

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

ADVANCE WELDING AND FABRICATING, INC.

for a determination pursuant to Section 909 of the New York Labor Law that violations of Labor Law, Article 30 and/or Code Rule 56 took place as hereinafter described.

**DEFAULT
REPORT
&
RECOMMENDATION**

Asbestos Case Nos.
25648334, 25655964, 25658052
25658959, 25661731, 25669317

To: Honorable Colleen Gardner
Commissioner of Labor
State of New York

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on October 13, 2011, in Albany, New York. The purpose of the hearing was to provide all parties an opportunity to be heard on the issues raised in the Notice of Hearing and to establish a record from which the Hearing Officer could prepare this Report and Recommendation for the Commissioner of Labor.

The hearing concerned an investigation conducted by the Asbestos Control Bureau (“Bureau”) of the Division of Safety and Health of the New York State Department of Labor (“Department”) into whether Advanced Welding and Fabricating, Inc. (“Respondent”) complied with the requirements of Article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR part 56 when Respondent undertook six asbestos abatement projects located at SUNY Albany, Indian Quad, Albany, NY (“SUNY Albany Project”); 2160 Amsterdam Road, Glenville, New York (“Glenville Project”); 29 8th Street, Troy, New York (“Troy Project”); 2160 Amsterdam Road, Glenville, New York (“Glenville Project-Boiler Room”); 301-303 Lafayette Street, Schenectady, New York (“Schenectady Project”); and 15 Ridge Place, Latham, New York (“Latham Project”).

APPEARANCES

The Bureau was represented by Department Counsel, Pico Ben-Amotz, Steven J. Pepe, Senior Attorney, of Counsel.

There were no appearances made by or on behalf of Respondent.

HEARING OFFICER DESIGNATION

John W. Scott was designated as Hearing Officer and conducted the hearing in this matter.

FINDINGS AND CONCLUSIONS

On August 31, 2011, the Department duly served copies of the Notice of Hearing on Respondent by personal service on the New York State, Secretary of State. The Department produced an Affidavit of Service and a Receipt for Service from the New York State, Secretary of State. (Hearing Officer Ex 1). The Notice of Hearing scheduled an October 13, 2011 hearing and required that the Respondent serve an Answer at least 14 days in advance of the scheduled hearing.

Respondent failed to answer the charges contained in the Notice of Hearing or appear at the hearing. As a consequence, Respondent is in default in this proceeding.

At the hearing, the Department produced sworn and credible evidence substantially supporting the Department's charges that Respondent violated the particular provisions of the Code Rule that are hereinafter particularized.

For the foregoing reasons, the findings, conclusions and determinations of the Department should be sustained.

RECOMMENDATIONS

Based upon the default of the Respondent in timely answering and contesting the charges contained in the Department's Notice of Hearing, and upon the sworn testimonial and documentary evidence adduced at the hearing in support of those charges, I recommend that the Commissioner of Labor make the following determinations and orders in connection with the issues raised in this case:

LATHAM PROJECT

DETERMINE that Respondent committed three violations of 12 NYCRR part 56 as follows:

12 NYCRR 56-7.7: Electric Power: The electric power within the regulated abatement work area was not shut down or locked out. The building room lighting was observed to be on

during the inspection. The Respondent did not provide temporary lighting powered from outside the regulated abatement work area. (DOL Exs. 2, 3; T. 15)

12 NYCRR 56-7.5.D.3: Remote Personal Decontamination System - Airlocks: The airlock in front of the work area was not sealed in a manner that would restrict air flow between a contaminated area and an uncontaminated area. (DOL Exs. 2, 3; T. 15-16)

12 NYCRR 56-7.11A: Regulated Abatement Work Area Enclosure – Critical Barriers: The light switch and thermostat control in the abatement area were not covered with two layers of 6 mil poly with each layer sealed independently with duct tape. (DOL Exs. 2, 3; T. 16-17)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty in the amount of \$1,000.00 for each of the three violations, for a total civil penalty of \$3,000.00 for this Latham Project. (T. 69)

SUNY ALBANY PROJECT

DETERMINE that Respondent committed one violation of 12 NYCRR part 56 as follows:

12 NYCRR 56-12.2: Variances: The Respondent failed to follow Part D. Proposal- Item 26 #11 of the site specific variance 08-0169. The proposal indicates that a small attached decontamination system would be used. A five chamber decontamination system was being used on site at the time of the inspection. The clean room of the enclosure was less than the required minimum 24 square feet of floor space and there was not a bench as required. (DOL Exs. 5, 6, 7; T. 23, 24-25)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$1,000.00 for this violation in this SUNY Albany Project. (T. 69)

GLENVILLE PROJECT

DETERMINE that Respondent committed three violations of 12 NYCRR part 56 as follows:

12 NYCRR 56-7.5.B.1: Personal Decontamination System Enclosure – Large Project: There was no existing adequate lighting source in the personal decontamination system enclosure nor was there a GFCI protected temporary lighting system. (DOL Exs. 9, 10; T. 27, 29-30)

12 NYCRR 56-7.5.B.2: Personal Decontamination System Enclosure – Large Project:
The personal decontamination system enclosure did not have an airlock between the clean room and the shower room as required. (DOL Exs. 9, 10; T. 30)

12 NYCRR 56-7.5.B.8: Personal Decontamination System Enclosure – Large Project:
The clean room in the personal decontamination system enclosure had less than the required 32 square feet of floor space. There was no bench or hooks as required. (DOL Exs. 9, 10; T. 27-28, 30)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty in the amount of \$1,000.00 for each of the three violations, for a total civil penalty of \$3,000.00 for this Glenville Project. (T. 69)

TROY PROJECT

DETERMINE that Respondent committed two violations of 12 NYCRR part 56 as follows:

12 NYCRR 56-8.3.A.1.III: Regulated Abatement Work Area Entry and Exit Procedures – Personal Protective Equipment: Abatement workers were observed exiting the regulated abatement work area fully clothed. Proper personal protective equipment procedures were not being followed. (DOL Exs.12, 13; T. 32-33, 34, 35)

12 NYCRR 56-7.8.A.10.VIII: Engineering Controls – Negative Air Pressure Equipment – Installation and Care: A four foot high construction fence with appropriate signage was not constructed around the area where the negative air tubes were being exhausted. (DOL Exs.12, 13; T. 33, 35-36)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty in the amount of \$1,000.00 for each of the two violations, for a total civil penalty of \$2,000.00 for this Troy Project. (T. 69)

GLENVILLE PROJECT-BOILER ROOM

DETERMINE that Respondent committed four violations of 12 NYCRR part 56 as follows:

12 NYCRR 56-7.8.A.4: Engineering Controls – Negative Air Pressure Equipment – Manometer: The Respondent had no manometer attached to the work area for the abatement of friable OSHA Class 1 asbestos containing material. (DOL Exs. 15, 16; T. 42, 52)

12 NYCRR 56-9.D: Final Cleaning Procedures – Third or Final Cleaning and Visual Inspection: The work area passed the supervisor’s visual inspection even though the work area still contained tools and water from the abatement. (DOL Exs. 15, 16; T. 42, 52)

12 NYCRR 56-7.5.F.2.I: Small and Large Size Regulated Abatement Work Areas – Washroom: The Respondent had one airlock attached to the work area and did not have the required attached washroom. A remote waste decontamination system enclosure was being used. (DOL Exs. 15, 17; T. 43, 50)

12 NYCRR 56-7.5.F.1.I: Where Allowed: The Respondent was using a remote decontamination system enclosure for the project instead of the required attached decontamination system enclosure. Friable gross removal was taking place in a tent. (DOL Exs. 15, 17; T. 42, 51)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty in the amount of \$1,000.00 for each of the four violations, for a total civil penalty of \$4,000.00 for this Glenville-Boiler Room Project. (T. 69)

SCHENECTADY PROJECT

DETERMINE that Respondent committed eight violations of 12 NYCRR part 56 as follows:

12 NYCRR 56-8.2.E: Access to and Maintenance of Decon. Systems and Regulated Abatement Work Area Enclosure – Repairs to Barriers and Enclosures: Tent enclosures had holes where pipes and wires passed through the work area. These holes were not sealed airtight to prevent escape of airborne asbestos fibers. (DOL Exs. 19, 20; T. 57, 60-61)

12 NYCRR 56-7.8.A.4: Engineering Controls – Negative Air Pressure Equipment – Manometer: The Respondent had no manometer readings in his project log for either 301 or 303 Lafayette Street. (DOL Exs. 19, 20; T. 58, 61)

12 NYCRR 56-8.2.D: Access to and Maintenance of Decon. Systems and Regulated Abatement Work Area Enclosure – Inspection of Barriers: The Respondent had no barrier inspections noted in his project log for either 301 or 303 Lafayette Street. (DOL Exs. 19, 20; T. 58, 61)

12 NYCRR 56-9.1.D: Final Cleaning Procedures – Third or Final Cleaning and Visual Inspection: There was debris throughout work areas of 303 Lafayette Street, as evidence that the final cleaning was insufficient and that the project should also never have passed the supervisor's visual inspection. (DOL Exs. 19, 20; T. 61-62)

12 NYCRR 56-7.11.F.1.II.D: Regulated Abatement Work Area Enclosure – Negative Pressure Tent Regulated Abatement Work Area Enclosure: The tents in 301 Lafayette Street were not equipped with airlocks. (DOL Exs. 19, 20; T. 62-63)

12 NYCRR 56-8.4.A.9: Handling and removal Procedures – Glovebags – Sealing the Contaminated Items: The glovebags found in the waste holding area were not collapsed with a vacuum. Also, waste was not sealed in the bag before being detached from the pipe. (DOL Exs. 19, 20; T. 63-64)

12 NYCRR 56-7.11.F.1.III: Regulated Abatement Work Area Enclosure – Negative Pressure Tent Regulated Abatement Work Area Enclosure: None of the tents found in the basement of 301 Lafayette Street was equipped with manometers. (DOL Exs. 19, 20; T. 58, 64)

12 NYCRR 56-7.8.A.1: Engineering Controls – Negative Air Pressure Equipment – Operation: Negative pressure in tents at 301 Lafayette Street was stopped prior to the visual inspections and final cleaning on the project areas. (DOL Exs. 19, 20; T. 64-65)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty in the amount of \$1,000.00 for each of the eight violations, for a total civil penalty of \$8,000.00 for this Schenectady Project. (T. 69)

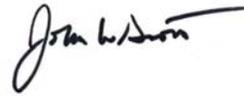
FINALLY

ORDER that Respondent immediately remit payment to the Division Of Safety & Health, Asbestos Control Bureau, State Office Campus, Building 12, Room 157, Albany, NY 12240 of civil penalties in total the amount of \$21,000.00 for the 21 violations of 12 NYCRR part 56 in all

Projects that are the subject of the within proceeding, made payable to the Commissioner of Labor.

Dated: January 3, 2012
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John W. Scott". The signature is written in a cursive style with a long horizontal stroke extending to the right.

John W. Scott, Hearing Officer