

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In The Matter Of:

Neiswonger Construction, Inc. 17592 Route 322 Strattanville, PA 16258	:	Violations of 25 Pa. Code §§ 121.7, 123.1, 123.2, 127.622, 127.642, and 40 C.F.R. 60, Subpart 000
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**CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement is entered into this 23<sup>rd</sup> day of October 2024, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and Neiswonger Construction, Inc. ("Neiswonger").

The Department has found and determined the following:

- A. The Department is the agency with the duty and authority to administer and enforce the Air Pollution Control Act of January 8, 1960, P.L. 2119 (1959), as amended, 35 P.S. §§ 4001-4015 ("Air Pollution Control Act"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17 ("Administrative Code"); and the rules and regulations ("rules and regulations") promulgated thereunder.
- B. Neiswonger is a Pennsylvania corporation that maintains a business address of 17592 Route 322, Strattanville, PA 16258. Neiswonger is a "person" as that term is defined in Section 3 of the Air Pollution Control Act, 35 P.S. § 4003.
- C. Neiswonger owns and operates Maggie Lynn Quarry ("Facility"), located in Deemston Borough, Washington County.

D. The Facility includes, inter alia, nonmetallic mineral processing equipment such as various crushers, screens, conveyors, transfer points, roadways, and nonroad engines (collectively, "Sources").

E. The Sources are "air contamination sources" as defined in 25 Pa. Code § 121.1.

F. "The Facility operates a portable nonmetallic mineral processing plant subject to the terms and conditions of General Plan Approval, GP3-63-00970F ("GP3")."

#### **January 5, 2022 Inspection**

G. Condition 17 of GP3 states "The operation of a portable nonmetallic mineral processing plant shall not at any time result in the emission of: (a) Fugitive air contaminants in excess of the limitations specified in 25 Pa. Code §§ 123.1 and 123.2. All reasonable actions shall be taken to prevent particulate matter from becoming airborne..."

H. 25 Pa. Code § 123.1 states "No person may permit the emission into the outdoor atmosphere of a fugitive air contaminant from a source..."

I. Condition 18(a) of GP3 states:

Water spray dust suppression systems on portable nonmetallic mineral processing plants shall be operated on any and all occasions that the respective plant is operated. Operation without simultaneous operation of the water spray dust suppression system can take place only in those unusual instances where processed materials contain sufficient moisture so as not to create air contaminant emissions in excess of the limitations and standards of this General Permit. If, however, the water spray dust suppression system is incapable of operation due to weather conditions or any other reason, the permittee may not operate the plant.

J. 25 Pa. Code § 127.642(a) states:

A portable source operating under a general plan approval or general operating permit for the portable source shall comply with the terms and conditions of the general plan approval or operating permit for the portable source.

K. During a complaint inspection on January 5, 2022, fugitive emissions were observed emanating from the nonmetallic mineral processing plant at the Facility. The inspection revealed that the plant's water spray dust suppression system was not connected, nor was it operating.

L. By permitting the emission of fugitive air contaminants from the nonmetallic mineral processing plants, Neiswonger violated 25 Pa. Code § 123.1.

M. By failing to comply with each condition of GP3, specifically Conditions 17 and 18(a), Neiswonger violated 25 Pa. Code § 127.642(a).

#### **March 21, 2022 Inspection**

During a complaint inspection on March 21, 2022, fugitive emissions were observed emanating from the nonmetallic mineral processing plant at the Neiswonger Facility. The inspection revealed that the plant's water spray dust suppression system was not connected, nor was it operating.

N. Neiswonger was in violation of 25 Pa. Code §§ 123.1 and 127.642(a).

#### **June 1, 2023 Inspection**

O. Condition 17(a) of GP3 and 25 Pa. Code § 123.1(c) require that all reasonable actions shall be taken to prevent particulate matter from becoming airborne.

P. Condition 17 of GP3 and 25 Pa. Code § 123.2 require that a person may not permit fugitive particulate matter to be emitted into the outdoor atmosphere from a source if the emissions are visible at the point the emissions pass outside the person's property.

Q. On June 1, 2023, the Department inspected the Facility and observed dust emanating from the "bench road" and reasonable actions to prevent particulate matter from becoming airborne were not being taken.

R. By failing to take reasonable actions to prevent particulate matter from becoming airborne, Neiswonger violated 25 Pa. Code § 123.1.

S. Also, on June 1, 2023, the Department inspected the Facility and observed fugitive emissions crossing the property line into residential areas from the "bench road" due to equipment traffic.

T. By permitting fugitive particulate matter emissions to visibly pass outside the Facility's property, Neiswonger violated 25 Pa. Code § 123.2

**June 6, 2023 Aerial Inspection by  
Department of Environmental Protection Mining Division**

U. Condition 17(a) of GP3 states that "The operation of a portable nonmetallic mineral processing plant shall not at any time result in the emission of: (a) fugitive air contaminants in excess of the limitations specified in 25 Pa. Code §§ 123.1 and 123.2." (Processing equipment is not included in the list of permissible fugitive emissions referenced in 25 Pa. Code §123.1(a).)

V. On June 6, 2023, the Department's Mining Division performed an aerial inspection and observed fugitive dust emanating from the processing equipment.

W. By generating fugitive emissions from the nonmetallic mineral processing plant, Neiswonger violated Condition 17(a) and 25 Pa. Code §§ 123.1(a) and 127.642(a).

#### **April 16, 2024 Inspection**

X. Condition 17(a) of GP3 and 25 Pa. Code § 123.1(a) states that fugitive air contaminants may not be emitted into the outdoor atmosphere from a source.

Y. On April 16, 2024, the Department inspected the Facility and observed fugitive emissions emanating from the processing equipment.

Z. By permitting these fugitive emissions, the Facility caused violations of GP3 and 25 Pa. Code §§ 127.642(a), 123.1(a).

AA. 40 C.F.R. § 60.676(b)(1) states that “The owner or operator of any affected facility for which construction, modification, or reconstruction commenced on or after April 22, 2008, that uses wet suppression to control emissions from the affected facility must perform monthly periodic inspections to check that water is flowing to discharge spray nozzles in the wet suppression system...”

BB. 40 C.F.R. § 60.676(b)(1) states “Owners or operators of affected facilities (as defined in §§ 60.670 and 60.671) for which construction, modification, or reconstruction commenced on or after April 22, 2008, must record each periodic inspection required under § 60.674(b) or (c), including dates and any corrective actions taken, in a logbook (in written or electronic format)”.

CC. The Facility did not document monthly inspections for the years of 2019-2023 in violation of 40 C.F.R. §§ 60.674(b) and 60.676(b)(1).

### **July 8, 2024 Inspection**

DD. Condition 16 of GP3 and 25 Pa. Code § 123.1(a) states that fugitive air contaminants may not be emitted into the outdoor atmosphere from a source.

EE. On July 8, 2024, the Department inspected the Facility and observed fugitive emissions coming from Source 101, Crusher.

FF. The Facility caused violations of GP3-63-00970F and 25 Pa. Code § 123.1(a).

GG. Condition 17 of GP3 and 25 Pa. Code § 123.1(c) states that "All reasonable actions shall be taken to prevent particulate matter from becoming airborne."

HH. On July 8, 2024, the Department inspected the Facility and observed excess dust emanating from the haul road and from the stockpiling of materials from a conveyor drop point.

II. The Facility caused violations of GP3-63-00970F and 25 Pa. Code § 123.1(c).

### **July 11, 2024 Inspection**

JJ. Condition 16 of GP3 and 25 Pa. Code § 123.1(a) states that fugitive air contaminants may not be emitted into the outdoor atmosphere from a source.

KK. On July 11, 2024, the Department inspected the Facility and observed fugitive emissions coming from Source 101, Crusher.

LL. The Facility caused violations of GP3-63-00970F and 25 Pa. Code § 123.1(a).

MM. Condition 17 of GP3 and 25 Pa. Code § 123.1(c) states that "All reasonable actions shall be taken to prevent particulate matter from becoming airborne."

NN. On July 11, 2024, the Department inspected the Facility and observed excess dust emanating from the haul road and from the stockpiling of materials from a conveyor drop point.

OO. The Facility caused violations of GP3-63-00970F and 25 Pa. Code § 123.1(c).

### **Facility Upgrades**

PP. The Department recognizes the following upgrades made to the Facility in the last year: the purchase of a new water pump to increase water pressure of the water spray system, hiring a full time water truck driver to water and clean roads, and the installation of buried water lines for the prevention of freezing that will allow the use of the processing plant in colder weather.

QQ. The violations described in Paragraphs L., M., N., R., T., W., Z., CC., FF., II., LL., and OO., above, constitute unlawful conduct under Section 8 of the Air Pollution Control Act, 35 P.S. § 4008, and a public nuisance under Section 13 of the Air Pollution Control Act, 35 P.S. § 4013, and subject Neiswonger to a claim for civil penalties under Section 9.1 of the Air Pollution Control Act, 35 P.S. § 4009.1.

### **ORDER**

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Neiswonger as follows:

1. **Authority.** This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 4(9)(i) and 10.1 of the Air Pollution Control Act, 35 P.S. §§ 4004(9)(i) and 4010.1, and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. **Findings.**

a. In any matter or proceeding between Neiswonger and the Department, Neiswonger shall not challenge or deny the Department's assertion of the truth, accuracy, or validity of Paragraphs A. through QQ. 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. **Corrective Action.**

a. Within one hundred twenty (120) days after the date of this Consent Order and Agreement, Neiswonger shall submit to the Department an application for a state-only operating permit for the Facility.

b. Within one hundred twenty (120) days after the date of this Consent Order and Agreement, Neiswonger shall begin **performing and keeping record** of Facility-wide inspections for the presence of **fugitive emissions, visible emissions, and potentially objectionable odors each day** that the Facility operates.



c. Within one hundred twenty (120) days after the date of this Consent Order and Agreement, Neiswonger shall train personnel responsible for performing and keeping record of the daily Facility-wide inspection for the presence of **fugitive emissions, visible emissions, and potentially objectionable odors** at the Facility as required in Section 3.b., above. The training shall consist of:

- (i) **Fugitive Emissions:** Noting and taking corrective actions for:
  - a) any fugitive emissions coming from processing plant (e.g. making sure water sprays are on)
  - (b) any fugitive emissions coming from **all road** surfaces (e.g. using water truck), and
  - (c) any fugitive emissions leaving the property (e.g. applying water where necessary to eliminate dust and dirt from leaving the Facility).
- (ii) **Visible Emissions:** Recognizing dust, dirt, fugitive emissions from any area or source at the Facility.
- (iii) **Objectionable odors:** Be aware of malodors that can be generated from any source at the Facility and taking note and any necessary action to prevent it from leaving the property

(A list of all current personnel that are trained to do a facility-wide inspection should be kept with the daily record).

- d. Within one hundred twenty (120) days after the date of this Consent Order and Agreement, Neiswonger shall install permanent water spray bars with multiple water nozzles at every transfer point, screen, and crusher along the nonmetallic mineral processing plant. All permanent water spray bars shall be operated as necessary to keep all material processed adequately wetted in order for the facility to operate in accordance with 25 Pa Code § 123.1.
- e. Neiswonger shall maintain all air contamination sources and air cleaning devices per manufacturer's specifications and good operating practices.
- f. Neiswonger shall operate the road sweeper and/or pressurized water truck throughout the day as needed to prevent fugitive emissions in accordance with 25 Pa Code §§ 123.1 and 123.2 and keep **record** of all operations of the road sweeper and/or pressurized water truck. (Sweeper and/or pressurized water truck should be run at the entrance to the Facility at the close of business.)

4. **Civil Penalty Settlement.** Neiswonger consents to the assessment of a civil penalty of THIRTY-FIVE THOUSAND SEVEN HUNDRED DOLLARS (\$35,700.00), which shall be paid in **full** upon signing this Consent Order and Agreement. This payment is in

settlement of the Department's claim for civil penalties for the violations set forth in Paragraphs L., M., N., R., T., W., Z., CC., FF., II., LL., and OO., above. The payment shall be made by corporate check or the like made payable to Commonwealth of Pennsylvania, Clean Air Fund and sent to the Air Quality Program Manager, Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

5. ***Stipulated Civil Penalties.***

a. In the event Neiswonger fails to comply in a timely manner with any term or provisions of Paragraph 3, Corrective Actions, Neiswonger shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount determined under the following schedule:

(i) For any violation of Paragraphs 3.a, 3.b, 3.c, or 3.d \$100.00 per day for the first 15 days, and \$500.00 per day for each additional day in violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month and shall be submitted in accordance with Paragraph 10 (Correspondence with the Department), below.

c. Any payment under this paragraph shall neither waive Neiswonger's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel Neiswonger's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only Neiswonger's liability for

civil penalties arising from the violations of this Consent Order and Agreement for which the payment is made.

6. ***Additional Remedies.***

a. In the event Neiswonger fails 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 for civil penalties or action to enforce this Consent Order and Agreement.

b. The remedies provided by this paragraph and Paragraph 5 (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.

7. ***Reservation of Rights.*** The Department reserves the right to require additional measures to achieve compliance with applicable law. Neiswonger reserves the right to challenge any action which the Department may take to require those measures.

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

9. ***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 Facility or any part thereof.

b. If Neiswonger intends to transfer any legal or equitable interest in the Facility which is affected by this Consent Order and Agreement, Neiswonger 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 Southwest Regional Office of the Department of such intent.

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

Air Quality Program Manager, Southwest Region  
Pennsylvania Department of Environmental Protection  
400 Waterfront Drive  
Pittsburgh, PA 15222-4745  
412-442-5215; Facsimile 412-442-4194

11. ***Correspondence with Neiswonger.*** All correspondence with Neiswonger concerning this Consent Order and Agreement shall be addressed to:

Vincent Neiswonger  
President  
Neiswonger Construction, Inc.  
17592 Route 322  
Strattanville, PA 16258

Email: [vinnie@neiswongerinc.com](mailto:vinnie@neiswongerinc.com)

Neiswonger shall notify the Department whenever there is a change in the contact person's name, title, or address. Neiswonger agrees that service of any notice, document, or any legal process for any purpose under this Consent Order and Agreement, including its enforcement,

may be made electronically by email to the above email address or by mailing a copy by first class mail to the above address.

12. **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.

13. **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.

14. **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.

15. **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.

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. Neiswonger waives its rights to appeal to the Environmental Hearing Board any decision that the Department makes under the provisions of this Consent Order and Agreement, including a notice that stipulated civil penalties are due, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-

94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. The Department agrees that any objection that Neiswonger may have to any such decision may be raised as a defense in any Court where the Department enforces this Consent Order and Agreement.

**Termination.** The obligations in this Consent Order and Agreement shall terminate when the Department determines that all of the obligations contained herein have been complied with, all funds due to the Department have been paid, and the Department has approved or denied the state-only operating permit application identified in Paragraph 3.a., above.

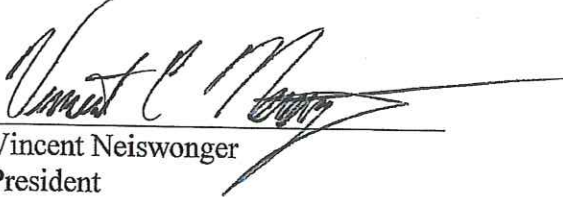
**Execution of Agreement.** This Consent Order and Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument and may be transmitted electronically via portable document format (.pdf).


IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. Neiswonger certifies under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement and that Neiswonger consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Neiswonger hereby knowingly waives its right 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 ~~Neiswonger's~~  
attorney certifies only that the agreement has been signed after consulting with counsel.) *N/A*

FOR NEISWONGER CONSTRUCTION, INC

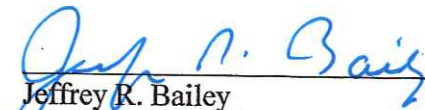
FOR THE COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT OF  
ENVIRONMENTAL PROTECTION:

  
\_\_\_\_\_  
Vincent Neiswonger  
President

  
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Mark R. Gorog, P.E.  
Air Quality Program Manager

*N/A*  
\_\_\_\_\_  
Name  
Title

*Rich Sex Berns White*  
\_\_\_\_\_  
Name  
Attorney for Neiswonger Construction Inc

  
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Jeffrey R. Bailey  
Assistant Counsel