

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In The Matter Of:

Cheswick Plant Environmental	:	
Redevelopment Group, LLC	:	
12601 Plantside Drive	:	Solid Waste Management Act
Louisville, KY 40299	:	
	:	
And	:	
	:	
Controlled Demolition, Inc	:	
13401 Still Haven Ct.	:	
Phoenix, MD 21131	:	
	:	
And	:	
	:	
Grant Mackay Company, Inc.	:	
13610 Reeveston Road	:	
Houston, Texas 77039	:	
	:	
Springdale Borough	:	
Allegheny County	:	
ENF ID <u>421758</u>	:	

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement ("COA") is entered into this 13th day of November 2023, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), Cheswick Plant Environmental Redevelopment Group, LLC ("CPERG"), Controlled Demolition, Inc ("Controlled Demolition") and Grant Mackay Company, Inc. ("Grant Mackay").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, *as amended*, 35 P.S. §§ 6018.101-6018.1003 ("SWMA") and the rules and regulations ("rules and regulations") promulgated thereunder.

B. CPERG is a Pennsylvania limited liability company with a corporate address of 12601 Plantside Drive, Louisville, KY 40299, and a “person” as that term is defined in Section 103 of the Solid Waste Management Act, 35 P.S. § 6018.103.

C. Controlled Demolition is a Maryland corporation with an address of 13401 Still Haven Court, Phoenix, MD 21131, and a “person” as that term is defined in Section 103 of the Solid Waste Management Act, 35 P.S. § 6018.103.

D. Grant Mackay is a Utah corporation with an address of 13610 Reeveston Road, Houston, Texas, 77039, and is a “person” as that term is defined in Section 103 of the Solid Waste Management Act, 35 P.S. § 6018.103

E. CPERG owns real property and various structures thereon located at the former Cheswick Generating Station at 151 Porter Street, Springdale, PA 15144, 10 Pittsburgh Street, Springdale, PA 15144, 223 Pittsburgh Street, Springdale, PA 15144, and Rosslyn Avenue, Springdale, PA 15144 with Parcel IDs of 628-F-75 (Parcel 1B), 628-G-20 (Parcel 1D), 628-B-200 (Parcel 1F), 627-P-300 (Parcel 1G), 627-P-320 (Parcel 1J), 627-G-150 (Parcel 1K), and 628-G-04 (Parcel 1C) (“Site”).

F. CPERG retained Grant Mackay as a demolition contractor, who then retained Controlled Demolition as a blasting contractor to perform blasting activities to demolish two chimneys at the Site. Controlled Demolition applied for and obtained Department authorization to conduct certain blasting operations at the Site in accordance with the terms and conditions of Blasting Activity Permit No. 0223400, as well as the Administrative Code of 1929 and 25 Pa. Code Chapter 211, for the demolition and felling of two concrete chimneys at the Site.

G. According to the Blasting Activity Permit, approved by the Department on May 9, 2023, both chimneys were intended to fall within the Site. Ultimately, both chimneys did fall within the Site.

H. On June 2, 2023 at approximately 08:00a.m., Controlled Demolition detonated explosives at the base of two chimneys at the Site. As a result, the two chimneys fell. When the chimneys fell, debris was released from the Site onto numerous properties in the surrounding community. Damage from this debris included broken windows at numerous buildings near the Site. The buildings sustaining damage were clustered along Pittsburgh Street and Washington Street, directly across from where the taller tower fell. Numerous additional properties were covered in a thick coating of dust. The Department also observed chunks of metal and concrete throughout the area.

I. The metal, concrete, dust and other debris released from the Site onto other properties as a result of the felling of the chimneys constitutes solid waste, municipal waste and construction/demolition waste as those terms are defined in Section 103 of the SWMA, 35 P.S. § 6018.103, and/or Section 271.1 of the Department's regulations, 25 Pa. Code § 271.1. CPERG's, Controlled Demolition's and Grant Mackay's deposition of such solid waste in areas surrounding the Site, without permit authorization to release and deposit such waste and in a manner constituting a public nuisance, constitutes the unpermitted and unauthorized "disposal" of solid waste, as that term is utilized in the Solid Waste Management Act, in violation of Section 201 of the SWMA, 35 P.S. § 6018.201 and Section 271.101 of the Department's regulations, 25 Pa. Code § 271.101.

J. CPERG's, Controlled Demolition's and Grant Mackay's violations, as set forth above, constitute a public nuisance pursuant to Section 601 of the SWMA, 35 P.S. § 6018.601, and unlawful conduct pursuant to Sections 610(1), (4), and (9) of the SWMA, 35 P.S. §§ 6018.610(1), (4), and (9), and subjects CPERG, Controlled Demolition and Grant Mackay to civil penalty liability under Section 605 of the SWMA, 35 P.S. § 6018.605.

K. Pursuant to the Department's "Policy for the Acceptance of Community Environmental Projects in Conjunction with Assessment of Civil Penalty," CPERG, Controlled

Demolition and Grant Mackay have agreed to pay a total payment in the amount of **THIRTY NINE THOUSAND ONE HUNDRED DOLLARS (\$39,100.00)**, made up of a payment of a civil penalty of **SEVENTEEN THOUSAND, FIVE HUNDRED DOLLARS (\$17,500.00)** and the funding of a Community Environmental Project (“CEP” or “Project”) valued at **TWENTY ONE THOUSAND SIX HUNDRED DOLLARS (\$21,600.00)**, as follows:

CPERG, Controlled Demolition and Grant Mackay shall provide funding for upgrades and/or maintenance to the Springdale Borough’s public parks. The Department has determined that the CEP will provide substantial public health, safety, and/or environmental benefits and that the CEP is not something that CPERG, Controlled Demolition or Grant Mackay are otherwise legally required to do. The Department has agreed that the value of the Project is at least TWENTY ONE THOUSAND SIX HUNDRED DOLLARS (\$21,600.00).

L. CPERG, Controlled Demolition and Grant Mackay have represented that they do not intend for this Consent Order and Agreement to impact their private contractual obligations with respect to the violations set forth in Paragraphs H and I, above.

After full and complete negotiations of all matters set forth in this COA and upon mutual exchange of the covenants herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby **ASSESSED** by the Department and **AGREED** by CPERG, Controlled Demolition and Grant Mackay as follows:

1. **Authority.** This COA is an Order of the Department authorized and issued pursuant to Sections 104(7) and 602 of the SWMA, 35 P.S. §§ 6018.104(7) and 602; and 35 P.S. §§ 691.5 and 691.10, and Section 1917 A of the Administrative Code, 71 P.S. § 510-17.

2. **Findings.**

a. In any matter or proceeding between CPERG, Controlled Demolition or Grant Mackay and the Department, neither CPERG, Controlled Demolition nor Grant Mackay shall challenge or deny the Department’s assertion of the truth, accuracy, or validity of Paragraphs A through L, above.

b. The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

3. **Civil Penalty Assessment and Community Environmental Project (“CEP”).**

CPERG, Controlled Demolition and Grant Mackay consent to the assessment of a civil penalty as set forth below. This payment is in settlement of the Department’s claim for civil penalties for the violations set forth in Paragraphs H and I, above, for the date set forth therein. In resolution of the Department’s claim for civil penalties, which the Department is authorized to pursue under Section 605 of the SWMA, 35 P.S. § 6018.605, the Department hereby assesses a civil penalty of **THIRTY NINE THOUSAND ONE HUNDRED DOLLARS (\$39,100.00)**, which CPERG, Controlled Demolition and Grant Mackay, jointly and severally, hereby agree to pay in the following manner: (a) concurrently with execution of this COA, submission of one or more corporate checks or the like totaling **SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00)**, made payable to “Commonwealth of Pennsylvania, Solid Waste Abatement Fund”; and (b) within fourteen (14) days of execution of this Consent Order and Agreement, submit one or more corporate checks or the like totaling **TWENTY ONE THOUSAND SIX HUNDRED DOLLARS (\$21,600.00)** payable to Springdale Borough for its use in upgrades and or maintenance of publicly owned parks and recreational areas. The check for the Commonwealth of Pennsylvania and a copy of the check sent to the Borough shall be sent to Lauren Fike, Compliance Specialist, Waste Management, Pennsylvania Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

4. **Tax Deductibility.** CPERG, Controlled Demolition and Grant Mackay shall not deduct any costs incurred in connection with or in any way associated with the CEP Project described in Paragraph 3 for any tax purpose or otherwise obtain favorable tax treatment for those costs. If requested to do so by the Department, CPERG, Controlled Demolition and Grant Mackay

shall submit an affidavit of the corporate officer responsible for the financial affairs of CPERG and Controlled Demolition certifying that CPERG, Controlled Demolition and/or Grant Mackay have not deducted or otherwise obtained favorable tax treatment of any of the costs of the CEP.

5. **Publicity About the Project.** CPERG, Controlled Demolition and Grant Mackay agree that whenever either publicizes, in any way, the CEP, it will state that the CEP was undertaken as part of the settlement of an enforcement action with the Department.

6. **Stipulated Civil Penalties.**

a. In the event the requirements of Paragraphs 3-5 above are not timely complied with, CPERG, Controlled Demolition and Grant Mackay shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall, jointly and severally pay a civil penalty in the amount of \$500.00 per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month and shall be forwarded as described in Paragraph 3 (Civil Penalties) above.

c. Any payment under this paragraph shall neither waive CPERG, Controlled Demolition and Grant Mackay's duty to meet their obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel their compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only their liability for civil penalties arising from the violations of this Consent Order and Agreement for which the payment is made.

d. Stipulated civil penalties shall be due automatically and without notice.

7. **Additional Remedies.**

a. In the event CPERG, Controlled Demolition or Grant Mackay fail to comply with any provision of this Consent Order and Agreement, the Department may, in addition

to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. The remedies provided by this paragraph and Paragraph 6 (Stipulated Civil Penalties) are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated penalty is paid.

8. **Liability of Operator.** CPERG, Controlled Demolition and Grant Mackay shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by their officers, agents, employees, or contractors. CPERG, Controlled Demolition and Grant Mackay also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by their successors and assigns.

9. **Correspondence with Department.** All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

Lauren Fike, Environmental Protection Compliance Specialist
Waste Management
400 Waterfront Drive
Pittsburgh, PA 15222
412-442-4000

10. **Correspondence with CPERG, Controlled Demolition and/or Grant Mackay.**
All correspondence with CPERG, Controlled Demolition and/or Grant Mackay concerning this Consent Order and Agreement shall be addressed to:

Scott Reschly, Vice President of Operations
Charah, LLC, Manager of Cheswick Plant Environmental Redevelopment Group, LLC
12601 Plantside Drive
Louisville, KY 40299
502-245-1353

Controlled Demolition, Inc.
13401 Still Haven Ct.
Phoenix, MD 21131

Grant Mackay Company, Inc.
13610 Reeveston Road
Houston, Texas, 77039

CPERG, Controlled Demolition and/or Grant Mackay shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above address.

11. **Entire Agreement.** This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

12. **Attorney Fees.** The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

13. **Modifications.** No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

14. **Severability.** The paragraphs of this Consent Order and Agreement shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

15. **Termination.** The obligations but not the Findings in this Consent Order and Agreement shall terminate when the Department determines in writing that all obligations required under this Consent Order and Agreement, including the payment of all civil penalties and stipulated penalties, have been fully completed, or such earlier time if the Department determines in writing that termination is in the best interest of human health or the environment.

16. **Titles.** A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but shall not be treated as controlling

17. **Decisions Under Consent Order.** Any decision which the Department makes under the provisions of this Consent Order and Agreement, including a notice that stipulated civil penalties are due, is intended to be neither a final action under 25 Pa. Code § 1021.2, nor an adjudication under 2 Pa. C.S. § 101. Any objection which CPERG, Controlled Demolition and/or Grant Mackay may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

18. **Reservation of Rights.** The Department reserves the right to require additional measures to achieve compliance with applicable law. CPERG, Controlled Demolition and Grant Mackay reserve the right to challenge any action which the Department may take to require those measures.

19. **Liability of Operator.** CPERG, Controlled Demolition and/or Grant Mackay shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by their officers, agents, employees, or contractors. CPERG, Controlled Demolition and/or Grant Mackay also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by their successors and assigns.

20. **Transfer of Site.**

a. The duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the Site or any part thereof.

b. If CPERG intends to transfer any legal or equitable interest in the Site which is affected by this Consent Order and Agreement, CPERG shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty

(30) days prior to the contemplated transfer and shall simultaneously inform the Department of such intent.

21. **Execution of Agreement.** This Consent Order and Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of CPERG, Controlled Demolition and Grant Mackay certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of CPERG, Controlled Demolition or Grant Mackay; that CPERG, Controlled Demolition and Grant Mackay consent to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that CPERG, Controlled Demolition and Grant Mackay hereby knowingly waive all rights to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provisions of law. Signature by CPERG, Controlled Demolition and Grant Mackay's attorney(s) certifies only that the agreement has been signed after consulting with counsel.

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**FOR CHESWICK PLANT
ENVIRONMENTAL REDEVELOPMENT
GROUP, LLC:**

By: Charah, LLC, its Manager:

Signature

Name (print) Steven A Brehm
VP Legal Affairs / Corporate Secretary

Signature

Name (print) Joseph Skmore
CFO & Treasurer

Signature

Name (print) _____
Attorney for CPERG (or official's initials
indicating waiver of right to attorney review)

FOR CONTROLLED DEMOLITION, INC.:

Signature

Name (print) _____
President or Vice President

Signature

Name (print) _____
Secretary or Treasurer

Signature

Name (print) _____
Attorney for Controlled Demolition, Inc. (or
official's initials indicating waiver of right to
attorney review)

**FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:**

Sharon Svitek
Program Manager
Waste Management

John Herman
Regional Counsel

**FOR CHESWICK PLANT
ENVIRONMENTAL REDEVELOPMENT
GROUP, LLC:**

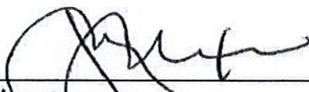
By: Charah, LLC, its Manager:

Signature
Name (print)_____

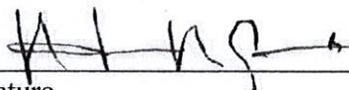
Signature
Name (print)_____

Signature
Name (print)_____
Attorney for CPERG (or official's initials
indicating waiver of right to attorney review)

FOR CONTROLLED DEMOLITION, INC.:



Signature
Name (print) J.M. LOIZEAUX
President or Vice President



Signature
Name (print) ADRIENNE GRANT
Secretary or Treasurer



Signature
Name (print) R. Anthony Aluca
Attorney for Controlled Demolition, Inc. (or
official's initials indicating waiver of right to
attorney review)

**FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:**

Sharon Svitek
Program Manager
Waste Management

John Herman
Regional Counsel

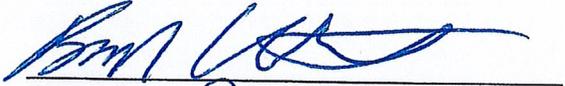
FOR GRANT MACKAY COMPANY, INC.:



Signature

Name (print) Nephi Mackay

President or Vice President



Signature

Name (print) Bryce Christensen

Secretary or Treasurer



Signature

Name (print) Julie Brennan

Attorney for Grant Mackay Company, Inc.

(or official's initials indicating waiver of right to attorney review)

**FOR CHESWICK PLANT
ENVIRONMENTAL REDEVELOPMENT
GROUP, LLC:**

By: Charah, LLC, its Manager:

Signature
Name (print)_____

Signature
Name (print)_____

Signature
Name (print)_____
Attorney for CPERG (or official's initials
indicating waiver of right to attorney review)

FOR CONTROLLED DEMOLITION, INC.:

Signature
Name (print)_____

President or Vice President

Signature
Name (print)_____

Secretary or Treasurer

Signature
Name (print)_____
Attorney for Controlled Demolition, Inc. (or
official's initials indicating waiver of right to
attorney review)

**FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:**

Sharon Svitek

Sharon Svitek
Program Manager
Waste Management

John Herman

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