

NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION NO. 15-2880

6

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

METALS RECYCLING, L.L.C., d/b/a
Schnitzer Northeast, and
PROLERIZED NEW ENGLAND COMPANY
LLC, d/b/a Schnitzer Northeast,

Defendants.

Notice sent
11/15/22
(2) X

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2022 NOV -9 P 1:22
MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE

MODIFICATION OF CONSENT JUDGMENT

WHEREAS, on September 24, 2015, the Court entered a consent judgment ("Consent Judgment") in this action, attached hereto as "Exhibit 1," brought by the Commonwealth of Massachusetts (the "Commonwealth"), acting by and through the Attorney General and the Massachusetts Department of Environmental Protection (the "Department"), against Metals Recycling, L.L.C., d/b/a Schnitzer Northeast ("Metals Recycling"), and Prolerized New England Company, LLC, d/b/a Schnitzer Northeast ("PNE"), (collectively referred to herein as the "Defendants") alleging violations of the portion of the Commonwealth's Clean Air Act, G.L. c. 111, §§ 142A-142O (the "Air Act"), and its implementing regulations found at 310 C.M.R. 7.00 *et seq.* and 310 C.M.R. 7.00 Appendix C (the "Air Regulations"); the Hazardous Waste Management Act, G.L. c. 21C (the "HWMA"), and its implementing regulations found at 310 C.M.R. 30.000 *et seq.* (the "HWMA Regulations"); the Massachusetts Solid Waste Management

Act, G.L. c. 111, § 50A (the "SWMA"), and its implementing regulations found at 310 C.M.R. 19.000 *et seq.*; and the Massachusetts Mercury Management Act (St. 2006, c. 190, amending G.L. c. 21H; the "MMA"), and the implementing regulations found at 310 C.M.R. 70.00 *et seq.* and 310 C.M.R. 70.00 *et seq.* (the "MMA Regulations") at PNE's Everett metal shredding facility ("the Everett Facility").

WHEREAS Consent Judgment ¶ 16 required PNE to "file a fully completed Comprehensive Plan Application ("CPA") for" the metal shredder at the Everett Facility ("Mega Shredder"), which PNE did on November 19, 2015, with supplemental information provided on July 18, 2016;

WHEREAS consistent with Consent Judgment ¶ 16, that CPA contains provisions requiring PNE to "properly install and thereafter properly maintain and properly operate" multiple specific measures designed to reduce pollution from the Mega Shredder, including a "pollutant capture system" ("PCS") enclosing the Mega Shredder;

WHEREAS Consent Judgment ¶ 19 requires PNE to "properly install, begin proper operation of, and thereafter properly and continuously operate and maintain" the pollution-reducing measures included in the CPA, including the PCS, once the Department issues a written CPA Plan Approval, which the Department issued on February 12, 2018;

WHEREAS Consent Judgment ¶ 20 requires that, "PNE shall complete the installation and begin continuous operation of the pollutant capture, control, and monitoring systems identified in Paragraph 16 of this Consent Judgment," including the PCS, which PNE completed on May 12, 2020;

WHEREAS, Consent Judgment ¶ 22 further requires that, “[a]fter obtaining the CPA Plan Approval, PNE shall operate the Everett Facility at all times in compliance with said CPA Plan Approval, and with all applicable Air Regulations at 310 C.M.R. 7.00 *et seq.* and Appendix C of 310 C.M.R. 7.00 *et seq.*”;

WHEREAS, a fire at the Everett Facility on December 8, 2021 caused significant damage to the PCS, requiring its replacement, and the Defendants do not anticipate completion of the replacement PCS before August or September of 2023;

WHEREAS, continued operation of the Mega Shredder without a functioning PCS releases emissions of volatile organic compounds, particulate matter, and other hazardous air pollution into the ambient air;

WHEREAS, Consent Judgment ¶ 50 provides that its terms “may be modified only by a subsequent written agreement signed by the Parties” and, “[w]here the modification constitutes a material change to any term,” by “approval of the Court,”;

WHEREAS, the Commonwealth and the Defendants (“Parties”) have agreed to enter into this Modification in the interest of effective implementation of the Consent Judgment in the aftermath of the fire at the Mega Shredder by providing a mechanism for the Defendants to operate the Mega Shredder prior to completion of the replacement, permanent PCS without violating the Consent Judgment or the Air Act by implementing a Temporary Capture System with the approval of the Department;

WHEREAS, the Parties have agreed that certain Department personnel may monitor the operation of the Temporary Capture System using a video feed, the Defendants have asserted that this feed is Trade Secret Information and therefore exempt from the definition of “Public

Records” in G.L. c. § 7 pursuant to “exception (g)” to that definition, and the Department is evaluating the Defendants’ assertion pursuant to its standard public records policy in effect as of October 2022; and

WHEREAS the Parties, and the Court by entering this Modification, recognize without admission of facts in law except as expressly stated herein and without admission of liability by the Defendants, that this Modification has been negotiated at arms-length and in good faith and that this Modification of Consent Judgment is fair, reasonable and in the public interest, and entry of this Modification of Consent Judgment without further litigation is an appropriate resolution of the disputes.

NOW, THEREFORE, upon the consent of the Parties, the Consent Judgment is hereby modified as follows:

1. The period at the end of Paragraph 19 of the Consent Judgment shall be deleted and replaced with a comma and the following clause “except as provided in Paragraph 23.”

2. The period at the end of Paragraph 20 of the Consent Judgment shall be deleted and replaced with a comma and the following clause “except as provided in Paragraph 23.”

3. The period at the end of Paragraph 22 of the Consent Judgment shall be deleted and replaced with a comma and the following clause “except as provided in Paragraph 23.”

4. A new paragraph shall be added to the end of subsection V, “Compliance Requirements,” numbered as “Paragraph 23” with the following provisions:

“Following the expected destruction of portions of the PCS in December of 2021, PNE may not conduct metal shredding operations in the absence of a replacement PCS. However, during the pendency of the reconstruction of a new permanent PCS, PNE may resume

operations to operate the Everett Facility's Mega Shredder subject to the following conditions:

- a.) PNE installs and continuously maintains and operates a temporary capture system ("Temporary Enclosure") to collect and route emissions to the existing emission control system as described in PNE's "Temporary Capture System – Standard Operating Procedures" Manual ("Temporary Capture SOP Manual"), attached as "Appendix A."
- b.) PNE immediately discontinues metal shredding if any component of the Temporary Enclosure fails to maintain the emission capture conditions demonstrated during the September 20 and 21, 2022 Temporary Enclosure testing program.
- c.) PNE complies with the daily operation, inspection, and maintenance provisions detailed in the Temporary Capture SOP Manual.
- d.) Beginning on the first day of the calendar month following entry of the Modification of this Consent Judgment dated November 9, 2022, PNE submits monthly reports to the Department which shall include the hours of operation of the Mega Shredder during the previous calendar month and all repair and replacement work related to the Temporary Enclosure or its components during the previous month, provided, however, that PNE notifies the Department within twenty-four (24) hours in the event of any loss or damage to any portion of the Temporary Enclosure or any portion of the air pollution control train that reduces the Temporary Enclosure's

ability to capture and/or divert emissions.

- e.) PNE installs and thereafter continually operates a camera providing real-time viewing of the Temporary Enclosure and the metal shredder to which the Department shall have access via an internet hyperlink and access credentials shall only be shared with necessary Department staff.
- f.) Subject to source testing contractor and sulfur hexafluoride availability, PNE conducts monthly Tracer Gas testing of the Temporary Enclosure and the Under Mill Oscillator ("UMO") enclosure. A reduced schedule for future testing may be approved by the Department following review of the testing data. Tracer Gas testing is conducted in accordance with PNE's "Source Test Protocol," attached as "Appendix B." PNE also conducts monthly photoionization detector ("PID") volatile organic compound ("VOC") testing at the UMO outlet. PID VOC testing is conducted in accordance with the testing protocols employed in such testing on September 22, 2022. PNE submits results from these tests to the Department monthly until the replacement PCS is operational.
- g.) PNE discontinues operation of the Mega Shredder, including metal shredding or metal processing, during any period of replacement or upgrade of the venturi scrubbers. PNE shall notify MassDEP no later ninety (90) days prior to the procurement of any venturi scrubbers not approved under the CPA Plan Approval.

- h.) Within 15 days following entry of this Modification of Consent Judgment, PNE provides final plans and specifications for the construction and installation of the new PCS to the Department for review and comment and PCS addresses the Department's comments in writing. PNE will not operate the new PCS until the Department has reviewed and approved the final plans and specifications.
- i.) PNE makes best efforts to complete construction and installation of the new PCS in a timely manner throughout the operation of the Temporary Enclosure. PNE shall submit monthly reports summarizing the progress of the design, procurement, and construction of the new PCS. PNE completes construction and installation of the new PCS by September 29, 2023, at the latest.

5. A new paragraph shall be added to the beginning of subsection VI, "Supplemental Environmental Projects," as "Paragraph 24" with the following provisions:

"Within sixty (60) days of the Entry Date of this Modification, PNE shall submit in writing to the Commonwealth for its review and approval a plan to fund a Supplemental Environmental Project ("SEP") with a value of One Hundred Thousand Dollars (\$100,000) for the benefit of residents of Everett who may have been impacted by air pollution emitted by the Mega Shredder before the Temporary Enclosure was installed, with a focus on impacts to environmental justice neighborhoods. PNE shall address any comments from the Commonwealth regarding plan approval and shall resubmit the plan as necessary to secure Commonwealth approval. At minimum, such plan shall include the following elements:


- a.) A description of the SEP and its benefits to Everett residents with supporting documentation;
- b.) A statement of the cost to PNE of the SEP with supporting documentation;
- c.) A requirement that, within one hundred eighty (180) days of the Commonwealth's written approval of the SEP, PNE shall ensure that the work required by the SEP has been completed; and
- d.) A requirement that, within ninety (90) days of PNE's full implementation and completion of the approved work required by the SEP, PNE shall submit to the Commonwealth a written report documenting PNE's implementation of the SEP in compliance with the SEP plan.

6. All subsequent Paragraph numbering from original Paragraph 23 to the end of the Consent Judgment shall be adjusted so as to accommodate the two new Paragraphs.

THE UNDERSIGNED PARTIES enter into this Modification of Consent Judgment in the matter of *Commonwealth v. Metal Recycling, L.L.C., et al* (Suffolk Superior Court).

FOR THE COMMONWEALTH OF
MASSACHUSETTS

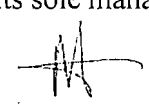
MAURA HEALEY
ATTORNEY GENERAL



Louis Dundin (BBO#660359)
Senior Enforcement Counsel
Assistant Attorney General
Julia Jonas-Day (BBO#703539)
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
louis.dundin@mass.gov
julia.jonas-day@mass.gov

Dated: November 9, 2022

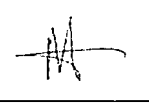
FOR METALS RECYCLING, L.L.C.,
By its sole managing member,



Michael R. Henderson, President
Joint Venture Operations, Inc.
299 SW Clay; Suite 350
Portland, OR 97201
(917) 932-4976
mrhenderson@schn.com

Dated: November 9, 2022

FOR PROLERIZED NEW ENGLAND
COMPANY, LLC,
By its duly authorized representative,



Michael R. Henderson, President
Joint Venture Operations, Inc.
299 SW Clay; Suite 350
Portland, OR 97201
(917) 932-4976
mrhenderson@schn.com

Dated: November 9, 2022

By the Court:



JUSTICE, SUPERIOR COURT

Date

11/10/22

