

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION No. _____

COMMONWEALTH OF MASSACHUSETTS,)
))
Plaintiff,)
))
v.)
))
TED RILEY & COMPANY, INC. d/b/a)
ENVIRO-SAFE ENGINEERING,)
))
Defendant.)

CONSENT JUDGMENT
BETWEEN THE
COMMONWEALTH AND TED
RILEY & COMPANY, INC. d/b/a
ENVIRO-SAFE ENGINEERING

I. INTRODUCTION

WHEREAS, Plaintiff, the Commonwealth of Massachusetts (“Commonwealth”), acting by and through the Attorney General and the Massachusetts Department of Environmental Protection (“Department”), has filed a Complaint in this action alleging that Defendant, Ted Riley & Company, Inc. d/b/a Enviro-Safe Engineering (“Enviro-Safe”), has violated the Massachusetts Clean Air Act, G.L. c. 111, §§ 142A-O (“CAA”) and its regulations at 310 C.M.R. § 7.15 (“Asbestos Regulations”) at several buildings in Everett, Massachusetts (“the Site”);

WHEREAS, the Complaint alleges that Enviro-Safe caused, suffered, allowed, or permitted asbestos abatement activity at the Site that violated the CAA and Asbestos Regulations and resulted in conditions of air pollution by conducting a deficient and unlawful asbestos survey that failed to inspect numerous areas and identify asbestos in and around structures at the Site;

WHEREAS, the Commonwealth’s Complaint seeks injunctive relief and the assessment of civil penalties;

WHEREAS, the Commonwealth and Enviro-Safe (collectively, the “Parties”) have reached an agreement to resolve the Commonwealth’s claims against Enviro-Safe, including an agreement on the amount of a civil penalty;

WHEREAS, the Commonwealth and Enviro-Safe consent to the entry of this Consent Judgment without a trial on any issues and agree that the entry of this Consent Judgment is an appropriate means to resolve this case; and

WHEREAS, the Parties agree that the settlement of this matter has been negotiated in good faith and at arm’s length, that implementation of this Consent Judgment will avoid prolonged and complicated litigation between the Parties, and that this Consent Judgment is consistent with the goals of the CAA and Asbestos Regulations and in the public interest.

NOW, THEREFORE, based on the Joint Motion of the Parties for Entry of this Consent Judgment, and before taking any testimony and without the adjudication of any issue of fact or law except as provided in Section II (Jurisdiction and Venue), it is **ADJUDGED, ORDERED, AND DECREED**, as follows:

II. JURISDICTION AND VENUE

1. The Superior Court has jurisdiction over the subject matter of this action and over the parties to it pursuant to G.L. c. 111, § 142A, and G.L. c. 214, §§ 1 and 3. Venue is proper in Suffolk County pursuant to G. L. c. 223, § 5.

2. The Complaint alleges facts, which, if proven, would constitute good and sufficient grounds for the relief set forth in this Consent Judgment.

III. PARTIES BOUND

3. This Consent Judgment shall constitute a binding agreement between the Parties, and Enviro-Safe consents to its entry as a final judgment by the Court and waives all rights of appeal

upon its entry on the docket. If the Superior Court declines to enter this Consent Judgment on any ground except one related to form, this Consent Judgment is voidable at the option of either Party within fourteen (14) days of the Court's decision. If, on the other hand, the Superior Court determines that substantive modifications to this Consent Judgment are necessary prior to the Court's entry of it, the Parties shall enter into good faith negotiations to discuss the modifications, and this Consent Judgment shall be void unless the Commonwealth and Enviro-Safe agree otherwise in writing within fourteen (14) days of the Court's decision.

4. The provisions of this Consent Judgment shall apply to and bind Enviro-Safe, and any person or entity acting by, for, or through Enviro-Safe, including Enviro-Safe's managers, directors, officers, supervisors, employees, agents, servants, attorneys-in-fact, successors, assigns, and those persons in active concert or participation with Enviro-Safe who receive notice of this Consent Judgment.

5. Enviro-Safe shall not violate this Consent Judgment, and Enviro-Safe shall not allow its officers, directors, agents, servants, attorneys-in-fact, employees, successors, assigns, or contractors to violate this Consent Judgment. In any action to enforce this Consent Judgment, Enviro-Safe shall not raise as a defense the failure by any of its managers, directors, officers, supervisors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Judgment.

6. In addition to any relief specifically provided in this Consent Judgment, Enviro-Safe understands and agrees that violations of this Consent Judgment may be punishable by contempt.

IV. PAYMENT OF CIVIL PENALTIES

7. Enviro-Safe shall pay to the Commonwealth a civil penalty pursuant to the CAA of Fifty-Two Thousand dollars (\$52,000.00) in the following manner:

(a) Within ten (10) days of the entry of this Consent Judgment (“Entry Date”), Enviro-Safe shall pay to the Commonwealth a sum of Twenty-Six Thousand dollars (\$26,000.00); and

(b) Within ninety (90) days of the Entry Date, Enviro-Safe shall pay to the Commonwealth a sum of Twenty-Six Thousand dollars (\$26,000).

8. Enviro-Safe shall make the above-described civil penalty payments by Electronic Funds Transfer (“EFT”) to the Commonwealth of Massachusetts in accordance with current EFT procedures, using the following account information:

Commonwealth of Massachusetts, Office of the Attorney General
ABA#: 011075150
ACCOUNT#: 00088882022
SANTANDER BANK
75 STATE STREET
BOSTON, MA 02109
TIN: 046002284

and shall include the following in the payment information: “EPD, *Commonwealth v. Enviro-Safe, et al.*” Any payments received by the Commonwealth after 4:00 P.M. (Eastern Time) will be credited on the next business day. At the time of payment, Enviro-Safe shall send notice that such payment has been made to the Commonwealth by electronic mail as set forth below in Section X (Notices) and shall include all of the payment information stated in this Paragraph in addition to the amount of the payment. The Commonwealth may alter this payment information from time to time by electronic mail or first class mail to Enviro-Safe pursuant to Section X (Notices) of this Consent Judgment.

V. INJUNCTIVE RELIEF

9. For the purposes of this Section V, all terms that are defined by the CAA, the Asbestos Regulations, and 454 C.M.R. §§ 28.00, *et seq.* (“Asbestos Licensing Regulations”) shall have the meaning assigned to them in those acts and regulations.

10. Enviro-Safe shall not perform asbestos consulting services, asbestos analytical services, surveys for asbestos, asbestos sampling, or monitoring or inspection of asbestos abatement activity except in compliance with the CAA, Asbestos Regulations, and Asbestos Licensing Regulations.

11. Within ten (10) days of the Entry Date, Enviro-Safe shall have ceased all business operations, including performance of any asbestos consulting services, asbestos analytical services, surveys for asbestos, asbestos sampling, or monitoring or inspection of asbestos abatement activity.

12. Within ten (10) days of the Entry Date, Enviro-Safe president and owner, Patricia E. Riley (“Riley”), shall cease performance of all asbestos abatement activity, asbestos analytical services, surveys for asbestos, asbestos sampling, or monitoring or inspection of asbestos abatement activity except where such activity is authorized by a current, valid license of one of the following types, issued by the Massachusetts Department of Labor Standards (“DLS”) under the Asbestos Licensing Regulations: a) asbestos inspector; b) asbestos management planner; and c) asbestos designer; Riley may not hold any other type of asbestos license from DLS. In addition, Riley shall not own or act as an officer of any company that performs asbestos abatement activity or asbestos analytical services and shall not perform asbestos field work except where such work is necessary for the design of non-traditional asbestos abatement plans pursuant to 310 C.M.R. § 7.15 or filings required by the Asbestos Hazard Emergency Response

Act, 15 U.S.C. §§ 2641-56 and its Massachusetts regulations at 454 C.M.R. § 28.13 (“AHERA”).

VI. PRESERVATION OF RECORDS

13. In addition to complying with any other applicable local, State, or federal records preservation requirements, until five (5) years after the Entry Date, Enviro-Safe shall preserve at least one legible copy of all documents in its possession, custody, or control that relate to the performance of Enviro-Safe’s obligations under this Consent Judgment. If Enviro-Safe retains or employs any agent, consultant, or contractor for the purpose of complying with the terms of this Consent Judgment, then Enviro-Safe’s agreement or contract with the agent, consultant, or contractor shall require such person or persons to provide Enviro-Safe with a copy of all documents relating to the performance of Enviro-Safe’s obligations under this Consent Judgment. This requirement includes electronic documents. Any copies of documents subject to this requirement may be maintained in an electronic format.

VII. INTEREST AND COLLECTIONS

14. If any payment required pursuant to this Consent Judgment is late or not made, Enviro-Safe shall pay interest on any overdue amount for the period of such nonpayment at the rate of twelve percent (12%) pursuant to G.L. c. 231, § 6B, computed monthly, and shall pay all expenses associated with collection by the Commonwealth of the unpaid amounts and interest for any period of nonpayment after the payment obligation becomes due, including reasonable attorneys’ fees.

VIII. EFFECT OF CONSENT JUDGMENT

15. Upon compliance with the requirements of this Consent Judgment, (a) this Consent Judgment shall resolve Enviro-Safe’s liability for the specific legal claims alleged against it in

the Complaint and (b) the Commonwealth shall release Enviro-Safe from liability for the specific legal claims alleged against Enviro-Safe in the Complaint.

16. Nothing in this Consent Judgment, or any permit or approval issued by the Department or DLS: (a) shall bar any action by the Commonwealth on any legal claim not specifically pleaded in the Complaint or for any violations not revealed to the Commonwealth; (b) shall be deemed to excuse noncompliance by Enviro-Safe or any of the persons or entities otherwise bound by this Consent Judgment with any law or regulation; or (c) shall preclude a separate or ancillary action by the Commonwealth to enforce the terms of this Consent Judgment, or any permit or other approval issued by the Department or DLS. The Commonwealth expressly reserves all claims for injunctive relief for violations of all of the statutes and regulations referred to in this Consent Judgment, whether related to the specific legal claims resolved by this Consent Judgment or otherwise.

17. Nothing in this Consent Judgment shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Judgment.

IX. MISCELLANEOUS

18. Enviro-Safe understands and agrees that, pursuant to 11 U.S.C. § 523(a)(7), the civil penalty and any other costs or sums that Enviro-Safe may be required to pay under this Consent Judgment are not subject to discharge in any bankruptcy.

19. Enviro-Safe shall pay all expenses, including reasonable attorneys' fees and costs, incurred by the Commonwealth in the enforcement of this Consent Judgment.

20. Enviro-Safe waives entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure.

21. The titles in this Consent Judgment have no independent legal significance and are used merely for the convenience of the Parties.

22. Massachusetts law shall govern the interpretation and enforcement of this Consent Judgment.

23. In computing any period of time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or State or Federal holiday, the period shall run until the close of business of the next business day.

24. This Consent Judgment shall be effective when the Court enters the Consent Judgment on the docket.

X. NOTICES

25. Unless otherwise specified in this Consent Judgment, notices and submissions required by this Judgment shall be made in writing by first class mail or email to the following addresses:

For the Attorney General's Office and the Commonwealth:

Louis Dundin
Assistant Attorney General
Senior Enforcement Counsel
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Louis.dundin@mass.gov

For the Department:

Colleen McConnell
Senior Regional Counsel
Northeast Regional Office
Massachusetts Department of
Environmental Protection

Colleen.McConnell@mass.gov

For Enviro-Safe:

Patricia E. Riley
President
Enviro-Safe Engineering
203 Prospect Street
Brockton, MA 02301
prileyasb@aol.com

or, to such other place or to the attention of such other individual as a Party may from time to time designate by written notice to the other Party to this Consent Judgment.

XII. INTEGRATION

26. Except as expressly set forth in this Consent Judgment, this Consent Judgment sets forth all of the obligations of the Parties and represents the complete and exclusive statement of the Parties with respect to the terms of the settlement agreement embodied by this Consent Judgment; any other representations, communications or agreements by or between the Parties shall have no force and effect.

XIII. MODIFICATION

27. The terms of this Consent Judgment may be modified only by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to any term of this Consent Judgment, it shall be effective only by written approval of the Parties and the approval of the Court. The Commonwealth's decision to extend a deadline in this Consent Judgment shall not constitute a material change for purposes of this Paragraph.

XIV. AUTHORITY OF SIGNATORY

28. The person signing this Consent Judgment on behalf of Enviro-Safe acknowledges: (a) that he or she has personally read and understands each of the numbered Paragraphs of this Consent Judgment; (b) that, to the extent necessary, Enviro-Safe's managers, directors, officers, and shareholders have consented to Enviro-Safe entering into this Consent Judgment and to its entry as a Final Judgment; and (c) that he or she is authorized to sign and bind Enviro-Safe to the terms of this Consent Judgment.

XV. RETENTION OF JURISDICTION

29. The Court shall retain jurisdiction over this case for purposes of resolving disputes that arise under this Consent Judgment, entering orders modifying this Consent Judgment, or effectuating or enforcing compliance with the terms of this Consent Judgment and any permits, approvals, or directives issued by the Department pursuant to the terms of this Consent Judgment.

XVI. FINAL JUDGMENT

30. Upon approval and entry of this Consent Judgment by the Court, this Consent Judgment shall constitute a Final Judgment of the Court.

IT IS SO ORDERED. JUDGMENT is hereby entered in accordance with the foregoing.

By the Court:

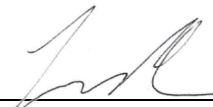
JUSTICE, SUPERIOR COURT

Date

The Undersigned Parties enter into this Consent Judgment in the matter of
Commonwealth v. Ted Riley & Company, Inc. d/b/a Enviro-Safe Engineering (Suffolk Superior
Court).

FOR THE COMMONWEALTH OF
MASSACHUSETTS

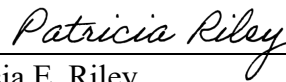
MAURA HEALEY
ATTORNEY GENERAL



Louis M. Dundin, BBO No. 660359
Assistant Attorney General
Senior Enforcement Counsel
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 963-2433
Louis.dundin@mass.gov

Dated: 11/16/22

FOR TED RILEY & COMPANY, INC. d/b/a
ENVIRO-SAFE ENGINEERING



Patricia E. Riley
President
Ted Riley & Company, Inc. d/b/a Enviro-Safe
Engineering
203 Prospect Street
Brockton, MA 02301
(617) 593-0599
prileyasb@aol.com

Dated: 11/02/22