

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH COUNTY, SS
SOUTHERN DISTRICT

SUPERIOR COURT

State of New Hampshire
Department of Environmental Services

v.

Nashua Foundries, Inc.

Docket No.:226-2016-CV-00270

CONSENT DECREE

NOW COME the Petitioner, the State of New Hampshire Department of Environmental Services (hereinafter “State” or “Department” or “DES”), by and through its attorneys, the Office of the Attorney General, and the Respondent Nashua Foundries’ Inc., pro se, and hereby agree to the terms and conditions set forth in this Consent Decree (“Decree”), as ordered by the Superior Court for Hillsborough County, in settlement of the claims asserted by the State in this case.

A. INTRODUCTION

1. The Department, located at 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire, 03302-0095, is the State agency responsible for the administration and enforcement of New Hampshire’s Underground Storage Facilities Act, RSA chapter 146-C, and the Administrative Rules adopted thereunder.

2. Respondent Nashua Foundries, Inc. (“Nashua Foundries”) is a New Hampshire corporation with a principal place of business in Nashua, New Hampshire and a mailing address

of 5 Foundry Street, Nashua New Hampshire 03060. Peter J. Lyons is the president and registered agent of Nashua Foundries.

3. The State filed a Petition for Civil Penalties with the Hillsborough County Superior Court, Southern District on June 6, 2016, alleging specific violations of the State's Underground Storage Facility Act under RSA 146-C and the Administrative Rules promulgated thereunder.

4. On August 2, 2016, the Court issued a notice of default against Nashua Foundries for failure to file a timely appearance and answer.

5. The State and the Defendant, wishing to avoid the expense of litigation, and in an effort to work cooperatively in resolving this matter, agree that settlement of this matter is in the public interest and that entry of this Decree without further litigation is an appropriate way to resolve the dispute, and the parties consent to the entry of this Decree as an Order of the Court.

NOW THEREFORE, it is ORDERED, ADJUDGED and DECREED as follows:

B. JURISDICTION AND VENUE

6. The Court has jurisdiction over this matter pursuant to RSA 491:7 and RSA 146-C:10, I. Venue is appropriate as the location of alleged violations and Nashua Foundries' principal place of business is in Hillsborough County.

7. For purposes of this Decree and the underlying Petition, including any further action to enforce the terms of this Decree, Nashua Foundries waives any and all objections it may have to the Court's subject matter or personal jurisdiction. Nashua Foundries also agrees that its president and registered agent, Peter Lyons, representing the corporation, *pro se*, is filing an appearance in this matter forthwith.

C. CIVIL PENALTIES

8. Nashua Foundries shall be assessed a total civil penalty of fifty thousand dollars (\$50,000) to the State's Oil Pollution Control Fund under RSA 146-C in exchange for a full settlement and release of claims in the Petition.

9. Nashua Foundries shall make the payments in monthly installments as follows: Twenty-Five (25) cash payments of Two Thousand Dollars (\$2000.00) monthly to the State with the first payment of Two Thousand Dollars (\$2000.00) commencing on January 30, 2017, and continuing thereafter, monthly on the 30th of each month until the balance is paid in full.

10. The installments of fifty thousand dollars (\$50,000) cash payment due to the State under this Decree shall be due and payable without any demand from the State. The payments shall be delivered by hand or certified mail to the Office of the Attorney General, Environmental Protection Bureau, 33 Capitol Street, Concord, New Hampshire, 03301, Attn: Mary E. Maloney, Assistant Attorney General. Nashua Foundries shall pay interest on any late payment, which interest shall accrue at a rate of 10% per annum, per RSA 336:1, I.

11. Time is of the essence with regard to these payments. Should Nashua Foundries fail to make any of the aforementioned monthly payments on the date they are due, the balance of the entire Fifty Thousand Dollars (\$50,000.00) shall immediately become due and payable, without any demand from the State, and at the election of the State, any motion to compel made may seek to compel the entire balance of the remaining due to the State. In such a case the interest referenced in paragraph 10 shall be applied to the entire balance owing to the State at that time.

12. The civil penalty shall also be secured by a voluntary lien on real estate owned by Nashua Foundries and located at 5 Foundry Street, Nashua New Hampshire, more

particularly identified on the Nashua Tax Map #35, Lot #3.

F. OTHER TERMS AND CONDITIONS

13. The Department, by and through the Attorney General, releases and covenants not to sue or take any administrative action against Nashua Foundries and its successors and assigns for the violations alleged in the Petition or for violations that might have been alleged based on facts known to the State, through the effective date of this Decree. The State expressly reserves the right to sue or to bring administrative actions against Nashua Foundries and its successors and assigns with regard to claims or liability for violations that could not have been alleged in the State's Petition and Nashua Foundries reserves any and all defenses with regard to such State claims. The State and Nashua Foundries each also reserves the right to bring an action to enforce the terms of this Decree.

14. The parties acknowledge that Nashua Foundries and its successors and assigns have a continuing obligation to remain in compliance with all applicable federal and state laws, rules and permits relating to its facility. Subject to the qualifications in Paragraph 13, the State reserves the right to bring any administrative, civil, or criminal action for any violation of the State's Underground Storage Facility laws or other environmental violation based on facts occurring or arising after the effective date of this Decree, except as provided in Paragraph 13. This reservation of rights includes, but is not limited to, violations that occur in connection with the terms of this Decree. Nashua Foundries reserves any and all defenses with regard to such State claims.

15. The obligations and undertakings hereunder shall survive the sale or other conveyance of Nashua Foundries, including without limitation the bankruptcy of Nashua Foundries or any assignment for the benefit of creditors. Nashua Foundries acknowledges

and agrees that its obligations hereunder are non-dischargeable pursuant to 11 U.S.C. §1141(d)(1) and §524 and shall not be considered claims pursuant to 11 U.S.C. §101(5).

16. It is the intention of the parties that this Decree be entered and enforced as an Order of the Court, subject to all the power of the Court at law and equity. Nashua Foundries acknowledges that any violation of the Decree or the agreements reflected herein may be cause for Nashua Foundries being adjudged in contempt of court and hereby waives any objections to jurisdiction or service of process if such remedy is sought by the State.

17. The State's failure to enforce any provision of this Decree after any breach or default shall not be deemed a waiver of its right to enforce each and all of the provisions of this Decree upon further breach or default.

18. This Decree contains the entire agreement of the parties, and any material modifications hereto must be agreed to in writing by both Nashua Foundries and the State, acting through the Attorney General's Office, and filed with the Court. The parties may agree in writing without Court approval of non-material modification, such as modification to schedules established by this Decree with no effect on statutory, regulatory, or permitted obligations. Such non-material modifications become effective upon execution by both parties.

19. The effective date of this Decree shall be the date upon which it is entered as an Order of the Court.

20. This Decree shall be construed in accordance with the laws of New Hampshire.

21. Each party shall bear its own costs and attorneys' fees.

22. The Court shall retain jurisdiction of this matter for purposes of enforcement of the Decree and shall reopen the case upon motion by either party for enforcement of its terms.

Respectfully submitted,

**THE STATE OF NEW HAMPSHIRE
JOSEPH A. FOSTER
ATTORNEY GENERAL**

Dated: _____

By: _____

Mary E. Maloney (N.H. Bar # 1603)
Assistant Attorney General
Environmental Protection Bureau
33 Capitol Street
Concord, New Hampshire 03301
Tel. (603)271-3679

Nashua Foundries, Inc.

Dated: 12/26/16

By: Peter Lyons

Peter Lyons, *pro se*
President
Nashua Foundries, Inc.
5 Foundry Street
Nashua New Hampshire 03060

I hereby enter this Consent Decree as an Order of the Court.

Dated and entered this ____ day of _____, 20__.

Justice of the Superior Court