

Shout

SUPERIOR COURT
CIVIL ACTION NO. 24-0292A

Defendants.

JUDGMENT ENTERED ON DOCKET 215 2024
 PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 56(a)
 AND TO SEND TO PARTIES PURSUANT TO THE PRO-
 VISIONS OF MASS. R. CIV. P. 77(d) AS FOLLOWS

Notice sent 2/5/24
(BC)

sealing, and labeling the excavated ACM and ACWM, thereby causing or contributing to a condition of air pollution and 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, the LLC Defendants deny 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 LLC Defendants state that their environmental consultant conducted pre-construction site characterization that failed to identify asbestos at the Site. In reliance on the site characterization results, the LLC Defendants commenced soil excavation activities and any release of asbestos containing material ("ACM") and asbestos containing waste material ("ACWM") was without the knowledge of the LLCs.

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

WHEREAS, the LLC Defendants have limited ability to pay a civil penalty;

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. The LLC Defendants shall pay to the Commonwealth a civil penalty pursuant to the Clean Air Act of twenty-five thousand dollars (\$25,000) within 60 days of entry of this Consent Judgment.

5. The LLC Defendants 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. P25 Phase 2 LLC 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, the LLC Defendants 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.

6. The LLC Defendants 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.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

7. In order to secure significant environmental benefits, protection, and improvements above and beyond regulatory compliance, the LLC Defendants shall pay to the Whittier Street Health Center the sum of twenty-five thousand dollars (\$25,000) to fund projects to prevent and treat asthma and other respiratory related illnesses and conditions in Roxbury, MA (the "Supplemental Environmental Project" or "SEP").

8. The LLC Defendants' payment shall be made within sixty (60) days of entry of this Agreement by certified check, treasurer's check, or bank check, and sent to the Whittier Street

Health Center, Attention: Frederica Williams, 1290 Tremont Street, Roxbury, MA 02120.

Confirmation of the LLC Defendants' payment shall be contemporaneously provided to the Commonwealth in accordance with the Notices section herein.

9. The LLC Defendants hereby certify that the SEP is not required under any other state, local, or federal law or regulation, order, consent decree, or permit, and that the SEP is not to be implemented as a consequence of another agreement to which the LLC Defendants are party.

10. Any public statement, oral or written, made by or on behalf of the LLC Defendants making reference to the SEP shall include the following language: "This Project was undertaken in connection with the settlement of an enforcement action, *Commonwealth v. P25 Phase 2 LLC et al.* (Suffolk Superior Court), by the Commonwealth alleging violations of the Commonwealth's Clean Air Act and the Asbestos Regulations." This requirement does not apply to statements made by the LLC Defendants, or its employees, agents, or contractors during internal meetings not attended by members of the public nor televised.

INJUNCTIVE RELIEF

11. The LLC Defendants 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.

12. For the purposes of this Section, all words defined in 310 C.M.R. §§ 7.00 & 7.15 shall have the meanings ascribed to them in that regulation unless otherwise stated.

Training Requirements

13. The LLC Defendants shall ensure that any person employed by the LLC Defendants to supervise or direct any construction, demolition, or renovation activity, as defined by 310 C.M.R §§ 7.00 & 7.15, including but not limited to each project manager, in Massachusetts

within two years of entry of this Consent Judgment, at least thirty (30) days prior to commencement of site work on the project (or at least thirty (30) days before that person starts on-site work where the person is newly assigned for a project that is already underway), receive training meeting the requirements of the Asbestos Inspectors training course set forth at 454 C.M.R. § 28.05(4)(c) conducted by a training provider accredited by the Department of Labor Standards ("DLS"). During the term of each trained employee's involvement with the project, each trained employee shall complete the annual refresher training required of licensed workers under the DLS regulations at 454 CMR 28.05(a)-(f). If the LLC Defendants do 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. If the LLC Defendants employ any person required to obtain training as provided in Paragraph 13, the LLC Defendants shall submit to the Office of the Attorney General and the DEP at least thirty (30) days before such person supervises or directs any construction, demolition, or renovation activity a sworn certificate that such person has successfully completed the required training, along with a certification of completion from the training provider.

15. For a period of two (2) years following entry of this Consent Judgment, the LLC Defendants shall ensure that a person trained pursuant to Paragraph 13 of this Consent Judgment is present to supervise or direct any construction, demolition, or renovation activity that the LLC Defendants perform or oversee in Massachusetts.

Reporting Requirements

16. 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, the LLC Defendants shall submit to the Office of the Attorney General and the DEP a report identifying

any construction, demolition, or renovation activity, as defined by 310 C.M.R §§ 7.00 & 7.15, the LLC Defendants plan, as of the date of the submittal, to undertake in Massachusetts during the following quarter or certifying no such activities are planned during the following quarter. 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, the LLC Defendants 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 the LLC Defendants' liability, as alleged in the Complaint, (and the liability of their 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 the LLC Defendants, their 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:

- a. Shall be deemed to excuse any non-compliance by the LLC Defendants, their 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;

- b. Shall in any way bar any future actions by the Commonwealth against the LLC Defendants 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;
- c. 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 the LLC Defendants 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;
- d. Shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Judgment; or
- e. Shall preclude a future separate or ancillary action by the Commonwealth against the LLC Defendants to enforce this Consent Judgment.

ENFORCEMENT AND MISCELLANEOUS PROVISIONS

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

20. 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.

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

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

23. In addition to any relief specifically provided for in this Consent Judgment, the LLC Defendants understand and agree that violations of this Consent Judgment are subject to and may be punishable by a contempt proceeding being initiated against them.

24. This Consent Judgment shall apply to and bind the LLC Defendants and any person or entity acting by, for, or through the LLC Defendants, including the LLC Defendants' managers, directors, officers, supervisors, employees, agents, servants, attorneys-in-fact, successors, and assigns, and those persons in active concert or participation with the LLC Defendants who receive notice of this Consent Judgment. No change in ownership or relocation of the LLC Defendants will alter in any way the responsibilities of the LLC Defendants under this Consent Judgment.

25. The Commonwealth, acting through the Attorney General or the DEP, may in its unreviewable discretion extend any deadline in this Consent Judgment, as it determines appropriate.

26. 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.

27. 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 twenty-one (21) 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 twenty-one (21) days of this Court's modification.

NOTICES

28. 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
Government Bureau
Office of the Attorney General
One Ashburton Place, 20th Floor
Boston, MA 02108
grace.gohlke@mass.gov

For the DEP

John MacAuley, Bureau of Air and Waste,
Deputy Regional Director
Grady Dante, Asbestos Section Chief
Department of Environmental Protection
NERO
150 Presidential Way, Suite 300
Woburn, MA 01801
John.Macauley@mass.gov
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Colleen McConnell
Senior Regional Counsel
Department of Environmental Protection
NERO
150 Presidential Way, Suite 300
Woburn, MA 01801
Colleen.McConnell@mass.gov

For LLC Defendants

P25 Phase 2, LLC

c/o Patricia Flaherty
Mission Hill Neighborhood Housing Services
One Brigham Circle / M Level
1620 Tremont Street
Mission Hill, MA 02120
pflaherty@missionhillnhs.org

Mission Hill Parcel 25, LLC

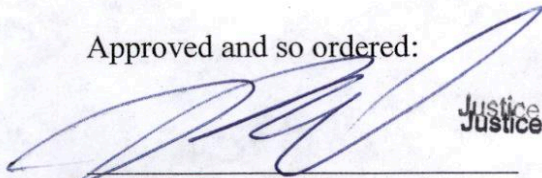
c/o Patricia Flaherty
Mission Hill Neighborhood Housing Services
One Brigham Circle / M Level
1620 Tremont Street
Mission Hill, MA 02120
pflaherty@missionhillnhs.org

With a copy to:

Barbara K. Landau, Esq.
Noble, Wickersham & Heart LLP
131 Mt. Auburn Street
Cambridge, MA 02138
bl@noblewickersham.com

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

Approved and so ordered:



Justice, Superior Court

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

2-2-24
Date

Attest: _____
Assistant Clerk

Date

Stipulated and agreed:

COMMONWEALTH OF
MASSACHUSETTS

P25 PHASE 2, LLC, and
MISSION HILL PARCEL 25, LLC

By its Attorney,

By their Attorney,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

Grace Gohlke, BBO #704218
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Barbara K. Landau, BBO # 556706
Noble, Wickersham & Heart LLP
131 Mount Auburn Street
Cambridge, MA 02138
(617) 491-9822
bl@noblewickersham.com

Dated:

Dated:

JUDGMENT is hereby entered in accordance with the foregoing, this ___ day of _____, 2024.

Approved and so ordered:

Hallel, J.
Justice, Superior Court

2/2/24
Date

Attest: [Signature]
Assistant Clerk

2/2/24
Date

Stipulated and agreed:

COMMONWEALTH OF
MASSACHUSETTS

P25 PHASE 2, LLC, and
MISSION HILL PARCEL 25, LLC

By its Attorney,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

[Signature]
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By their Attorney,

[Signature]
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Dated: 1/31/24

Dated: 1/26/2024