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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
NEI GENERAL CONTRACTING, 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 the Defendant, NEI General Contracting, Inc. ("NEI"), 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 vacant lot at 1 Halleck Street, Boston, Massachusetts (the "Site");

WHEREAS, the Complaint alleges that NEI caused or suffered to cause the release of asbestos containing material ("ACM") and asbestos containing waste material ("ACWM") from early September to October 5, 2020, at the Site without notifying the DEP of the activities; and without property isolating and decontaminating work areas and wetting, sealing, and labeling the excavated ACM and ACWM, thereby causing or contributing to a condition of air pollution and

JUDGMENT ENTERED ON DOCKET 2/5 2024
PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P.
AND NOTICE SENT TO PARTIES PURSUANT TO THE PRO-
VISIONS OF MASS. R. CIV. P. 77(d) AS FOLLOWS

Notice sent 2/5/24 (PL)

posing an actual or potential threat to 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, NEI 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;

WHEREAS, the Commonwealth and NEI (collectively, "the Parties") have reached an agreement to resolve the Commonwealth's claims against NEI, including a release of liability against NEI 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. NEI 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 the entry of this Consent Judgment, NEI shall pay to the Commonwealth eighty thousand dollars (\$80,000).

6. NEI will pay the Commonwealth sixty thousand dollars (\$60,000) within two years after entry of this Consent Judgment.

7. The balance of the civil penalty, being ten thousand dollars (\$10,000), shall be suspended ("Suspended Penalty"). The Commonwealth shall waive this Suspended Penalty when NEI has made the payment set forth above and has completed the Injunctive Relief described herein.

8. NEI 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. NEI et al.*"

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, NEI 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. NEI 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. NEI 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. NEI's compliance reporting to the Office of the Attorney General shall include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments to it, and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on personal knowledge or on my inquiry of those individuals immediately responsible for

obtaining the information, that to the best of my knowledge the information is true, accurate, and complete.

12. 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

13. No later than ninety (90) days from the entry of this Consent Judgment (hereinafter the "Initial Training Period"), NEI shall ensure that any person employed by NEI to supervise or direct any construction, demolition, or renovation activity in Massachusetts within twenty-four (24) months of entry of this Consent Judgment (hereinafter a "Qualifying Project") in the role of General Superintendent, Site Superintendent, and Assistant Site Superintendent (General Superintendent, Site Superintendent and Assistant Site Superintendent hereinafter referred to as "On-Site Personnel"), 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 training provider accredited by the Department of Labor Standards ("DLS") (hereinafter the "Training Requirement"). If NEI does not undertake work on any Qualifying Project within two years of entry of this Consent Judgment, no training will be required under this Paragraph. Any On-Site Personnel newly assigned to a Qualifying Project subsequent to the Initial Training Period shall fulfill the Training Requirement prior to their first day on the Qualifying Project. Any On-Site Personnel trained under this Paragraph must attend any annual refresher training that would be required under 454 C.M.R. § 28.05(5)(b) during the course of the two-year term of this Consent Judgment.

14. NEI shall submit to the Office of the Attorney General and the DEP certificates of completion for all On-Site Personnel who receive training during the Initial Training Period 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, NEI shall submit certificates of completion for all On-Site Personnel who are newly trained or shall submit a sworn certification that no employees were trained during the preceding three-month period.

15. For a period of two (2) years following entry of this Consent Judgment, NEI shall ensure that at least one NEI employee satisfying the Training Requirement is present to supervise or direct each construction, demolition, or renovation activity that NEI performs or oversees in Massachusetts.

Monitoring and Reporting Requirements

16. NEI shall engage a third-party environmental consultant (hereinafter the "Environmental Consultant") to review any proposed Qualifying Project for a period of twenty-four (24) months following the entry of the Consent Judgment, and NEI shall do the following:

17. Before NEI begins work on any new project in the Commonwealth of Massachusetts, NEI shall provide its Environmental Consultant with all environmental surveys and reports generated in connection with the proposed project for its review and solicit input as to any additional surveys or precautions that should be undertaken in connection with the planned work.

18. Upon receipt of such recommendations or precautions from its Environmental Consultant, NEI shall—to the extent within its contractual scope—implement the same, or, to the extent it is not within its contractual scope, recommend the same to the property owner and/or the property owner's consultants for review and consideration.

19. NEI shall review as part of its internal training programs a summary of any issues or mitigation measures highlighted by its Environmental Consultant's review no less frequently than quarterly.

20. NEI shall affirm through a written statement that it is in compliance with its Monitoring and Reporting Requirements, as defined herein, with the Office of Attorney General and the DEP within ninety (30) days of the entry of this Consent Judgment and every three months thereafter.

RELEASE AND RESERVATION OF RIGHTS

21. Upon full compliance with the above Paragraphs 4-20 of this Consent Judgment, this Consent Judgment shall resolve NEI'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 alleged in the Complaint, and NEI, 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.

22. Except as otherwise provided herein, nothing in this Consent Judgment shall be deemed to excuse any non-compliance by NEI, 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 21 of this Consent Judgment.

23. Except as otherwise provided herein, nothing in this Consent Judgment shall in any way bar any future actions by the Commonwealth against NEI based upon any claims or allegations not asserted in the Complaint or any claims not conditionally released pursuant to the above Paragraph 21 of this Consent Judgment.

24. 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 NEI 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.

25. 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.

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

ENFORCEMENT AND MISCELLANEOUS PROVISIONS

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

28. 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.

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

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

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

32. This Consent Judgment shall apply to and bind NEI and any person or entity acting by, for, or through NEI, including NEI's managers, directors, officers, supervisors, employees, agents, servants, attorneys-in-fact, successors, and assigns, and those persons in active concert or

participation with NEI who receive notice of this Consent Judgment. No change in ownership or relocation of NEI will alter in any way the responsibilities of NEI under this Consent Judgment.

33. 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, as it determines appropriate.

34. 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.

35. 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

36. 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

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
Grady.Dante@mass.gov

Colleen McConnell
Senior Regional Counsel
Department of Environmental Protection
NERO
150 Presidential Way, Suite 300
Woburn, MA 01801
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For NEI

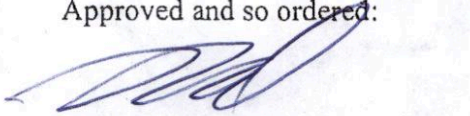
Ryan D. Sullivan, Director of Legal
NEI General Contracting, Inc.
27 Pacella Park Drive
Randolph, MA 02368
781-885-3756
rsullivan@neigc.com

with copy to:

Douglas Radigan
Bowditch & Dewey LLP
311 Main Street
Worcester, MA 01608
508-926-3497
dradigan@bowditch.com

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

Approved and so ordered:



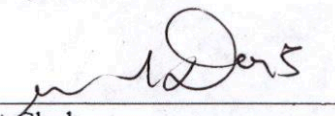
Justice, Superior Court

2-2-24

Date

Attest:

Assistant Clerk



2/2/24

Date

Stipulated and agreed:


COMMONWEALTH OF MASSACHUSETTS

NEI GENERAL CONTRACTING,
INC.

By its Attorney,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

By its Attorney,



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Constitutional & Administrative Law Division
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Turner Smith, BBO #684750
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Dated: 1/31/24

Dated: 1/30/24