.
- U. Respondents shall perform the following closure activities upon achieving the proposed fill subgrade elevations, as approved by MassDEP, or upon Respondents' termination of the Project before achieving the proposed fill subgrade elevations:
 - i. Within 60 days of achieving the approved fill subgrade elevations or terminating the Project, Respondents shall complete all outstanding recommendations made by the Project LSP and/or Independent Third Party;
 - ii. Within 90 days of achieving the approved fill subgrade elevations or terminating the Project, Respondents shall stabilize all slopes by applying suitable materials approved by MassDEP in the Final Grading Plan and establishing a vegetative cover or final cover over all areas of fill as specified in the Final Grading Plan;
 - iii. Within 180 days of achieving the approved fill subgrade elevations or terminating the Project, Respondents shall submit to MassDEP an As-Built Plan prepared and stamped by a Massachusetts Registered Land Surveyor or Professional Engineer. The As-Built Plan shall show the final elevations at the Property and any permanent stormwater management features; and

- iv. After achieving the MassDEP approved fill subgrade elevations or terminating the Project, Respondents shall monitor the groundwater in accordance with the FMP.
 - V. Respondents shall maintain records of all soil accepted at the Property, including but not limited to Generator applications, Soil Submittal Packages, soil profiles, Project LSP Recommendations and Acceptance/Approval documents, for a minimum of twenty years after the completion Project activities. Any and all records, including records in electronic and paper form, shall be made available to MassDEP and the Town of Dracut for inspection and reproduction upon request.
 - W. The FMP shall become effective upon the date this Consent Order is executed by MassDEP.
 - X. Respondents may submit written requests for minor modifications to the FMP to MassDEP for review and approval. MassDEP may approve minor modifications, at its sole discretion and in writing, without revising this ACO. This does not negate any other approvals Respondents may require from the Town of Dracut or others for such modifications.
 - Y. Any violation of the FMP shall be a violation of this Consent Order.
 - Z. If any soil or fill material is accepted in connection with the Project in violation of the requirements of the Consent Order or FMP, the Respondents shall be deemed to have violated this Consent Order and shall perform one or more of the following actions as may be required by the Department at its sole discretion and as set out by MassDEP in writing:
 - i. Respondents shall immediately stop accepting any additional truckload(s) of soil or fill material and shall immediately stop placing any additional soil or fill materials that may be contained within truckload(s) that are already on site; and
 - ii. Respondents shall take any and all actions to return to compliance with this Consent Order as may be deemed necessary by MassDEP in writing, including but not limited to an Order by MassDEP to remove and properly dispose of any materials that are deemed by MassDEP to be in violation of this Consent Order.
12. MassDEP reserves the right to require Respondents to take any and all actions necessary to ensure that the activities conducted at the Property do not cause any nuisance conditions including, but not limited to, dust, noise, odor, or wetlands impacts. Upon notification by MassDEP that the Project activities create such a nuisance condition(s), Respondents shall immediately abate any nuisance condition(s) to the satisfaction of MassDEP.

13. MassDEP reserves the right to require Respondents to take any and all corrective actions recommended by the Project LSP and/or the Independent Third Party within a specific time period. Respondents' failure to complete such corrective actions shall be considered a violation of this Consent Order.
14. For the purposes of this Consent Order, the Project will commence upon the execution of this Consent Order by MassDEP. Soil and fill materials placed, dumped, disposed or reused at the Property prior to execution of this Consent Order are expressly prohibited.
15. Unless submitted via eDEP, or except as otherwise provided herein, all notices, submittals and other communications required by this Consent Order shall be directed to:

Eric S. Worrall, Regional Director
MassDEP Northeast Regional Office
205 B Lowell Street
Wilmington, MA 01887

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

16. 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 Respondents or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.
17. Respondents 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 the MassDEP.
18. This Consent Order may be modified only by written agreement of the parties hereto.
19. MassDEP hereby determines, and Respondents hereby agrees, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondents to take the actions described.
20. 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.

21. 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.
22. 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 Respondents 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.
23. 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 Respondents with respect to any subject matter not covered by this Consent Order.
24. This Consent Order shall be binding upon Respondents and upon Respondents' heirs, successors and assigns. Respondents shall not violate this Consent Order and shall not allow or suffer Respondents' directors, officers, employees, agents, contractors or consultants to violate this Consent Order. Until Respondents has fully complied with this Consent Order, Respondents shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.
25. Force Majeure.
 - A. MassDEP agrees to extend the time for performance of any requirement of this Consent Order if MassDEP determines that such failure to perform is caused by a Force Majeure event. The failure to perform a requirement of this Consent Order shall be considered to have been caused by a Force Majeure event if the following criteria are met: (1) an event delays performance of a requirement of this Consent Order beyond the deadline established herein; (2) such event is beyond the control and without the fault of Respondents and Respondents' employees, agents, consultants, and contractors; and (3) such delay could not have been prevented, avoided or minimized by the exercise of due care by Respondents or Respondents' employees, agents, consultants, and contractors.
 - B. Financial inability and unanticipated or increased costs and expenses associated with the performance of any requirement of this Consent Order shall not be considered a Force Majeure Event.

- C. If any event occurs that delays or may delay the performance of any requirement of this Consent Order, Respondents shall immediately, but in no event later than five (5) days after obtaining knowledge of such event, notify MassDEP in writing of such event. The notice shall describe in detail: (i) the reason for and the anticipated length of the delay or potential delay; (ii) the measures taken and to be taken to prevent, avoid, or minimize the delay or potential delay; and (iii) the timetable for taking such measures. If Respondents intend to attribute such delay or potential delay to a Force Majeure event, such notice shall also include the rationale for attributing such delay or potential delay to a Force Majeure event and shall include all available documentation supporting a claim of Force Majeure for the event. Failure to comply with the notice requirements set forth herein shall constitute a waiver of Respondents' right to request an extension based on the event.
- D. If MassDEP determines that Respondents' failure to perform a requirement of this Consent Order is caused by a Force Majeure event, and Respondents otherwise comply with the notice provisions set forth in paragraph C above, MassDEP agrees to extend in writing the time for performance of such requirement. The duration of this extension shall be equal to the period of time the failure to perform is caused by the Force Majeure event. No extension shall be provided for any period of time that Respondents' failure to perform could have been prevented, avoided or minimized by the exercise of due care. No penalties shall become due for Respondents' failure to perform a requirement of this Consent Order during the extension of the time for performance resulting from a Force Majeure event.
- E. A delay in the performance of a requirement of this Consent Order caused by a Force Majeure event shall not, of itself, extend the time for performance of any other requirement of this Consent Order.

26. Respondents shall pay stipulated civil administrative penalties to the Commonwealth in accordance with the following schedule if Respondents violates any provision of this Consent Order:

For each day, or portion thereof, of each violation, Respondents shall pay stipulated civil administrative penalties in the following amounts:

| <u>Period of Violation</u> | <u>Penalty per day</u> |
|--|------------------------|
| 1 st through 15 th days | \$250 per day |
| 16 th through 30 th days | \$500 per day |
| 31 st day and thereafter | \$1,000 per day |

False Submittals to MassDEP

Respondents shall pay, upon written demand, a stipulated administrative penalty of \$5,000.00 to the Commonwealth for each false or misleading statement or submittal made pursuant to this Consent Order by the Respondents, the Project LSP, and/or employees thereof. In addition to this penalty, MassDEP reserves the right, upon its sole discretion, to immediately terminate this Consent Order and prohibit all further filling operations associated with the Project until such time that it is convinced that all necessary steps have been taken to address and correct actions and conditions associated with the false and misleading statement or submittal, and that future activities will be undertaken in a competent, professional, and honest manner.

Stipulated civil administrative penalties (except for those relating to false submittals) shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondents corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondents 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 Respondents a written demand for payment. 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 Respondents' 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 Respondents' failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondents shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondents reserve whatever rights they may have to contest MassDEP's determination that Respondents 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. Upon exhaustion of such rights, if any, Respondents agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.


27. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondents 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.
28. Respondents agree 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, including the collection of groundwater and/or soil for analysis. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

29. 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.
30. This Consent Order shall become effective on the date that it is executed by MassDEP.

In the Matter of: FPR Realty and Deloury Construction/Agretech Corp
ACO No. 00010832
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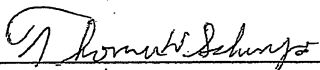
Consented To:

F.P.R. Realty Trust

By: 
Richard D. Schiripo, Trustee
479 Broadway Road
Dracut, MA 01826

Date: 3-31-21

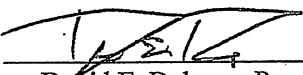
AND

By: 
Thomas W. Schiripo, Trustee
479 Broadway Road
Dracut, MA 01826
Federal Employer Identification No. 04-6052706

Date: 3/31/21

AND


Deloury Construction Company, Inc.

By: 
David E. Deloury, President
50 Jackson Street
Dracut, MA 01826
Deloury Federal Employer Identification No. 04-2440278

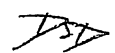
Date: 3/31/21

AND

Agretech, Inc.

By: 
David E. Deloury, President
50 Jackson Street
Dracut, MA 01826
Agretech Federal Employer Identification No. 04-3541369

Date: 3/31/21



In the Matter of: FPR Realty and Deloury Construction/Agretech Corp
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Issued By:

MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: 

Eric S. Worrall
Regional Director
Northeast Regional Office
205 B Lowell Street
Wilmington, MA 01887

Date:

3/31/07

(ATTACHMENTS)