

**DAN DOW**  
**DISTRICT ATTORNEY**

1035 Palm Street  
San Luis Obispo, CA 93408

Tel. (805) 781-5800  
Fax. (805) 781-4307  
[www.slocounty.ca.gov/DA](http://www.slocounty.ca.gov/DA)



**Lee V. Cunningham**  
Assistant District Attorney

**Jerret C. Gran**  
Chief Deputy District Attorney

**Sheryl M. Wolcott**  
Chief Deputy District Attorney

**William M. Hanley**  
Chief, Bureau of Investigations

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**PRESS RELEASE**

**McNamara Realty to Pay \$30,000 Settlement  
In Asbestos Disposal Case**

SAN LUIS OBISPO, CA, May 25, 2017 – District Attorney Dan Dow announced today that San Luis Obispo County Superior Court Judge Barry T. LaBarbera has ordered McNamara Realty to pay \$30,000 for penalties and costs, as a result of a settlement of a civil environmental protection action filed by the District Attorney’s Office alleging the company mishandled asbestos, a hazardous waste.

The stipulated judgment between McNamara Realty and the San Luis Obispo County District Attorney’s Office, resolves claims made in a civil enforcement lawsuit filed May 23, 2017. The lawsuit centered on McNamara Realty’s removal of approximately 1100 square feet of asbestos-containing acoustic ceiling material from several residential rental units under its management. The ceiling material was determined to be hazardous waste under state law. The suit also alleged that McNamara Realty failed to notify the San Luis Obispo County Air Pollution Control District prior to the removal of the ceiling material, failed to have staff trained in asbestos abatement on-site during the removal, failed to track the material as required by law, and caused the material to be disposed of at a facility that was not permitted to receive hazardous waste.

“California law describes the proper methods for the removal, transportation and disposal of hazardous waste, such as asbestos. When a business cuts corners in violation of the law it places competing companies at a financial disadvantage and places the health of the public at risk,” said District Attorney Dan Dow.

Under the settlement, McNamara Realty must pay \$15,000 in civil penalties and \$15,000 to reimburse the costs of the investigation. The property management company will be bound under the terms of a permanent injunction prohibiting similar future violations of law. McNamara Realty was cooperative in the investigation and has implemented procedures designed to eliminate the improper removal and disposal of asbestos containing material.

This case was investigated by the San Luis Obispo County Air Pollution Control District in conjunction with the District Attorney’s Consumer and Environmental Protection Division and was prosecuted by Deputy District Attorney Eric Dobroth.

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Dan Dow  
District Attorney  
State Bar #237986  
Eric J. Dobroth  
Deputy District Attorney  
State Bar #197676  
County of San Luis Obispo  
County Government Center, Room 450  
San Luis Obispo, CA 93408  
Telephone: (805) 781-5800

**FILED**

**MAY 24 2017** *De*

**SAN LUIS OBISPO SUPERIOR COURT**  
BY D. O'Leary, Deputy Clerk

Attorneys for Plaintiff, The People of the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN LUIS OBISPO

**THE PEOPLE OF THE STATE OF CALIFORNIA,**  
  
**Plaintiffs,**  
  
**v.**  
  
**MCNAMARA REALTY**  
  
**Defendant.**

CASE NO.: 17CV0288

STIPULATION FOR ENTRY OF FINAL JUDGMENT AND PERMANENT INJUNCTION; ORDER THEREON

ACTION FILED:

This Stipulation for Entry of Final Judgment and Permanent Injunction ("Final Judgment") is entered into by Plaintiff, The People of the State of California ("People"), and Defendant, McNamara Realty ("McNamara"). The People and McNamara shall be referred to collectively as "Parties." The Parties have stipulated and consented to the entry of this Final Judgment prior to trial. The Parties have agreed to settle the above captioned matter without further litigation, as set forth below; and,

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1 WHEREAS, the People have investigated facilities owned and operated by  
2 McNamara for alleged violations relating to the removal, transportation, and  
3 disposal of hazardous wastes; and,

4 WHEREAS, McNamara cooperated with the People during the course of the  
5 People's investigation; and,

6 WHEREAS, the People believe that the resolution embodied in this Final  
7 Judgment is fair and reasonable, fulfills the People's enforcement objectives and  
8 furthers the public interest; and that except as provided in this Final Judgment, no  
9 further action is warranted concerning the allegations contained in the Complaint;  
10 and,

11 WHEREAS, McNamara believes that this Final Judgment is a fair and  
12 reasonable resolution to avoid the expense and uncertainty of trial of the matters  
13 alleged in the Complaint; and,

14 WHEREAS, this Final Judgment is intended to be a full, final and complete  
15 resolution as to the "Covered Matters" defined herein;

16 AND WHEREAS, the Court finds that the settlement between the Parties is  
17 fair and in the public interest;

18 NOW THEREFORE, upon the consent of the Parties, it is hereby ORDERED,  
19 ADJUDGED, AND DECREED:

20 **FINAL JUDGMENT AND PERMANENT INJUNCTION ON CONSENT**

21  
22 **1. JURISDICTION**

23 The Parties stipulate and agree that the Superior Court of California, County  
24 of San Luis Obispo, has subject matter jurisdiction over the matters alleged in this  
25 action and personal jurisdiction over the Parties to this Final Judgment.

26 **2. SETTLEMENT OF DISPUTED CLAIMS**

27 This Final Judgment is not an admission by McNamara regarding any issue of  
28 law or fact in the above-captioned matter or any violation of any law, or any

1 admission or acknowledgment of wrongdoing; the Parties enter into this Final  
2 Judgment pursuant to a compromise and settlement of disputed claims, as set forth  
3 in the Complaint filed in this action.

4 All Parties have stipulated and consented to the entry of this Final Judgment  
5 prior to the taking of any proof, and without trial or adjudication of any fact or law  
6 herein. The Parties also waive their right to appeal.

7 **3. DEFINITIONS**

8 Except where otherwise expressly defined in this Final Judgment, all terms  
9 shall be interpreted consistent with Chapters 6.5 of Division 20 of the Health and  
10 Safety Code; and the regulations promulgated under these Chapters and Sections.

11 "McNamara Facilities" means current and former residential and commercial  
12 properties owned at least in part by McNamara and residential and commercial  
13 properties managed by McNamara, including those acquired during the life of the  
14 Permanent Injunction.

15 "Covered Facilities" means the "McNamara Facilities" as defined above.

16 **4. INJUNCTIVE RELIEF**

17 Pursuant to the provisions of Health and Safety Code Section 25181 and  
18 Business and Professions Code Section 17203, and subject to Paragraph 20 below,  
19 McNamara is permanently enjoined and shall comply with the injunctive provisions in  
20 Paragraph 4.1, below. Notwithstanding any other provision in this Final Judgment,  
21 nothing in this Final Judgment shall relieve McNamara from prospectively complying  
22 with all applicable laws and regulations.

23 **4.1 Injunctive Provisions**

24 McNamara shall comply with each of the following provisions:

25 4.1.a. McNamara, their employees and agents shall obtain the services of a  
26 Certified Asbestos Consultant to prepare an Asbestos Operations and Management  
27 Plan (hereinafter "Plan") for their managed properties. The goal of the Plan shall be  
28 to reduce the potential exposure risk of all building workers and occupants to

1 asbestos fibers. The Plan shall be site specific and address all McNamara Facilities  
2 that consist of five (5) or more living units. A written draft shall be provided to the  
3 San Luis Obispo County Air Pollution Control District for their review and comment  
4 regarding compatibility with applicable law.

5 4.1.b. McNamara shall notify the tenants, renters, lease holders, and co-  
6 signers of the below listed apartment units from the date of renovation on that  
7 specific apartment unit through April 1, 2014 of the potential removal of regulated  
8 asbestos containing material during their tenancy. Language for the notification  
9 shall be submitted to the San Luis Obispo County District Attorney's Office for review  
10 and comment prior to notification. Additionally, McNamara shall notify the former and  
11 current employees who were directly involved with renovation activities related to the  
12 below listed apartment units of their potential exposure to regulated asbestos  
13 containing materials. The apartment units subject to this subsection are:

- 14 A. Units B and C at 1303 Foothill Blvd, San Luis Obispo, CA;
- 15 B. Units A, B, G and H at 1309 Foothill Blvd, San Luis Obispo, CA;
- 16 C. Units B, D and F at 1315 Foothill Blvd, San Luis Obispo, CA.

17 4.1.c. McNamara shall obey all federal, state and local laws, regulations,  
18 ordinances, rules and orders relating to the removal, transportation and disposal of  
19 regulated asbestos containing materials at all McNamara Facilities.

20  
21 **5. CIVIL PENALTIES AND REIMBURSEMENTS**

22 **5.1 Civil Penalties**

23 5.1.a. On or before December 1, 2017, McNamara shall pay FIFTEEN  
24 THOUSAND (\$15,000.00) as civil penalties pursuant to Health and Safety Code  
25 Section 25189 and Business and Professions Code Section 17206, to the San Luis  
26 Obispo County District Attorney's Office, payable to the same, delivered to:

27 Eric J. Dobroth  
28 Deputy District Attorney  
San Luis Obispo County District Attorney's Office  
Consumer and Environmental Protection Division

1 1050 Palm St, Rm 450  
2 San Luis Obispo, CA 93401

3 **5.2 Reimbursement of Costs of Investigation and Enforcement**

4 On or before December 1, 2017, McNamara shall pay FIFTEEN THOUSAND  
5 DOLLARS (\$15,000.00) for reimbursement of costs of investigation, and other costs  
6 of enforcement, to the San Luis Obispo County Air Pollution Control District

7 (Reference NOV #2907), payable to the same, delivered to:

8 Larry R. Allen.  
9 Air Pollution Control Officer  
10 San Luis Obispo County A.P.C.D.  
11 3433 Roberto Ct  
12 San Luis Obispo, CA 93401

13 **6. ENFORCEMENT OF FINAL JUDGMENT AND PENALTIES**

14 Plaintiff may move this Court for additional relief in the event of the failure to  
15 comply with the injunction set forth herein or with the terms and conditions of the  
16 Final Judgment entered hereon, which may subject McNamara to enforcement  
17 proceedings, including, but not limited to, contempt and/or additional sanctions,  
18 penalties, or injunctive relief, in accordance with California law and consistent with  
19 the provisions of this Final Judgment. An allegation or enforcement action and  
20 McNamara documentation demonstrating compliance (or a return to compliance)  
21 shall not automatically result in a contempt action.

22 **7. MATTERS COVERED BY THIS FINAL JUDGMENT**

23 7.1 This Final Judgment is a final and binding resolution and settlement of,  
24 all claims, violations and/or causes of action alleged by the People in the Complaint  
25 regarding the McNamara Facilities, and including, but not limited to, all claims,  
26 violations, causes of action, or possible proceedings arising out of the same facts  
27 and circumstances alleged in the Complaint that the People could have alleged or  
28 pursued against McNamara, or arising out of any facts and circumstances about  
Plaintiff became aware or reasonably should have been aware during  
Plaintiff's investigation underlying this matter. The matters described in the previous

1 sentence are "Covered Matters." Any claim, violation, or cause of action that is not a  
2 Covered Matter is a "Reserved Claim." Reserved Claims include, without limitation,  
3 any unknown violation, any violation that occurs after the filing of this Final Judgment  
4 and Permanent Injunction, and any claim, violation, or cause of action against  
5 McNamara's independent contractors or subcontractors. The Parties reserve the  
6 right to pursue any Reserved Claim and to defend against any Reserved Claim.

7 7.2 In any subsequent action that may be brought by the People based on  
8 any Reserved Claim, McNamara agrees that it will not assert that failing to pursue  
9 any Reserved Claim as part of this action constitutes claim-splitting.

10 7.3 The provisions of paragraph 7.1 are effective on the date of entry of  
11 the Final Judgment.

12 7.4 Paragraph 7.1 does not limit the ability of the People to enforce the  
13 terms of this Final Judgment.

14 7.5 McNamara covenants not to pursue any civil or administrative claims  
15 against the People or against any agency of the County or City of San Luis Obispo  
16 (collectively "Agencies"), or against any of their officers, employees, representatives,  
17 agents or attorneys, arising out of or related to any Covered Matter; provided,  
18 however, that if any Agency initiates a claim against McNamara, McNamara  
19 reserves any and all rights, claims, demands and defenses against such Agency.

20 7.6 Any event that is beyond the control of McNamara that prevents timely  
21 or full performance of any obligation under Paragraph 4 of this Final Judgment and  
22 that could not have been prevented by the exercise of prudence, diligence and care,  
23 is a "*force majeure*" event, which shall excuse timely or full performance to the  
24 extent caused by such *force majeure* event. "*Force majeure*" does not include acts  
25 or omissions of McNamara or its employees or financial inability to fund or complete  
26 the obligation.

27 **8. NOTICE**

28 All submissions and notices required by this Final Judgment shall be sent to:

1 For the People:  
2 Eric J. Dobroth  
3 Deputy District Attorney  
4 San Luis Obispo County District Attorney's Office  
5 Consumer & Environmental Protection Division  
6 1035 Palm Street, Rm 450  
7 San Luis Obispo, CA 93408  
8 (805) 781-5800  
9 [edobroth@co.slo.ca.us](mailto:edobroth@co.slo.ca.us)

6 For McNamara Realty:

7 Jeffrey C. Radding  
8 Attorney at Law  
9 1035 Walnut Street  
10 San Luis Obispo, CA 93401  
11 [radding@msn.com](mailto:radding@msn.com)

and to

12 Michael McNamara  
13 McNamara Realty  
14 390 Higuera Street  
15 San Luis Obispo, CA 93401

10 Any Party may change its notice name and address by informing the other  
11 party in writing, but no change is effective until it is received. All notices and other  
12 communications required or permitted under this Final Judgment that are properly  
13 addressed as provided in this paragraph are effective upon delivery if delivered  
14 personally or by overnight mail, or are effective five (5) days following deposit in the  
15 United States mail, postage prepaid, if delivered by mail, or the day that electronic  
16 mail is sent if sent before 5 p.m. to the electronic mail addresses of the designated  
17 recipients for notice concurrent with sending the notice by overnight mail.

18 **9. EFFECT OF FINAL JUDGMENT**

19 Except as expressly provided in this Final Judgment, nothing in this Final  
20 Judgment is intended, nor shall it be construed, to preclude the People from  
21 exercising its authority under any law, statute or regulation. Except as expressly  
22 provided in this Final Judgment, McNamara retains all of its defenses to the exercise  
23 of the aforementioned authority.

24 **10. NO WAIVER OF RIGHT TO ENFORCE**

25 The failure of the People to enforce any provision of this Final Judgment shall  
26 neither be deemed a waiver of such provision nor in any way affect the validity of  
27 this Final Judgment. The failure of the People to enforce any such provision shall not  
28

1 preclude them from later enforcing the same or any other provision of this Final  
2 Judgment, subject to Paragraph 20 below. Except as expressly provided in this  
3 Final Judgment, McNamara retains all defenses allowed by law to any such later  
4 enforcement. No oral advice, guidance, suggestions or comments by employees or  
5 officials of any Party regarding matters covered in this Final Judgment shall be  
6 construed to relieve any Party of its obligations under this Final Judgment.

7 **11. FUTURE REGULATORY CHANGES**

8 Nothing in this Final Judgment shall excuse McNamara from meeting any  
9 more-stringent requirement that may be imposed by applicable law or by any change  
10 in the applicable law. To the extent any future statutory or regulatory change makes  
11 McNamara's obligations less stringent than those provided for in this Final  
12 Judgment, McNamara's compliance with the changed law shall be deemed  
13 compliance with this Final Judgment.

14 **12. APPLICATION OF FINAL JUDGMENT**

15 This Final Judgment shall apply to and be binding upon the People and upon  
16 McNamara.

17 **13. AUTHORITY TO ENTER FINAL JUDGMENT**

18 Counsel for the People are statutorily authorized to bring the causes of action  
19 alleged in the Complaint, pursuant to Business and Professions Code section  
20 17204, and Health & Safety Code section 25182. McNamara certifies that each  
21 signatory on its behalf is fully authorized to enter into this Final Judgment, to execute  
22 it on McNamara's behalf, and to legally bind McNamara.

23 **14. CONTINUING JURISDICTION**

24 The Court shall retain continuing jurisdiction to enforce the terms of this Final  
25 Judgment and to address any other matters arising out of or regarding this Final  
26 Judgment. The Parties shall meet and confer at least ten (10) business days prior to  
27 the filing of any application or motion relating to this Final Judgment, and shall  
28 negotiate in good faith in an effort to resolve any dispute without judicial intervention.

1 If the Parties are unable to resolve their dispute after meet-and-confer discussions,  
2 any Party may move this Court seeking a resolution of that dispute by the Court.

3 **15. ABILITY TO INSPECT AND COPY RECORDS AND DOCUMENTS**

4 On reasonable notice, McNamara shall permit any duly authorized  
5 representative of the People to inspect and copy records and documents reasonably  
6 relevant to determine compliance with the terms of this Final Judgment. Nothing in  
7 this paragraph is intended to require access to or production of any documents that  
8 are protected from production or disclosure by the attorney-client privilege, attorney  
9 work product doctrine, any other applicable privilege, defense, exemption, or  
10 immunity afforded to McNamara under applicable law, nor does it waive any of the  
11 objections or defenses to which McNamara would be entitled in responding to  
12 requests for documents made by subpoena or other formal legal process or  
13 discovery. This obligation shall not require McNamara to alter its normal document-  
14 retention. Nothing in this paragraph is intended to limit the authority of any  
15 governmental agency to inspect McNamara or its records and documents under  
16 applicable law.

17 **16. PAYMENT OF LITIGATION EXPENSES AND FEES**

18 McNamara shall make no request of the People to pay its attorney fees,  
19 expert witness fees and costs, or investigation incurred to date. Other than as set  
20 forth herein, the People shall bear its own fees and costs associated with this action,  
21 the claims set forth, and the investigation thereof.

22 **17. COUNTERPART SIGNATURES**

23 This Final Judgment may be executed by the Parties in counterparts.

24 **18. INTEGRATION**

25 This Final Judgment constitutes the entire agreement between the Parties  
26 and may not be amended or supplemented except as provided for herein. No oral  
27 representations have been made or relied upon other than as expressly set forth  
28 herein.

1  
2 **19. MODIFICATION OF FINAL JUDGMENT**

3 This Final Judgment may be modified only on noticed motion by one of the  
4 Parties with approval of the court, or upon written consent by all of the Parties and  
5 the approval of the court.

6 **20. TERMINATION OF FINAL JUDGMENT**

7 At any time after the date that is sixty (60) days before this Final Judgment  
8 has been in effect for five (5) years, and McNamara has paid any and all amounts  
9 due under the Final Judgment, any Party may provide notice to the Court (which  
10 shall be served on all Parties designated to receive notice under Paragraph 8) that  
11 the injunctive provisions of this Final Judgment should expire and have no further  
12 force and effect ("Notice of Termination"). The injunctive provisions of this Final  
13 Judgment will be of no further force or effect sixty (60) days thereafter, unless the  
14 People file a motion contesting the expiration of any particular injunctive provision(s)  
15 within forty (40) days of receipt of the Notice of Termination. In the event that such  
16 motion is filed, none of the injunctive provisions of the Final Judgment contested in  
17 the People's motion will terminate pending the Court's ruling on the motion. The  
18 People's right to contest termination of injunctive provision(s) pursuant to this  
19 paragraph shall be exclusively on the grounds that McNamara has not substantially  
20 complied with the provision(s) being contested, and includes the right to offer any  
21 evidence relevant to such motion. McNamara reserves its rights to respond to any  
22 grounds raised in the People's motion and to offer any evidence relevant to such  
23 motion. The motion shall be noticed for hearing as soon after it is filed as feasible,  
24 given the court's calendar; provided that McNamara shall have a minimum of forty  
25 (40) days to file a response to the motion, unless it waives such time period and  
26 seeks an earlier hearing. The injunctive provisions in the Final Judgment will expire  
27 and be of no further force or effect unless the Court (upon consideration of the  
28 Parties' pleadings, arguments, and evidence or documents submitted to the Court, if

1 any) determines that the expiration of the provision(s) at issue would not be in the  
2 interests of justice because McNamara has not substantially complied in material  
3 respects with such provision(s).

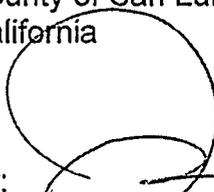
4 The termination of any injunctive provisions of this Final Judgment shall have  
5 no effect on McNamara's obligation to comply with the requirements imposed by  
6 statute, regulation, ordinance, or law.

7 **IT IS SO STIPULATED.**

8 FOR THE PEOPLE:

9  
10 DAN DOW, District Attorney  
County of San Luis Obispo, State of  
California

11  
12 DATED: May 23, 2017

13 By:   
14 ERIC J. DOBROTH  
Deputy District Attorney

15  
16 FOR MCNAMARA REALTY:

17  
18 DATED: May 17, 17

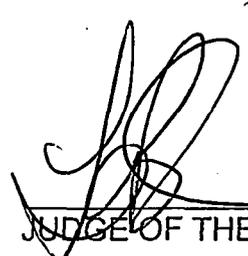
19 By:   
20 MICHAEL MCNAMARA  
OWNER McNamara Realty

21  
22 DATED: May 22, 17

23 By:   
24 JEFFERY C. RADDING  
COUNSEL FOR McNamara Realty

25 **IT IS SO ORDERED.**

26 DATED: May 24 17

27 By:   
28 JUDGE OF THE SUPERIOR COURT