

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2007-1197-MSW-E TCEQ ID RN105242549 CASE NO. 34334
RESPONDENT NAME: N.E. CONSTRUCTION, LLP

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 103 High School Drive, Grand Prairie, Dallas County

TYPE OF OPERATION: Construction company

SMALL BUSINESS: Yes No N/A

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired February 1, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Mr. Clinton Sims, Waste Enforcement Section, MC 169, (512) 239-6933

TCEQ Regional Contact: Mr. Sam Barrett, Dallas/Fort Worth Regional Office, MC R-04, (817) 588-5903

Respondent: Mr. Charlie Nicholas, Partner, N.E. Construction LLP, 420 Southfork Drive, Lewisville Texas 75057

Respondent's Attorney: Mr. Vincent P. Dhooghe, Attorney at Law, 420 Southfork Drive, Lewisville, Texas 75057

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: June 7, 2007</p> <p>Date of NOE Relating to this Case: July 3, 2007</p> <p>Background Facts: The EDPRP was filed on June 17, 2008. The Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the agreed order was signed on November 27, 2009.</p> <p>Current Compliance Status: No outstanding Technical Requirements. The waste material from the Site was disposed of at an authorized facility (Skyline Landfill).</p> <p>MSW: Failed to prevent the unauthorized transportation and disposal of municipal solid waste. Specifically, approximately 2,535 cubic yards of Regulated Asbestos Containing Material ("RACM") generated at the Site was disposed of at the City of Grand Prairie Landfill and the City of Arlington Landfill. These landfills were not authorized to accept RACM [30 TEX. ADMIN. CODE §§ 330.7 and 330.15(a)(3)].</p>	<p>Total Assessed: \$33,061</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$931/\$32,130</p> <p>The Respondent paid \$931 of the administrative penalty. The remaining amount of \$32,130 shall be payable in 35 monthly payments of \$918 each.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the City of Grand Prairie removed all remaining waste material from the Site in 2007, and the removal of all remaining waste material from the site was confirmed during a site visit by a TCEQ Dallas/Fort Worth Regional Office investigator on May 8, 2007.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

TCEQ

DATES	Assigned	9-Jul-2007			
	PCW	23-Jul-2007	Screening	27-Jul-2007	EPA Due

RESPONDENT/FACILITY INFORMATION			
Respondent	N.E. Construction, LLP		
Reg. Ent. Ref. No.	RN105242549		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	34334	No. of Violations	1
Docket No.	2007-1197-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Clinton Sims
Multi-Media		EC's Team	EnforcementTeam 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$5,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage

Compliance History	0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No adjustments due to average performer classification.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

	50% Enhancement*	Subtotal 6	\$2,500
Total EB Amounts	\$28,061	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$32,955		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$7,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	340%	Adjustment	\$25,561
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes: Recommended adjustment to capture the avoided cost benefit associated with the disposal of the municipal solid waste.

Final Penalty Amount	\$33,061
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$33,061
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$33,061
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Screening Date 27-Jul-2007

Docket No. 2007-1197-MSW-E

PCW

Respondent N.E. Construction, LLP

Policy Revision 2 (September 2002)

Case ID No. 34334

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN105242549

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustments due to average performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 27-Jul-2007

Docket No. 2007-1197-MSW-E

PCW

Respondent N.E. Construction, LLP

Policy Revision 2 (September 2002)

Case ID No. 34334

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN105242549

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Violation Number 1

Rule Cite(s) 30 Tex. Admin Code §§ 330.15(a)(3) & 330.7

Violation Description Failed to prevent the unauthorized transportation and disposal of municipal solid waste. Specifically, approximately 2,535 cubic yards of RACM (Regulated Asbestos Containing Material) generated at the site was disposed of at the City of Grand Prairie Landfill and the City of Arlington Landfill. The landfills were not authorized to accept RACM.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual		x		25%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
	Human health or the environment has been exposed to significant amounts of pollutants which do not exceed protective levels as a result of the violation.				

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2 50 Number of violation days

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$5,000

Two monthly events are recommended from the June 7, 2007 investigation date to the July 27, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$28,061

Violation Final Penalty Total \$33,061

This violation Final Assessed Penalty (adjusted for limits) \$33,061

Economic Benefit Worksheet

Respondent N.E. Construction, LLP
Case ID No. 34334
Reg. Ent. Reference No. RN105242549
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal	\$32,955	7-Jun-2007	29-Mar-2008	0.8	\$1,336	\$26,725	\$28,061
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost differential between disposal at an unauthorized facility as opposed to an authorized facility. Date Required is the investigation date and the Final Date is the expected date of compliance.

Approx. Cost of Compliance \$32,955

TOTAL \$28,061

Compliance History

Customer/Respondent/Owner-Operator: CN603171554 N.E. CONSTRUCTION, LLP Classification: AVERAGE Rating: 3.01
Regulated Entity: RN105242549 FORMER PRAIRIE PARK APARTMENTS Classification: AVERAGE BY DEFAULT Site Rating: 3.01
ID Number(s):
Location: 103 HIGHSCHOOL DR, GRAND PRAIRIE, TX, 75050 Rating Date: 9/1/2006 Repeat Violator: NO
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: August 09, 2007
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: August 09, 2002 to August 09, 2007

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Clinton Sims Phone: (512)239-6933

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 07/03/2007 (563446)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
N.E. CONSTRUCTION, LLP;
RN105242549

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-1197-MSW-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the N.E. Construction, LLP ("N.E. Construction") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and N.E. Construction, represented by Vincent P. Dhooche, Attorney at Law, appear before the Commission and together stipulate that:

1. N.E. Construction owns and operates a construction company conducting activities at 103 High School Drive, Grand Prairie, Dallas County, Texas (the "Site").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361 and TCEQ rules.
3. The Commission and N.E. Construction agree that the Commission has jurisdiction to enter this Agreed Order, and that N.E. Construction is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by N.E. Construction of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of thirty-three thousand sixty-one dollars (\$33,061.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). N.E. Construction paid nine hundred thirty-one dollars (\$931.00) of the administrative penalty. The remaining amount of thirty-two thousand one hundred thirty dollars (\$32,130.00) of the administrative penalty shall be payable in 35 monthly payments of nine hundred eighteen dollars (\$918.00) each. The first monthly payment shall be paid

within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If N.E. Construction fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, N.E. Construction's failure to meet the payment schedule of this Agreed Order constitutes the failure by N.E. Construction to timely and satisfactorily comply with all of the terms of this Agreed Order

6. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
7. The Executive Director of the TCEQ and N.E. Construction agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director recognizes that the City of Grand Prairie removed all remaining waste material from the Site in 2007, and the removal of all remaining waste material from the site was confirmed during a Site visit by a TCEQ Dallas/Fort Worth Regional Office investigator on May 8, 2007.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that N.E. Construction has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

1. During an investigation conducted on June 7, 2007, a TCEQ Dallas/Fort Worth Regional Office investigator documented that N.E. Construction violated 30 TEX. ADMIN. CODE §§ 330.7 and 330.15(a)(3) by failing to prevent the unauthorized transportation and disposal of municipal solid waste. Specifically, approximately 2,535 cubic yards of Regulated Asbestos Containing Material ("RACM") generated at the Site was disposed of at the City of Grand Prairie Landfill and the City of Arlington Landfill. These landfills were not authorized to accept RACM.
2. N.E. Construction received notice of the violations on or about July 8, 2007.

III. DENIALS

N.E. Construction generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that N.E. Construction pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and N.E. Construction's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: N.E. Construction, LLC, Docket No. 2007-1197-MSW-E" to:

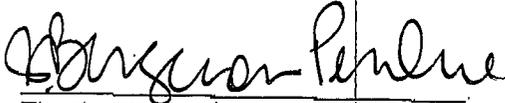
Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon N.E. Construction. N.E. Construction is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against N.E. Construction in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Agreed Order to N.E. Construction, or three days after the date on which the Commission mails notice of this Agreed Order to N.E. Construction, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

12/22/09

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on N.E. Construction's compliance history;
- Greater scrutiny of any permit applications submitted by N.E. Construction;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against N.E. Construction;
- Automatic referral to the Attorney General's Office of any future enforcement actions against N.E. Construction; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

11/27/09
Date

CHARLIE NICHOLAS

Name (Printed or typed)
Authorized representative of
N.E. Construction, LLP

PARTNER

Title