

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

CIVIL ACTION No. 24-3155

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

METROWEST ENVIRONMENTAL SERVICES  
LLC,

Defendant

COMPLAINT

INTRODUCTION

1. During the renovation of a residential home located at 68 Hayward Street, Milford, Massachusetts (the "Site"), the Defendant, Metro West Environmental Services LLC, ("Metro West" or "Defendant") illegally and unsafely removed, stored, and handled asbestos-containing material ("ACM") and asbestos-containing waste material ("ACWM") without following legally required removal and handling safety practices.

2. Specifically, Metro West broke asbestos-containing siding during removal, left exposed pieces of dry, asbestos-containing siding to the ambient air in and around the work area at the Site, failed to close or seal the house in a manner sufficient to prevent leakage of dust or debris into interior spaces during the asbestos abatement, allowed workers to remove and handle asbestos-containing siding without protective equipment, and failed to comply with instructions from the Department of Environmental Protection (the "Department") to conduct the abatement work in compliance with applicable asbestos regulations.

SUFFOLK SUPERIOR COURT  
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ACTING CLERK

3. As a result of MetroWest's noncompliance, it repeatedly risked harm to neighbors, the public, its employees, and the environment. Accordingly, the Commonwealth of Massachusetts (the "Commonwealth") seeks civil penalties for these violations of the Clean Air Act, G.L. c. 111, §§ 142A-142O (the "Air Act"), and its regulations at, 310 C.M.R. § 7.15 (the "Asbestos Regulations").

#### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter of this action and the authority to order the requested relief pursuant to G.L. c. 111, § 142A and G.L. 12, § 11D.

5. Venue lies in Suffolk Superior Court pursuant to G.L. c. 223, § 5.

#### **PARTIES**

6. The Plaintiff is the Commonwealth of Massachusetts appearing by and through the Attorney General and the Department.

7. The Attorney General is the chief law officer of the Commonwealth, with offices at One Ashburton Place, Boston, Massachusetts. She is authorized to bring this action and to seek the relief requested herein pursuant to G.L. c. 12, §§ 8 and 11D and G.L. c. 111, § 142A.

8. The Department is an agency of the Commonwealth charged with administering and enforcing the environmental laws of the Commonwealth including the Air Act and the Asbestos Regulations. The Department maintains its principal office at 100 Cambridge Street, 9<sup>th</sup> Floor, Boston, Massachusetts, and has a regional office at 8 New Bond Street, Worcester, Massachusetts.

9. MetroWest Environmental Services LLC is a domestic limited liability company which was organized under the laws of the Commonwealth on August 3, 2022, and has a principal place of business at 68 Chelsea Street, #4, East Boston, Massachusetts 02128.

## REGULATORY BACKGROUND

10. The Air Act, initially enacted in 1954, gives the Department broad authority to “adopt regulations . . . to prevent pollution or contamination of the atmosphere.” G.L. c. 111, § 142A. Pursuant to this authority, the Department has promulgated regulations concerning air pollution control at 310 C.M.R. §§ 7.00 *et seq.*, including the Asbestos Regulations.

11. ACM is “any material containing 1% or more asbestos .... [ACM] includes, but is not limited to, sprayed-on and troweled-on materials applied to ceilings, walls, and other surfaces; insulation on pipes, boilers, tanks, ducts, and other equipment structural and non-structural members; tiles; asphalt roofing or siding materials; or asbestos-containing paper.” 310 C.M.R. § 7.15(1).

12. Asbestos is a hazardous material and known human carcinogen regulated both by the Department and the Massachusetts Department of Labor Standards. There are multiple kinds of asbestos, including chrysotile asbestos. Due to the serious health risks associated with exposure to asbestos, there is no safe exposure level. There is a high likelihood that asbestos fibers will be released into the air when asbestos material is broken or disturbed – for example during demolition or renovation work.

13. ACM is most dangerous to health when it is “friable.” Friable ACM is “any ACM, that, when dry, can be crumbled, shattered, pulverized or reduced to powder by hand pressure or any non-friable ACM that has been subjected to sanding, grinding, cutting, or abrading or has been crumbled, shattered, or pulverized by mechanical means such as, but not limited to, the use of excavators, bulldozers, heavy equipment, or power and/or hand tools.” 310 C.M.R. § 7.15(1).

14. Accordingly, the Asbestos Regulations include a program for regulating the handling of asbestos, requiring notification to the Department before commencement of certain

work and imposing detailed requirements for handling, storage, and disposal of ACM and ACWM. See 310 C.M.R. § 7.15.

15. The regulations at 310 C.M.R. § 7.15(3)(a)2. and 3. prohibit the performance of any asbestos abatement activity in a manner that causes or contributes to a condition of air pollution or poses an actual threat to human health, safety, and welfare or to the environment, and the provisions of 310 C.M.R. § 7.15(12) and (15) set forth detailed procedures for the removal and abatement of ACM siding and ACWM to prevent visible or particulate emissions of asbestos to the ambient air.

### FACTS

16. The Site is a residential property located at 68 Hayward Street, Milford, Massachusetts, and comprises approximately 8,050 square feet. It contains a two-car separate garage and a two-story, two-family house that was covered in asbestos cementitious exterior siding (“asbestos-containing siding”) prior to the events of this case.

17. The Site is surrounded on all sides by residential properties.

18. 68 Hayward St. LLC owns the Site, which it purchased on December 5, 2022.

#### *Illegal Handling of Asbestos-Containing Material at the Site*

19. On or about May 21, 2023, Defendant began asbestos abatement activities at the Site, including removal of 1,500 square feet of asbestos-containing siding from the two-family house.

#### a. May 25, 2023

20. On May 25, 2023, while conducting the abatement work, Defendant failed to employ proper removal and handling techniques for the removal of the asbestos-containing siding.

21. Defendant failed to remove and subsequently handle the asbestos-containing siding in a manner to prevent it from breaking, including by using a crowbar to rip the asbestos-containing siding off the two-family house, breaking pieces of asbestos-containing siding.

22. Defendant failed to seal both the inside and outside of windows of the two-family house, on the side of the house where the asbestos-containing siding was being removed, with polyethylene sheeting and duct tape in a manner sufficient to prevent leakage of dust or debris to the interior of the house.

23. Defendant failed to adequately wet the asbestos-containing siding with amended water prior to its removal.

24. Defendant failed to keep adequately wet the ACWM it generated from its asbestos abatement activity, and failed to keep such ACWM wet with amended water until after it was containerized and sealed in leak-tight containers.

25. On May 25, 2023, Department personnel spoke to Defendant's supervisor regarding required asbestos abatement work practices and ordered Defendant's supervisor to make corrections to the illegal asbestos abatement work practices at the Site, including by putting polyethylene sheeting on the interior of the windows of the two-family house, removing the asbestos-containing siding intact, wetting the asbestos-containing siding during removal, and not dropping the asbestos-containing siding to the ground.

26. The Department informed Defendant's supervisor that the Department would be at the Site the next day to make sure the Department's ordered corrections had been made and the legally required work practice standards were being followed.

b. May 26, 2023

27. On the morning of May 26, 2023, Defendant continued to conduct asbestos abatement work at the Site on the back side of the two-family house.

28. Defendant failed to use polyethylene sheeting in good condition during the abatement work, instead affixing polyethylene sheeting with visible holes to the building's foundation and extending out several feet.

29. Defendants caused or allowed broken pieces of asbestos-containing siding to fall through the holes in the polyethylene sheeting and scatter on the ground.

30. On May 26, 2023, a representative from the Department inspected the Site and spoke with Defendant's Asbestos Supervisor regarding required asbestos abatement work practices and reaffirmed the orders the Supervisor had received from the Department on May 25, 2023.

31. After the representative from the Department departed the Site, Defendant began abatement work on north-northeast side of the two-family house.

32. Within the work area, Defendant affixed a blue tarp under the edge of the building's roof and pulled it to the edge of the polyethylene sheeting on the ground.

33. The blue tarp did not create a containment for the asbestos abatement work, but created a visual barrier to prevent the work from being observed.

34. The employee who constructed the blue tarp visual barrier within the work area was not wearing personal protective equipment.

35. Inside the concealed work area, Defendant failed to use proper ACM removal and handling techniques, including by using a long-handled scraper to remove the asbestos-

containing siding which resulted in the asbestos-containing siding breaking during removal and subsequent handling.

36. Inside the concealed work area, Defendant failed to carefully lower the asbestos-containing siding to the ground in a manner to avoid breakage, instead dropping the asbestos-containing siding it removed from the north-northeast side of the building to the ground from heights in excess of six (6) feet, which caused the asbestos-containing siding to shatter.

37. Inside the concealed work area, Defendant failed to adequately wet the asbestos-containing siding with amended water prior to breaking it off the building and dropping it in pieces to the ground.

38. Defendant failed to adequately wet the asbestos-containing siding it removed with amended water before it was containerized.

39. The asbestos-containing siding Defendant removed from the building contained ten percent (10%) chrysotile asbestos.

40. Defendant removed, handled, and stored ACM and ACWM at the Site in a manner which caused or contributed to a condition of air pollution and posed an actual or potential threat to human health, safety, welfare, and the environment.

#### **CAUSES OF ACTION**

**COUNT I: UNLAWFUL HANDLING AND REMOVAL OF ASBESTOS AT THE SITE IN VIOLATION OF THE AIR ACT, G.L. C. 111, §§ 142A-142O, AND ASBESTOS REGULATIONS, 310 C.M.R. § 7.15**

41. The Commonwealth realleges and incorporates by reference the averments of paragraphs 1- 40.

42. The Asbestos Regulations as set forth in 310 C.M.R. § 7.15 apply to any person(s) engaged in asbestos abatement activities, to activities associated with such asbestos abatement activities, and to actions set forth in 310 C.M.R. § 7.15(3).

43. Under 310 C.M.R. §§ 7.00, 7.15(1), an “owner/operator” is “any person who has legal title, alone or with others, of a facility or dumping ground; has the care, charge, or control of a facility or dumping ground, or has control of an asbestos abatement activity, including but not limited to contractors and subcontractors.”

44. Under 310 C.M.R. § 7.00, a “person” includes “any individual, public or private partnership, association, firm, ... , company, ... , corporation ... , or any other entity recognized by law as the subject of rights and duties.”

45. Under 310 C.M.R. § 7.15(1), “asbestos-containing material” is “any material containing 1% or more asbestos .... [ACM] includes, but is not limited to, sprayed-on and troweled-on materials applied to ceilings, walls, and other surfaces; insulation on pipes, boilers, tanks, ducts, and other equipment structural and non-structural members; tiles; asphalt roofing or siding materials; or asbestos-containing paper.”

46. Under 310 C.M.R. § 7.15(1), “asbestos-containing waste material” is “any ACM removed during a demolition or renovation project and anything contaminated with asbestos in the course of demolition or renovation project including, but not limited to, asbestos waste from control devices, bags or containers that previously contained asbestos, contaminated clothing, materials used to enclose the work area during the demolition or renovation operation, and demolition or renovation debris. [ACWM] shall also include ACM on and/or in facility components that are inoperable or have been taken out of service and any ACM that is damaged.



or deteriorated to the point where it is no longer attaches as originally applied or is no longer serving the intended purpose for which it was originally installed.”

47. Under 310 C.M.R. § 7.15(1), “adequately wet” means “fixing or coating with water (or water to which a surfactant has been added), amended water or a remover-encapsulant, so as to prevent a friable condition and visible emissions. Material shall be considered adequately wetted where it has been fixed or coated with water (or water to which a surfactant has been added), amended water or a remover-encapsulant, so as to prevent a friable condition and visible emissions.”

48. Under 310 C.M.R. § 7.15(1), “amended water” is “water to which a wetting agent has been added.”

49. Under 310 C.M.R. § 7.15(1), “asbestos abatement activity” is “the removal, encapsulation, demolition, renovation, enclosure, repair, disturbance, handling, transportation, storage, or disposal of [ACM] or [ACWM] or any other activity involving [ACM] or [ACWM] that has the potential to result in a condition of air pollution.”

50. Under 310 C.M.R. § 7.15(1), “renovation” means “altering a facility or one or more facility components in any way, including stripping or removal of ACM from a facility component.”

51. Under 310 C.M.R. § 7.15(1), “work area” is “the area or location where any asbestos abatement activity or incidental maintenance work is being performed, including but not limited to: areas used for accessing the location where asbestos abatement, asbestos-associated project work or incidental work is being performed; areas used for the storage of equipment or removed materials related to asbestos abatement activity; and other areas of a facility or location

in which the Department determines that such asbestos abatement activity has been or may be an actual or potential cause of a condition of air pollution.”

52. Under 310 C.M.R. § 7.15(1), “work practice standards” means “the standards, procedures or actions for the removal, enclosure or encapsulation of asbestos, or for the demolition, renovation, maintenance or repair of facilities containing asbestos.”

53. 310 C.M.R. § 7.15(3)(a)1. provides that no person shall violate or cause, suffer, or allow a person to violate any requirement set forth in 310 C.M.R. § 7.15.

54. 310 C.M.R. § 7.15(3)(a)2. and 3. provide that no person shall cause, suffer, allow, or permit any asbestos activity which causes or contributes to a condition of air pollution, or which poses an actual or potential threat to human health, safety, and welfare or to the environment.

55. 310 C.M.R. § 7.15(12)(a) provides that asbestos cement siding shall not be broken, sanded, sawed, or drilled at any time during removal or subsequent handling.

56. 310 C.M.R. § 7.15(12)(b) requires that tarpaulin or plastic sheeting shall be spread on the ground under the areas where the siding is being removed and that said tarpaulin or plastic sheeting shall extend away from the edge of the building and to either side of the work area a sufficient distance to catch any debris generated by the work operation.

57. 310 C.M.R. § 7.15(12)(c) requires that openings on the side of the building where the asbestos abatement activities are taking place shall be closed or sealed with polyethylene sheeting and duct taped in a manner sufficient to prevent leakage of dust or debris to interior spaces.

58. 310 C.M.R. § 7.15(12)(e) requires siding be adequately wetted with amended water prior to removal.

59. 310 C.M.R. § 7.15(12)(f) requires that siding be carefully lowered to the ground in a manner to avoid breakage.

60. 310 C.M.R. § 7.15(15)(a)-(b) require that each owner or operator of a facility or facility component where any asbestos abatement activity is conducted shall adequately wet ACWM obtained from air cleaning equipment or from removal operations and, while it is adequately wet, place the ACWM into leak-tight containers.

61. Under G.L. c. 111, § 142A, this Court is authorized to enjoin further violations of the Air Act and any of the Asbestos Regulations promulgated by the Department.

62. The Defendant is a "person" within the meaning of 310 C.M.R. § 7.00.

63. Defendant was a person in control of an asbestos abatement activity at the Site, Defendant was an "operator" of the Site within the meaning of 310 C.M.R. §§ 7.00, 7.15(1).

64. The ACM siding on and removed from the two-family house contained 10% chrysotile asbestos and therefore constituted both ACM and ACWM within the meaning of 310 C.M.R. § 7.15(1).

65. The removal of siding from the two-family house at the Site at the direction of Defendant, was "renovation" work within the meaning of 310 C.M.R. § 7.15(1).

66. By causing, suffering, allowing, or permitting "removal, . . . demolition, renovation, . . . disturbance, handling, transportation, storage, or disposal of [ACM] or [ACWM]" at the Site, Defendant engaged in "asbestos abatement activity" within the meaning of 310 C.M.R. § 7.15(1).

67. By causing, suffering, allowing, or permitting asbestos abatement activity in the work areas at the Site in a manner that caused or contributed to a condition of air pollution and

posed an actual or potential threat to human health, safety, and welfare or to the environment, Defendant violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1.-3.

68. By failing to prevent the asbestos-containing siding from breaking throughout its removal and subsequent handling, Defendant violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and (12)(a).

69. By failing to spread tarpaulin or plastic sheeting on the ground under the work areas where it removed the asbestos-containing siding, Defendant violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and 12(b).

70. By failing to seal the openings on the sides of the two-family house where it performed the asbestos abatement work with polyethylene sheeting and duct tape in a manner sufficient to prevent leakage of dust or debris to interior spaces of the two-family house, Defendant violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and 12(c).

71. By failing to ensure that it adequately wetted the asbestos-containing siding with amended water prior to removal, Defendant violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and 12(e).

72. By failing to carefully lower the asbestos-containing siding to the ground in a manner to avoid breakage, Defendant violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and 12(f).

73. By failing to adequately wet the asbestos-containing siding it removed and the ACWM it generated through asbestos abatement activities, Defendant violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and 15(a).

74. By failing to containerize and seal the asbestos-containing siding and ACWM while adequately wet, Defendant violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and (15)(b).

75. Pursuant to G.L. c. 111, § 142A, Defendant is liable for civil penalties up to \$25,000 per violation per day per violation for violating the Air Act and Asbestos Regulations.

### **REQUEST FOR RELIEF**

WHEREFORE, the Commonwealth respectfully requests that this Court:

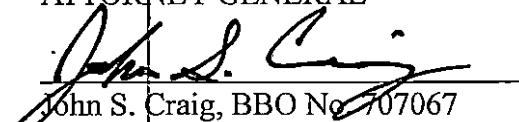
- A. **ORDER** Defendant to pay the Commonwealth a civil penalty of \$25,000 for each day of each violation of the Air Act, G.L. c. 111, § 142A, and the Asbestos Regulations, 310 C.M.R. § 7.15;
- B. **ISSUE** a permanent injunction requiring Defendant to comply with the Air Act and the Asbestos Regulations; and
- C. **GRANT** such other relief as the Court deems appropriate and just.

Respectfully submitted,

COMMONWEALTH OF  
MASSACHUSETTS

By its attorney,

ANDREA JOY CAMPBELL  
ATTORNEY GENERAL

  
John S. Craig, BBO No. 707067  
Assistant Attorney General  
Environmental Protection Division  
Office of the Attorney General  
One Ashburton Place, 18th Floor  
Boston, Massachusetts 02108  
Tel: (617) 963-2075  
John.Craig@mass.gov

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