

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION No. 24-4146

COMMONWEALTH OF MASSACHUSETTS,)
)
Plaintiff,)
)
v.)
)
HOLTEC PILGRIM, LLC and HOLTEC)
DECOMMISSIONING INTERNATIONAL,)
LLC,)
)
Defendant(s).)

COMPLAINT

2024 FEB 14 A 2:55
 JUSTICE OF THE PEACE
 ACTING CLERK MASSACHUSETTS

INTRODUCTION

1. During the decommissioning process of the former Pilgrim Nuclear Power Station (“Pilgrim”) in Plymouth, Massachusetts (the “Site”) the Defendants, Holtec Pilgrim, LLC and Holtec Decommissioning International, LLC (collectively “Defendants” or “Holtec”), caused, suffered, allowed, or permitted removal and handling of asbestos-containing material (“ACM”) and asbestos-containing waste material (“ACWM”) without using proper handling practices and without properly securing the ACWM for safe storage, transport, and disposal, causing a condition of air pollution, and repeatedly risking harm to the Defendants’ employees, contractors, workers at the receiving facilities, and the environment.

2. Specifically, Defendants failed to identify and remove all ACM before beginning demolition work on two buildings on the Site, failed to notify the Massachusetts Department of Environmental Protection (the “Department”) prior to conducting abatement of ACM, failed to submit a request for an emergency waiver to clean up ACWM, bulk loaded and removed ACWM without submittal and approval of a Non-Traditional Asbestos Abatement Work Practice

Application (“NTWP”), and illegally transported ACWM, in open-top dumpsters, to a metal recycling facility not approved to accept special waste.

3. As a result of Defendants’ improper asbestos removal, storage, transport, and disposal the Commonwealth of Massachusetts (the “Commonwealth”) seeks civil penalties for violations of that portion of the Commonwealth’s Public Health Law that addresses pollution of the atmosphere, G.L. c. 111, §§ 142A-O (the “Air Act”), and its regulations, 310 C.M.R. §§ 7.00 *et seq.* (the “Air 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. c. 12, § 11D.

5. This Court has personal jurisdiction over Defendants pursuant to the Massachusetts long-arm statute, G.L. c. 223A, § 3, and the United States Constitution.

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

PARTIES

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

8. 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, §§ 3 and 11D and G.L. c. 111, § 142A.

9. The Department is an agency of the Commonwealth charged with administering and enforcing the environmental laws of the Commonwealth including, the Air Act and Air Regulations. The Department maintains its principal office at 100 Cambridge Street, 9th Floor,

Boston, Massachusetts, and has a regional office at 20 Riverside Drive, Lakeville, Massachusetts.

10. Holtec Pilgrim, LLC, (“Holtec Pilgrim”), is a domestic limited liability company which was organized under the laws of the Commonwealth on August 22, 2019, and has a principal place of business at 600 Rocky Hill Road, Plymouth, Massachusetts 02360. Holtec Pilgrim is the owner of the Site.

11. Holtec Decommissioning International, LLC (“HDI”) is a foreign limited liability company, which was organized under the laws of Delaware on May 7, 2018, and has a principal place of business at 1 Holtec Boulevard, Camden, New Jersey 08104. HDI is the license holder and decommissioning operator for Pilgrim.

REGULATORY BACKGROUND

12. Article XCVII of the Massachusetts Constitution provides in relevant part:

The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose. The general court shall have the power to enact legislation necessary or expedient to protect such rights.

13. To further that goal, in the Air Act the General Court authorized the Department to promulgate regulations “to prevent pollution or contamination of the atmosphere,” G.L. c. 111, § 142A, pursuant to which authority the Department issued the Air Regulations, 310 C.M.R. §§ 7.00-7.72, as a comprehensive permitting scheme for emitting facilities “to attain, preserve, and conserve the highest possible quality of the ambient air compatible with needs of society.” 310 C.M.R. § 7.00 Preamble.

14. 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 anthophyllite asbestos. Because of 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:

15. Accordingly, the Air 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 (effective June 20, 2014).

16. Specifically, the Air Regulations require that any person renovating or demolishing a building that contains suspect asbestos-containing material (“SACM”) must conduct a survey of ACM at the worksite, and that anyone undertaking any asbestos abatement activities must notify the Department about the upcoming abatement at least ten (10) working days before it is to begin. 310 C.M.R. § 7.15(4), (6).

17. The regulations at 310 C.M.R. § 7.15(3)(a)2. and 3. further 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(5), (7), (8), and (15) set forth detailed procedures for the removal and abatement of ACM and ACWM to prevent visible or particulate emissions of asbestos to the ambient air. Those regulations include, among other things, the requirement that any ACM must be removed and properly disposed of prior to any demolition or renovation activity, 310 C.M.R. § 7.15(5), standards for containment and air filtration, 310

C.M.R. § 7.15(7), requirements for the handling and packaging of asbestos-containing material and asbestos-containing waste material, *id.*, and visual inspection procedures following completion of abatement projects, 310 C.M.R. § 7.15(8).

18. Additionally, the Air Regulations establish requirements for the storage and disposal of ACWM and state that the owner or operator of a facility where asbestos abatement activity is conducted shall ensure that all ACWM generated from any asbestos abatement activity is properly disposed of at a landfill approved to accept such material. 310 C.M.R. § 7.15(17).

19. A person engaging in asbestos abatement activity may only deviate from the requirements of 310 C.M.R. § 7.15 in limited circumstances, such as specified emergency situations, by applying for and complying instead with a NTWP approved by the Department. See 310 C.M.R. § 7.15(14).

FACTS

Ownership of and Description of the Site

20. The Site, located at 600 Rocky Hill Road in Plymouth, Massachusetts, is approximately 1,700 acres and is the location of Pilgrim, which was decommissioned on May 31, 2019.

21. The Site is surrounded by two perimeter security fences.

22. The Site is bounded to the north, west, and south by wooded area and to the east by Cape Cod Bay.

23. Just beyond the wooded areas to the northwest and south of the Site lie residential areas made up of single-family homes.

24. Holtec International purchased the Site and Pilgrim in August 2019. The Nuclear Regulatory Commission approved the transfer of Pilgrim's operating license to Holtec

International's subsidiaries, Holtec Pilgrim, as the owner, and HDI as the license holder and decommissioning operator for the plant.

25. The Site housed fire water storage tanks ("FWST") located in the northwest portion of the Site in the area surrounding the nuclear reactor where HDI, as the holder of the license, has the authority to determine all activities, including exclusion or removal of personnel and property from the area (the "exclusion area"). One of the FWSTs, known as FWST - Beta, (the "FWST B") is a subject of this matter.

26. The FWST B stood thirty-two (32) feet high, had a diameter of thirty-seven (37) feet, a capacity of two hundred fifty thousand (250,000) gallons, and was approximately ten (10) feet from the inner security fence, thirty (30) feet from the outer security fence, and one hundred (100) feet from the shorefront.

27. The exterior of the FWST B was painted with asbestos-containing paint, comprised of up to 2.86% anthophyllite asbestos ("FWST B Paint"). The FWST B Paint is a SACM which is presumed to be ACM until shown through testing and sampling to be negative for asbestos and must be properly handled, stored, and disposed of in accordance with the regulations.

28. The Operations and Maintenance Warehouse ("O&M Warehouse") is a forty thousand square foot (40,000ft²), single story, pre-engineered metal building.

29. The Reactor Building, located in the North Protected Area, is one of the principal structures on the Pilgrim campus. Within the Reactor Building is an area known as the 17 HPCI Area where the high-pressure coolant injection system ("HPCI") is located.

The Defendants' Illegal Removal, Storage, and Disposal of ACWM During Demolition of the FWST B

30. On February 23, 2021, and March 25, 2021, the Department met Defendants' on-site team at the Site. During these meetings, the Department conducted walkthroughs of portions of the Site and reviewed asbestos and demolition notification requirements and pre-demolition asbestos survey requirements and requested Defendants submit a comprehensive site plan and demolition schedule.

31. On April 8, 2021, the Department met virtually with Defendant's representatives and again reviewed the Department's asbestos survey and demolition requirements.

32. On May 13, 2021, the Department's asbestos staff met virtually with Defendants' representatives. During this meeting, Defendants told the Department that demolition had begun on the FWST B.

33. Defendants demolished the FWST B beginning on or about May 10, 2021.

34. Defendants failed to employ or engage an asbestos inspector to thoroughly inspect the FWST B, or those parts thereof where the demolition or renovation occurred, to identify the presence, location, amount, and condition of any ACM or SACM and to prepare a written asbestos survey report.

35. Defendants failed to file an asbestos notification form with the Department at least ten (10) days prior to causing, suffering, or allowing the demolition of the FWST B.

36. Defendants failed to obtain Department authorization prior to causing, suffering, or allowing the demolition of the FWST B.

37. Defendants failed to isolate and seal the FWST B work area before conducting demolition activities on the FWST B.

38. Defendants failed to sample or test the FWST B Paint, for the presence of asbestos prior to conducting demolition activities.

39. Defendants failed to remove and dispose of any ACM, including the FWST B Paint, prior to causing, suffering, or allowing demolition activities on the FWST B.

40. Defendants failed to use a high efficiency particulate air ("HEPA") filtered work area ventilation system ("HEPA filter system") during the demolition of the FWST B.

41. Defendants failed to ensure that a HEPA filter system remained in operation at all times until visual inspection requirements were met for the FWST B demolition.

42. Defendants failed to ensure that all exhaust air from the demolition activities was HEPA-filtered before being discharged outside of the FWST B work area.

43. Defendants failed to clean all visible debris found within the FWST B work area until there was no visible debris.

44. During the demolition, Defendants scattered ACWM debris in and around the FWST B demolition area, including the ground surface where the FWST B demolition occurred, the area between the Site's inner perimeter security fence and the Site's outer perimeter security fence, immediately adjacent to a stormwater catch basin, the reported forklift travel routes through an on-site warehouse, and the reported truck route from the FWST B area to the exit gates.

45. Defendants failed to keep ACM and ACWM adequately wet until and after it was containerized.

46. Defendants stored dry, un-containerized ACM paint chip debris from the FWST B demolition in ripped trash bags placed in open top waste bins and on the ground inside a two-story warehouse (the "Butler Building").

47. Defendants also stored ACM paint chips from the FWST B demolition in a storage shed adjacent to the FWST B.

48. Defendants stored ACM scrap metal debris painted with the FWST B Paint in an unlined Spiegel dumpster located in the demolition work area in and around the FWST B.

49. Defendants failed to seal ACWM obtained from the demolition, while it was wet, in leak-tight containers.

50. Defendants failed to properly label the ACM paint chip debris from the FWST B demolition that they removed during the demolition of the FWST B with a hazard label indicating its hazardous asbestos content and with a generator label identifying the name of the waste generator, the location at which the waste was generated, and the date of the generation.

51. Defendants' employees were present along the reported forklift travel routes where Defendants transported ACM paint chip debris from the FWST B demolition in open and unsecure bags and scattered them on the ground.

52. Defendants transported and stored ACM paint chip debris from the FWST B demolition at different locations on the Site.

53. Defendants failed to clean work areas in and around the FWST B demolition area until no debris was visible.

54. Defendants failed to engage an asbestos project manager to perform visual inspections of all surfaces within the FWST B work area for visible debris.

55. The paint chips that Defendants stored in ripped, open storage bags inside the Butler Building and scattered on the ground surrounding the FWST B demolition area contained up to 2.86% anthophyllite asbestos.

56. Defendants placed unconfined ACWM into open top waste trailers (known as “bulk loading”).

57. Defendants failed to package the ACWM in individual leak tight containers.

58. Defendants failed to ensure that all ACWM generated from the demolition of the FWST B was disposed of at a landfill approved to accept such material.

59. On May 13, 2021, Defendants delivered two, twenty (20) yard, open top waste trailers, containing ACWM scrap metal debris generated during the demolition of FWST B to Middleborough Recycling Facility.

60. On May 18, 2021, Defendants delivered an additional twenty (20) yard, open top waste trailer containing ACWM scrap metal debris generated at the Facility to Middleborough Recycling Facility.

61. Middleborough Recycling Facility is not approved to accept special waste.

62. Middleborough Recycling Facility stored the three waste trailers until they were processed and transferred to Schnitzer Steel scrap metal facility in Everett.

63. This transfer occurred on May 19, 2021.

64. Defendants caused, suffered, allowed, or permitted asbestos abatement activity at the Site when they demolished the FWST B, handled and removed the resulting ACM and ACWM, stored the ACM and ACWM inside the Butler Building, and transported the ACM and ACWM to the Middleborough Recycling Facility and risked the health of people at and around the work location and increased the likelihood that asbestos fibers were released into the air..

65. During the May 13, 2021, meeting, the Department requested that Defendants submit a copy of the asbestos survey report.

66. Defendants submitted a report to the Department, but this report did not meet the Air Regulations' requirements for an asbestos survey report.

67. The Department informed Defendants that they would need to hire an asbestos designer to evaluate the extent of the contamination from the asbestos paint chip debris and develop a NTWP to decontaminate all identified ACWM impacted areas.

68. On May 24, 2021, the Department met with Defendants' asbestos designer at the Site to conduct an inspection of the contaminated areas.

The Defendants' Illegal Removal, Storage, and Disposal of ACWM During Demolition of the O&M Warehouse

69. On January 26, 2022, Defendants' contractor began demolition of interior concrete masonry unit ("CMU") block partition walls, which contained asbestos-containing vermiculite, within the O&M Warehouse.

70. Defendants' asbestos inspector failed to recognize that the CMU block partition walls contained asbestos-containing vermiculite.

71. The asbestos survey of the O&M Warehouse submitted by Defendants failed to note that the CMU block partition walls contained asbestos-containing vermiculite.

72. Defendants failed to submit an asbestos notification form to the Department at least ten (10) days before causing, suffering, or allowing demolition activities in the O&M Warehouse.

73. Defendants failed to obtain Department authorization before causing, suffering, or allowing demolition activities in the O&M Warehouse.

74. Defendants failed to remove ACM before causing, suffering, or allowing demolition activities in the O&M Warehouse.

75. Defendants failed to isolate and seal the O&M Warehouse work area before causing, suffering, or allowing demolition activities.

76. Defendants caused, suffered, or allowed suspect asbestos-containing vermiculite to be disturbed during demolition of the CMU block partition walls.

77. Defendants failed to use a HEPA filter system during the January 26, 2022, demolition activities in the O&M Warehouse.

78. Defendants failed to ensure that a HEPA filter system remained in operation at all times until visual inspection requirements were met.

79. Defendants failed to ensure that all exhaust air from the demolition activities was HEPA-filtered before being discharged outside of the work area.

80. Defendants' asbestos consultant and contractor subsequently isolated the demolition area.

81. On January 27, 2022, Defendants caused, suffered, or allowed its contractors to conduct clean-up and containerization of comingled building debris without notifying or requesting an emergency waiver from the Department.

82. The Defendants' packaged and stored the material collected during the January 27, 2022, clean-up as ACWM and stored it in a secure location on-site.

83. Defendants then notified the Department of the discovery of the asbestos-containing vermiculite in an email dated January 28, 2022.

84. In this January 28, 2022, email, Defendants indicated that all demolition activities ceased, ACWM had been covered and made weathertight, and work would not continue until an NTWP was submitted for the clean-up of comingled building debris.

85. Defendants, during demolition, impacted approximately one hundred fifty (150) square feet of CMU block containing vermiculite.

86. On February 3, 2022, Defendants' contractor and asbestos consultant confirmed to the Department that clean-up occurred on January 27, 2022.

87. Defendants failed to submit a request for an emergency waiver to have the ACWM debris cleaned up, prior to conducting the clean-up and decontamination of the work area.

88. Defendants failed to file an asbestos notification form for the asbestos abatement activities prior to conducting the clean-up and decontamination of the work area.

89. Defendants' communication to the Department, through their contractor and asbestos consultant, did not include details about the initial clean-up and repackaging of vermiculite or decontamination of the work area.

90. Defendants caused, suffered, allowed, or permitted asbestos abatement activity at the Site when they demolished the O&M Warehouse, and removed, handled, and disposed of ACWM debris from the demolition which risked the health of people at and around the work location and increased the likelihood that asbestos fibers were released into the air.

The Defendants' Illegal Removal of ACWM During Demolition in the Reactor Building

91. On September 20, 2023, Defendants conducted repair work on a leaky pipe and gasket in the 17 HPCI Area of the Reactor Building.

92. Defendants failed to conduct an asbestos survey of the pipe and gasket prior to conducting the repair work.

93. The gasket on the pipe contained 40% Chrysotile asbestos.

94. Defendants failed to submit an asbestos notification form for the pipe and asbestos-containing gasket repair work to the Department prior to conducting such work.

95. Defendants failed to engage an asbestos inspector to perform required visual inspection procedures in the 17 HCPI work area after conducting the repair work.

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, AND AIR REGULATIONS, 310 C.M.R. §§ 7.09, 7.15

96. The Commonwealth realleges and incorporates by reference the averments of Paragraphs 1-95.

97. As described above, the Air Act and Air Regulations provide for requirements to prevent and control air pollution to protect public health and the environment, including specific requirements applicable to asbestos pollution. See 310 C.M.R. § 7.15.

98. The Air Regulations as set forth in 310 C.M.R. § 7.15 apply to any person(s) engaged in asbestos abatement activities or actions set forth in 310 C.M.R. § 7.15(3), and to activities associated with such asbestos abatement activities, including, but not limited to, notifications, surveys, visual inspections, and recordkeeping. Id. § 7.15(2)(a).

99. Section 7.15(3)(a)1. of 310 C.M.R. 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.

100. Sections 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.

101. Section 7.15(4) of 310 C.M.R. requires, with an exception not relevant here, that, the owner or operator of a facility or facility component that contains SACM shall, prior to

conducting any demolition or renovation, employ or engage an asbestos inspector to thoroughly inspect the facility or facility component, or those parts thereof where the demolition or renovation will occur, to identify the presence, location, amount, and condition of any ACM or suspect ACM and to prepare a written asbestos survey report. The survey shall identify and assess suspect ACM located in all areas that will be breached or otherwise affected by demolition or renovation activities.

102. Section 7.15(4)(c) of 310 C.M.R. requires that any suspect ACM that is not sampled and tested for the presence of asbestos must be handled and disposed of as if it were ACM and must be identified as ACM in the asbestos survey report.

103. Section 7.09(2) of 310 C.M.R. requires that any person responsible for construction or demolition of a commercial or industrial building notify the Department ten (10) days before initiating such activity.

104. Section 7.15(6) of 310 C.M.R. requires, with exceptions not relevant here, that each owner or operator of a facility or facility component notify the Department and obtain Department authorization before conducting any asbestos abatement activity by completing and submitting to the Department a Department-approved notification form at least ten (10) working days before commencing the asbestos abatement activity.

105. Section 7.15(5)(a) of 310 C.M.R. requires that each owner or operator of a facility or facility component remove and dispose of any ACM in accordance with 310 C.M.R. § 7.15 before conducting any demolition or renovation thereof.

106. Section 7.15(7)(c)4. of 310 C.M.R. requires that each owner or operator of a facility or facility component ensure that any asbestos abatement area is isolated before initiating

abatement work to prevent emissions to the ambient air by, among other things, sealing large openings like doorways with solid constriction materials and caulked seams.

107. Section 7.15(7)(e)1. of 310 C.M.R. requires that each owner or operator of a facility or facility component ensure that a HEPA filter is used to maintain a reduced atmospheric pressure in an asbestos abatement area.

108. Section 7.15(7)(e)2. of 310 C.M.R. requires that each owner or operator of a facility or facility component ensure that HEPA filters remain in operation at all times until the requirements of a visual inspection pursuant to 310 C.M.R. § 7.15(8) have been met.

109. Section 7.15(7)(e)6. of 310 C.M.R. provides that each owner or operator of a facility or facility component shall ensure that all exhaust air is HEPA-filtered before being discharged outside of the work area.

110. Section 7.15(7)(f)1. of 310 C.M.R. requires that each owner or operator of a facility or facility component ensure that all ACM is adequately wet and kept adequately wet until after it is containerized pursuant to 310 C.M.R. § 7.15(15).

111. Section 7.15(15)(a)-(b) of 310 C.M.R. require that each owner or operator of a facility or facility component adequately wet ACWM obtained from air cleaning equipment or from removal operations and, while it is wet, place the ACWM into leak-tight containers.

112. Section 7.15(7)(f)3. of 310 C.M.R. requires that each owner or operator of a facility component promptly clean up and place into leak-tight containers all ACM and ACWM.

113. Section 7.15(15)(c)-(d) of 310 C.M.R. require that each owner or operator of a facility or facility component label each container or package of ACWM with a hazard label indicating its hazardous asbestos content and with a generator label identifying the name of the waste generator, the location at which the waste was generated, and the date of generation.

114. Section 7.15(7)(f)4. of 310 C.M.R. requires that each owner or operator of a facility or facility component decontaminate all contaminated surfaces within an asbestos abatement area using HEPA vacuuming or wet cleaning techniques, so that no debris is visible.

115. Section 7.15(8)(a)-(b) of 310 C.M.R. require, with an exception not relevant here, that each owner or operator of a facility or facility component ensure that an asbestos project monitor conducts a visual inspection of all surfaces within the work area for visible debris and ensure that an asbestos contractor repeatedly cleans the work area until it is free of any visible debris.

116. Section 7.15(17)(a) of 310 C.M.R. requires that the owner or operator of a facility or facility component where any asbestos abatement activity is conducted ensure that all ACWM generated from any asbestos abatement activity is properly disposed of at a landfill approved to accept such material. If within Massachusetts, such sites must be operated in accordance with 310 C.M.R. 19.000: *Solid Waste Management*.

117. 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.

118. 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.”

119. Under 310 C.M.R. § 7.15(1), a “survey” means “pre-demolition or pre-renovation activity undertaken at a facility for the purpose of determining the presence, location, amount, and condition of [asbestos-containing material] or material assumed to contain asbestos.”

120. Under 310 C.M.R. § 7.15(1), a “facility” is “any dumping ground, or any installation, structure, building establishment or ship, and associated equipment.”

121. Under 310 C.M.R. § 7.00, a “facility component” is “any part of a facility including, but not limited to, any equipment, pipe, duct, boiler, tank, turbine, furnace, building material, insulation, load supporting and nonload supporting structural member or non-structural member at the facility.”

122. Under 310 C.M.R. § 7.15(1), “asbestos-containing material” is “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.”

123. 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 a 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 attached as originally applied or is no longer serving the intended purpose for which it was originally installed.”

124. Under 310 C.M.R. § 7.15(1), “suspect asbestos-containing material” means “products that have a reasonable likelihood of containing asbestos based upon their appearance, composition, and use[,] . . . include[ing] but . . . not limited to, non-fiberglass insulation (e.g.

pipe, boiler, duct work, etc.), cement/transite shingles, vinyl floor and wall tiles, vinyl sheet flooring, plaster, cement/transite pipes, cement sheets (corrugated and decorative), ceiling tiles, cloth vibration dampers or ductwork, spray-on fire proofing, mastic (flooring or cove base adhesive or damp proofing), and asphalt roofing or siding materials (shingles, roofing felts, tars, etc.).”

125. Under 310 C.M.R. § 7.15(1), “bulk loading” is “the placement of unconfined ACWM in a vehicle or container, such as a roll-off, dumpster or truck in *lieu* of packaging the ACWM in individual leak tight containers.”

126. Under 310 C.M.R. § 7.00 “demolition” means “any operation which involves the wrecking, taking out, removal, stripping, or altering in any way (including repairing, restoring, drilling, cutting, sanding, sawing, scratching, scraping, or digging into) or construction of one or more facility components or facility component insulation. [Demolition] includes load- and nonload – supporting structural members of a facility.”

127. For the purposes of 310 C.M.R. § 7.15(1), “demolition” is “any operation which involves” “the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.”

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

129. 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.”

130. Under 310 C.M.R. § 19.061 asbestos is a “special waste.”

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

132. The Defendants are “persons” within the meaning of 310 C.M.R. § 7.00.

133. Defendants were each a person in control of an asbestos abatement activity in the FWST B, O&M Warehouse, and Reactor Building areas at the Site, the Defendants are each an “owner/operator” of the Site within the meaning of 310 C.M.R. §§ 7.00, 7.15(1).

134. At all relevant times, the Site was a “facility” within the meaning of 310 C.M.R. § 7.15(1).

135. The FWST B, the CMU block partition walls, and the leaky pipe in the Reactor Building constitute “facility components” within the meaning of 310 C.M.R. § 7.00(1).

136. The FWST B Paint is “suspect asbestos-containing material[s]” within the meaning of 310 C.M.R. § 7.15(1).

137. The paint chip debris from the FWST B Paint scattered on the ground around the FWST B demolition area, along the forklift travel route, and the truck route to the exit gate, and stored in the Butler Building, as well as the vermiculite in the O&M Warehouse contained up to 2.6% asbestos and are therefore both ACM and ACWM within the meaning of 310 C.M.R. § 7.15(1).

138. The gasket removed from the pipe in the Reactor Building contained 40% Chrysotile asbestos and was therefore both ACM and ACWM within the meaning of 310 C.M.R. § 7.15(1).

139. The demolition of the FWST B at the direction of Defendants, on or before May 13, 2021, was “demolition” work within the meaning of 310 C.M.R. §§ 7.09; 7.15.

140. The demolition of interior CMU block partition walls at the O&M Warehouse was “demolition” work within the meaning of 310 C.M.R. § 7.09.

141. The removal of the gasket in the Reactor Building was “renovation” work within the meaning of 310 C.M.R. § 7.15.

142. By causing, suffering, allowing, or permitting their contractor to engage in the “removal, . . . demolition, renovation, . . .disturbance, handling, transportation, storage, or disposal of [ACM] or [ACWM]” in the FWST B area, O&M Warehouse, and the Reactor Building, the Defendants engaged in “asbestos-abatement activity” within the meaning of 310 C.M.R. § 7.15(1).

Violations Involving the FWST B

143. By causing, suffering, allowing, or permitting asbestos abatement activity in the FWST B demolition area 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, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)2.-3.

144. By failing to engage an inspector to conduct an asbestos survey of the FWST B before causing, suffering, or allowing demolition activities therein, and by failing to handle and dispose of any SACM not sampled as if it were ACM, or by causing, suffering, or allowing such failures, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and 4.

145. By failing to notify the Department before causing, suffering, or allowing asbestos abatement activity in the FWST B demolition area, or by causing, suffering, or allowing such failure, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and 6.

146. By failing to notify the Department before causing, suffering, or allowing demolition activities in the FWST B demolition area, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.09(2).

147. By failing to remove ACM before causing, suffering, or allowing demolition activities in the FWST B demolition area, or by causing, suffering, or allowing such failure, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and (5)(a).

148. By failing to sample or test the paint on the FWST B, a SACM, for the presence of asbestos and failing to handle and dispose of the paint chips as if it were ACM, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and (4)(c).

149. By failing to isolate and seal work areas in the FWST B demolition area before causing, suffering, or allowing asbestos abatement work, or by causing, suffering, or allowing such failures, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and (7)(c)4.

150. By failing to ensure that a HEPA filter system was used to maintain a reduced atmospheric pressure in the FWST B demolition area, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and (7)(e)1.

151. By failing to ensure that a HEPA filter system was in operation at all times from the commencement of the FWST B demolition activities until the visual inspection requirements of 310 C.M.R. 7.15(8) were met, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and (7)(e)2.

152. By failing to ensure that all exhaust air from the FWST B demolition work area was HEPA-filtered before being discharged outside of the work area, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and (7)(e)6.

153. By failing to wet ACM and ACWM in the FWST B demolition area, the Butler Building, the forklift travel routes, the truck route from the FWST B to the exit, storage shed, and scrap metal dumpster and by failing to keep ACM and ACWM wet until and after placing it into leak-tight containers, or by causing, suffering, or allowing such failures, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1., (7)(f)1., and (15)(a) and (b).

154. By failing to containerize and seal ACM and ACWM in the FWST B demolition area, Butler Building, forklift travel routes, truck route from the FWST B to the exit gates, storage shed, and scrap metal dumpster, or by causing, suffering, or allowing such failure, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1., (7)(f)3., and (15)(b).

155. By failing to label ACWM in FWST B demolition area, Butler Building, forklift travel routes, truck route from the FWST B to the exit gates, storage shed, and scrap metal dumpster, with hazard and generator labels, or by causing, suffering, or allowing such failure, the Defendants violated G.L. c. 111, § 142a, and 310 C.M.R. § 7.15(3)(a)1. and (15)(c)(d).

156. By failing to clean work areas in the FWST B demolition area until no debris was visible, or by causing, suffering, or allowing such failure, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1., (7)(f)4., and (8)(a)-(b).

157. By failing to engage an asbestos project manager to perform the visual inspection for the FWST B demolition, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1., and (8).

158. By failing to ensure that all ACWM generated from the FWST B demolition was disposed of at a landfill approved to accept such material and operated in accordance with 310 C.M.R. 19.000, or by causing, suffering, or allowing such failure, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and (17)(a).

Violations in the O&M Warehouse

159. By causing, suffering, allowing, or permitting asbestos abatement activity in the O&M Warehouse 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, the Defendants violated, G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)2. - 3.

160. By failing to file an asbestos notification with the Department before causing, suffering, or allowing demolition activities in the O&M Warehouse, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and 6.

161. By failing to notify the Department before causing, suffering, or allowing demolition activities in the O&M Warehouse, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.09(2).

162. By failing to remove ACM in the O&M Warehouse before causing, suffering, or allowing demolition or activities on facility components, or by causing, suffering, or allowing such failure, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and (5)(a).

163. By failing to submit a request for an emergency waiver to have ACM debris cleaned up before causing, suffering, or allowing asbestos abatement activities in the O&M Warehouse, or by causing, suffering, or allowing such failure, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and (6)(i).

164. By failing to isolate and seal work areas in the O&M Warehouse before causing, suffering, or allowing asbestos abatement work, or by causing, suffering, or allowing such failure, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and (7)(c)4.

165. By failing to file an asbestos abatement notification for the abatement activities, in the O&M Warehouse or by causing, suffering, or allowing such failure, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. §7.15(3)(a)1. and (6).

166. By failing to ensure that a HEPA filter system was used to maintain a reduced atmospheric pressure in the O&M Warehouse demolition area, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. §7.15(3)(a)1. and (7)(e)1.

167. By failing to ensure that a HEPA filter system was in operation at all times from the commencement of the demolition activities in the O&M Warehouse until the visual inspection requirements of 310 C.M.R. 7.15(8) were met, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and (7)(e)2.

168. By failing to ensure that all exhaust air from the O&M Warehouse demolition work area was HEPA-filtered before being discharged outside of the work area, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. §7.15(3)(a)1. and (7)(e)6.

169. By failing to engage an asbestos project manager to perform the visual inspection for the O&M Warehouse demolition, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1., and (8).

Violations Involving the Reactor Building

170. By failing to engage an inspector to conduct an asbestos survey of the Reactor Building before causing, suffering, or allowing renovation activities therein, and by failing to handle and dispose of any SACM not sampled as if it were ACM, or by causing, suffering, or allowing such failures, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and 4.

171. By failing to notify the Department before causing, suffering, or allowing asbestos abatement activity in the Reactor Building, or by causing, suffering, or allowing such failure, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1. and 6.

172. By failing to notify the Department before causing, suffering, or allowing renovation activities in the Reactor Building, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.09(2).

173. By failing to engage an asbestos project monitor to perform a visual inspection of the Defendants' work area the Reactor Building, the Defendants violated G.L. c. 111, § 142A, and 310 C.M.R. § 7.15(3)(a)1., and (8).

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

REQUEST FOR RELIEF

WHEREFORE, the Commonwealth respectfully requests that this Court:

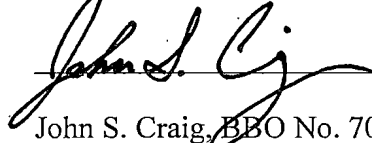
- A. ORDER the Defendants to pay to the Commonwealth a civil penalty of \$25,000 for each day of each violation of the Air Act, G.L. c. 111, § 142A, and the Air Regulations, 310 C.M.R. §§ 7.09 and 7.15 not to be paid from Pilgrim's Decommissioning Trust Fund or monies recovered from the United States for spent fuel management costs;
- B. ISSUE a permanent injunction requiring the Defendants to comply with the Air Act and the Air 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



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Dated: 2/14/24

