

24-0292A

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO.

24-0292A

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

P25 PHASE 2, LLC; MISSION HILL PARCEL 25 LLC;  
NEI GENERAL CONTRACTING, INC.;  
and D&M CIVIL INC.,

Defendants.

**CONSENT JUDGMENT BETWEEN THE COMMONWEALTH  
OF MASSACHUSETTS AND D&M CIVIL, INC.**

WHEREAS, Plaintiff, the Commonwealth of Massachusetts ("Commonwealth"), acting by and through the Attorney General and the Massachusetts Department of Environmental Protection ("DEP"), alleges in its Complaint, filed with this Consent Judgment, that Defendant, D&M Civil, Inc. ("D&M"), has violated the Massachusetts Clean Air Act, G.L. c. 111, § 142A-O ("Clean Air Act") and its implementing regulations, 310 C.M.R. §§ 7.00-7.72 ("Air Regulations"), specifically 310 C.M.R. § 7.15 ("Asbestos Regulations"), during redevelopment of a former vacant lot at 1 Halleck Street, Boston, Massachusetts (the "Site").;

WHEREAS, the Complaint alleges that D&M excavated and caused, suffered, allowed or permitted the release of asbestos containing material ("ACM") from early September to October 5, 2020 at the Site without notifying the DEP of the activities; and without properly isolating and decontaminating work areas and wetting, sealing and labeling the excavated ACM, thereby causing or contributing to a condition of air pollution and posing an actual or potential threat to

JUDGMENT ENTERED ON DOCKET 215 2024  
PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 58(a)  
AND NOTICE SENT TO PARTIES PURSUANT TO THE PRO-  
VISIONS OF MASS. R. CIV. P. 77(d) AS FOLLOWS

Notice sent  
2/5/24/SC

human health, safety and welfare or to the environment, in violation of the Clean Air Act and the Asbestos Regulations;

WHEREAS, the Complaint seeks the assessment of civil penalties and injunctive relief;

WHEREAS, D&M denies the Commonwealth's allegations, except as provided in the Jurisdiction, Venue, and Parties Sections of the Complaint for the limited purpose of settling this matter. D&M states that it is not an asbestos contractor, it did not oversee asbestos abatement work, and it had no contractual obligations regarding the identification or removal of asbestos at the Site. D&M states that it relied on the specialized knowledge, expertise and reports prepared by consultants hired by the owner of the project regarding the presence, location and abatement of ACM at the Site, and that it took reasonable steps under the facts as it understood them to protect the health and safety of its employees and the public in accordance with all applicable laws and regulations.

WHEREAS, the Commonwealth and D&M (collectively, "the Parties") have reached an agreement to resolve the Commonwealth's claims against D&M, including a release of liability against D&M and an agreement on the amount of a civil penalty and injunctive relief;

WHEREAS, the Parties consent to the entry of this Consent Judgment without a trial on any issues and agree that the entry of this Consent Judgment is an appropriate means to resolve this case; and

WHEREAS, the Parties agree that the settlement of this matter has been negotiated in good faith and at arm's length, that implementation of this Consent Judgment will avoid prolonged and complicated litigation between the Parties, and that this Consent Judgment is consistent with the goals of the Clean Air Act and corresponding regulations and is in the public interest;



NOW, THEREFORE, based on the Joint Motion of the Parties for Entry of this Consent Judgment, and before taking any testimony and without the adjudication of any issue of fact or law except as provided in Paragraphs 1-2 of this Consent Judgment (Jurisdiction and Venue), it is **ADJUDGED AND ORDERED**, as follows:

#### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action, personal jurisdiction over the parties hereto, and authority to grant the relief requested, pursuant to G.L. c. 111, § 142A; G.L. c. 214, §§ 1 and 3(12); and G.L. c. 12, §§ 5 and 11D.
2. Venue lies in Suffolk County Court pursuant to G.L. c. 223, § 5.
3. The Complaint alleges facts, which, if proven, would constitute good and sufficient grounds for the relief set forth in this Consent Judgment.

#### **PAYMENT PROVISIONS**

4. D&M shall pay to the Commonwealth a civil penalty pursuant to the Clean Air Act of one hundred fifty thousand dollars (\$150,000) in the manner described in Paragraphs 5 – 7.
5. Within thirty (30) days of entry of this Consent Judgment, D&M shall pay to the Commonwealth Forty Thousand Dollars (\$40,000).
6. D&M will pay the Commonwealth Forty Thousand Dollars (\$40,000) on or before June 1, 2024, and Forty Thousand Dollars (\$40,000) on or before October 31, 2024.
7. The balance of the civil penalty, being thirty thousand dollars (\$30,000) shall be suspended (“Suspended Penalty”). The Commonwealth shall waive this Suspended Penalty when D&M had made the payments set forth above in Paragraphs 5 and 6, and has completed all of the injunctive requirements in this Consent Judgment’s “Injunctive Relief” section. If, at any time before the Commonwealth waives the Suspended Penalty, the Commonwealth believes that

D&M has not complied with any of the material terms of Paragraphs 4-16 of this Consent Judgment, then it shall notify D&M in writing of that determination, identifying which terms of this Consent Judgment the Commonwealth believes D&M has violated. If D&M disagrees with a written determination of the Commonwealth that D&M has failed to comply with one or more terms of this Consent Judgment, then D&M may, within thirty (30) days of the date of the Commonwealth's determination, request reconsideration of the determination by submitting to the Office of the Attorney General and the DEP any specific information or material it believes demonstrates that the Commonwealth's determination was erroneous. D&M's failure to submit a request for reconsideration within the period specified in this Paragraph shall constitute waiver of D&M's ability to seek reconsideration and, in that case, the Commonwealth's determination shall be final and unreviewable. If, after consideration of a timely request for reconsideration, the Commonwealth decides to affirm, in whole or in part, its original determination, then the Commonwealth shall notify D&M of its determination on reconsideration. The Commonwealth's determination on reconsideration shall be final unless D&M seeks judicial review of the dispute by filing with the Court and serving on the Commonwealth, in accordance with the Notices section of this Consent Judgment, a motion in this case requesting judicial resolution of the dispute within fourteen (14) days of receipt of the Commonwealth's determination. In an action for judicial review under this Paragraph, D&M shall bear the burden of demonstrating that the Commonwealth's determination on reconsideration was arbitrary and capricious or otherwise not in accordance with law. D&M's motion and supporting memorandum shall not raise any new issues or be based on new facts or information that D&M did not present previously to the Commonwealth in its reconsideration request. If the Commonwealth's determination is upheld in whole or in part, D&M shall pay the Suspended



Penalty to the Commonwealth within thirty (30) days after the Court's decision is entered on the docket.

8. D&M shall make the above-described civil penalty payments by Electronic Funds Transfer ("EFT") to the Commonwealth of Massachusetts in accordance with current EFT procedures, using the following account information:

Commonwealth of Massachusetts, Office of the Attorney General  
ABA#: 011075150  
ACCOUNT#: 00088882022  
SANTANDER BANK  
75 STATE STREET  
BOSTON, MA 02109  
TIN: 046002284

and shall include the following in the payment information: "EPD, *Commonwealth v. D&M Civil, Inc.*" Any payments received by the Commonwealth after 4:00 P.M. (Eastern Time) will be credited on the next business day. At the time of payment, D&M shall notify the Commonwealth by electronic mail as set forth below in this Consent Judgment's "Notices" Section and shall include all of the payment information stated in this Paragraph in addition to the amount of the payment.

9. D&M shall be required to pay to the Commonwealth, for any period of non-payment after the payment obligation becomes due, interest on the entire amount due at the rate of twelve percent (12%) per annum pursuant to G.L. c. 231, § 6B, computed monthly, and shall pay all expenses, including attorneys' fees and costs, associated with collecting the unpaid amount and interest.

### **INJUNCTIVE RELIEF**

10. D&M shall submit the reports required in this Section to the Office of the Attorney General and the DEP by electronic mail and first-class mail as set forth in this Consent Judgment's "Notices" Section.

11. For the purposes of this Section, all words defined in 310 C.M.R. § 7.15 shall have the meanings ascribed to them in that regulation unless otherwise stated.

### **Training Requirements**

12. D&M shall ensure that any person D&M employs as an Equipment Operator or a Foreman during the course of any construction, demolition, or renovation activity in Massachusetts within two years of entry of this Consent Judgment, shall complete the 8-hour Equipment Operators Asbestos Safety Training approved by the Department of Labor Standards ("DLS"). Any Equipment Operator or Foreman employed by D&M as of the date of entry of this Consent Judgment will receive such training within thirty (30) days of entry of the Consent Judgment, and any Equipment Operator or Foreman hired within the two-year term of this Consent Judgment will receive such training within thirty (30) days of their date of hire. If, during the two-year term of this Consent Judgment, DLS requires or recommends a refresher training for the 8-hour Equipment Operators Asbestos Training, D&M shall ensure that any Equipment Operator or Foreman trained under this Paragraph attends such refresher training. If D&M does not undertake any construction, demolition, or renovation activity within two years of entry of this Consent Judgment, no training will be required under this Paragraph.

13. D&M shall further ensure that any person D&M employs as a Safety Manager in Massachusetts within two years of entry of this Consent Judgment shall receive training meeting the requirements of the Asbestos Supervisors training course set forth at 454 C.M.R.



§ 28.05(4)(b) conducted by a DLS-certified training provider. Any Safety Manager employed by D&M as of the date of entry of this Consent Judgment will receive such training within thirty (30) days of entry of the Consent Judgment, and any Safety Manager hired within the two-year term of this Consent Judgment will receive such training within sixty (60) days of their date of hire. Additionally, any Safety Manager trained under this Paragraph must attend any annual refresher training that would be required for licensure under 454 C.M.R. § 28.05(5)(b) during the course of the two-year term of this Consent Judgment. If D&M does not undertake any construction, demolition, or renovation activity within two years of entry of this Consent Judgment, no training will be required under this Paragraph.

14. D&M shall submit to the Office of the Attorney General and the DEP certificates of completion for all employees who receive training pursuant to Paragraphs 12 and 13 within ninety (90) days after the entry of this Consent Judgment. Every three months thereafter during the two-year period of this Consent Judgment or upon request from the Office of the Attorney General or the DEP, D&M shall submit certificates of completion for all employees who are newly trained or shall submit a sworn certification that no employees were trained during the preceding three-month period. For a period of two (2) years following entry of this Consent Judgment, D&M shall ensure that any person employed by D&M to conduct any construction, demolition, or renovation activity has been trained pursuant to this Section.

#### **Reporting Requirements**

15. Within thirty (30) days of entry of this Consent Judgment, and every three months thereafter for a period of two (2) years following entry of this Consent Judgment, D&M shall submit to the Office of the Attorney General and the DEP a report identifying any construction, demolition, or renovation activity D&M plans, as of the date of the submittal, to undertake in



Massachusetts during the following quarter or certifying that D&M has no such activities planned during the following quarter. If D&M is hired to perform any construction, demolition, or renovation activity in the middle of a quarter that will begin within that same quarter, D&M shall notify the Office of the Attorney General and the DEP in accordance with this section within 72 hours of being hired, and in no case more than 24 hours after beginning the construction, demolition, or renovation activity.

16. For any project identified, such report shall include a copy of any completed survey(s) for the presence of asbestos required by 310 C.M.R. § 7.15(4) and any completed notification documents required by 310 C.M.R. §§ 7.09(2) and 7.15(6). Where such survey(s) and notification(s) are not complete at the time of the submittal, D&M shall submit to the Office of the Attorney General and the DEP such survey(s) and notification(s) upon their completion.

#### **RELEASE AND RESERVATION OF RIGHTS**

17. Upon full compliance with the above Paragraphs 4-16 of this Consent Judgment, this Consent Judgment shall resolve D&M's liability (and the liability of its managers, directors, officers, supervisors, employees, agents, servants, attorneys-in-fact, successors, and assigns) to the Commonwealth for the specific legal claims for the violations alleged in the Complaint, and D&M, its managers, directors, officers, supervisors, employees, agents, servants, attorneys-in-fact, successors, and assigns shall be released from any and all claims for the violations specifically pleaded in the Complaint.

18. Except as otherwise provided herein, nothing in this Consent Judgment shall be deemed to excuse any non-compliance by D&M, its affiliates, agents, employees, servants, successors, and assigns with any law or regulations not asserted in the Complaint or any claims not conditionally released pursuant to the above Paragraph 17 of this Consent Judgment.



19. Except as otherwise provided herein, nothing in this Consent Judgment shall in any way bar any future actions by the Commonwealth against D&M based upon any claims or allegations not asserted in the Complaint or any claims not conditionally released pursuant to the above Paragraph 17 of this Consent Judgment.

20. Except as otherwise provided herein, nothing in this Consent Judgment shall be construed to bar, diminish, adjudicate, or in any way affect any legal or equitable rights the Commonwealth may have to take additional administrative or legal action against D&M with respect to any future violations of the laws or regulations of the Commonwealth or any violations that have not been revealed to the Commonwealth.

21. Except as otherwise provided herein, nothing in this Consent Judgment shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Judgment.

22. Except as otherwise provided herein, nothing in this Consent Judgment shall preclude a future separate or ancillary action by the Commonwealth against D&M to enforce this Consent Judgment.

#### **ENFORCEMENT AND MISCELLANEOUS PROVISIONS**

23. The Parties waive the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure.

24. The Parties will not challenge or appeal the entry of the Consent Judgment or this Court's jurisdiction to enter and enforce the Consent Judgment.

25. Upon approval and entry of this Consent Judgment by the Court, this Consent Judgment shall constitute a Final Judgment of the Court.

26. This Court shall retain jurisdiction to enforce this Consent Judgment following entry of Final Judgment.

27. In addition to any relief specifically provided for in this Consent Judgment, D&M understands and agrees that violations of this Consent Judgment are subject to and may be punishable by a contempt proceeding being initiated against it.

28. No change in ownership or relocation of the company will alter in any way the responsibilities of D&M under this Consent Judgment. D&M shall provide a signed copy of this Consent Judgment to any successor or assign.

29. This Consent Judgment shall apply to and bind D&M and any person or entity acting by, for, or through D&M, including D&M's managers, directors, officers, supervisors, employees, agents, servants, attorneys-in-fact, successors, and assigns, and those persons in active concert or participation with D&M who receive notice of this Consent Judgment.

30. The Commonwealth, acting through the Attorney General or the DEP, may in its unreviewable discretion, waive any portion of the Suspended Penalty, interest, or costs that become due pursuant to this Consent Judgment or extend any deadline in this Consent Judgment, except the two-year period of obligations set forth in Paragraphs 10-16, as it determines appropriate.

31. The terms of this Consent Judgment may be modified only by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to any term of this Consent Judgment, it shall be effective only by written approval of the Parties and the approval of the Court. The Commonwealth's decision to extend a deadline in this Consent Judgment shall not constitute a material change for purposes of this Paragraph.



32. If this Court should decline to approve the Consent Judgment on any ground except one related to form, this Consent Judgment is voidable at the option of either party within fourteen (14) days of this Court's decision, and the terms of the Consent Judgment may not be used as evidence in any litigation between the Parties. If, for any reason, this Court should determine that substantive modifications to the Consent Judgment are necessary, the Parties shall enter into good faith negotiations to discuss the modifications and this Consent Judgment shall be void unless the Parties agree otherwise in writing within fourteen (14) days of this Court's modification.

### **NOTICES**

33. Unless otherwise specified in this Consent Judgment, notices and submissions required by this Consent Judgment shall be made in writing by both electronic mail and first-class mail to the following addresses, or to such other place or to the attention of such other individual as a Party may from time to time designate by written notice to the other Party to this Consent Judgment:

#### **For the Office of the Attorney General**

Grace Gohlke, Assistant Attorney General  
Constitutional & Administrative Law  
Division, Government Bureau  
Office of the Attorney General  
One Ashburton Place, 20th Floor  
Boston, MA 02108  
[grace.gohlke@mass.gov](mailto:grace.gohlke@mass.gov)

#### **For the DEP**

John MacAuley, Deputy Regional Director,  
Bureau of Air and Waste  
Grady Dante, Asbestos Section Chief  
Department of Environmental Protection NERO  
150 Presidential Way, Suite 300  
Woburn, MA 01801  
[John.Macauley@mass.gov](mailto:John.Macauley@mass.gov)  
[Grady.Dante@mass.gov](mailto:Grady.Dante@mass.gov)

Colleen McConnell  
Senior Regional Counsel  
Department of Environmental Protection NERO  
150 Presidential Way, Suite 300  
Woburn, MA 01801  
[Colleen.McConnell@mass.gov](mailto:Colleen.McConnell@mass.gov)

**For D&M Civil, Inc.**

Timothy J. Duggan, Esq.  
Duggan & Gianacoplos, LLC  
89 Access Road, Unit A  
Norwood, MA 02062  
[tjd@declawyers.com](mailto:tjd@declawyers.com)

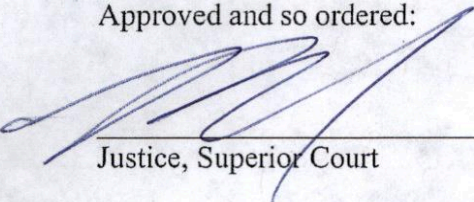
Ralph W. DiGiorgio  
D&M Civil, Inc.  
30 Log Bridge Road  
Building 100, Suite 102  
Middleton, MA 01949  
[rdigiorgio@dm-civil.com](mailto:rdigiorgio@dm-civil.com)



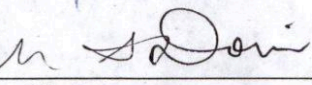
JUDGMENT is hereby entered in accordance with the foregoing, this 2 day of FEBRUARY, 2024.

Approved and so ordered:

**Mark A. Hallal**  
Justice of the Superior Court

  
Justice, Superior Court

FEB. 2 - 2024  
Date

Attest:   
Assistant Clerk

2/2/24  
Date

Stipulated and agreed:

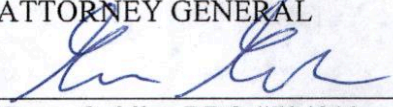
COMMONWEALTH OF MASSACHUSETTS

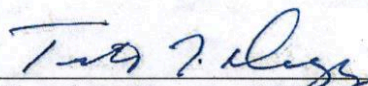
D&M CIVIL, INC.

By its Attorney,

By its Attorney,

ANDREA JOY CAMPBELL  
ATTORNEY GENERAL

  
Grace Gohlke, BBO #704218  
Assistant Attorney General  
Constitutional & Administrative Law Division  
Government Bureau  
Turner Smith, BBO #684750  
Deputy Bureau Chief  
Energy & Environment Bureau  
Office of the Attorney General  
One Ashburton Place, 18th Floor  
Boston, MA 02108  
(617) 963-2527  
(617) 963-2782  
[grace.gohlke@mass.gov](mailto:grace.gohlke@mass.gov)  
[turner.smith@mass.gov](mailto:turner.smith@mass.gov)

  
Timothy J. Duggan, BBO #545966  
Duggan & Gianacoplos, LLC  
89 Access Road, Unit A  
Norwood, MA 02062  
(781) 762-0077  
[tjd@declawvers.com](mailto:tjd@declawvers.com)

Dated: 1/30/24

Dated: 1/31/24