

IN THE MATTER OF

SALT CITY PROPERTIES, LLC

Respondent

A proceeding pursuant to NY Labor Law article 30 and/or
12 NYCRR 56.

DEFAULT

REPORT

&

RECOMMENDATION

Asbestos Case Nos.
AC-07-05-0076
AC-07-05-0360

To: Honorable M. Patricia Smith
Commissioner of Labor
State of New York

A hearing was held on May 15, 2009 at Syracuse, New York, to inquire into and report findings and conclusions, and to make recommendations to the Commissioner of Labor with respect to the issues raised by the investigation conducted by the Asbestos Control Bureau (“Bureau”) of the Division of Safety and Health of the NYS Department of Labor (“Department”). The Bureau investigated whether AEG, INC. (“Respondent”) complied with the requirements of Article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR 56 (“Code Rule”) when Respondent undertook two (2) asbestos projects located at 315-319 S. Clinton Street, Syracuse, NY (“the Project”).

APPEARANCES

The Bureau was represented by Department Counsel, Maria Colavito (Tsvi J. Gold, 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 March 27, 2009, the Department duly served copies of the Notice of Hearing (Hearing Officer Exhibit A) on Respondent by first class mail and by certified mail. The certified mail was returned by the United States Post Office (See, Hearing Officer Ex B). However, there is no evidence indicating that the Department's service of the Notice of Hearing on the Respondent by first class mail was returned (T. 6). The Notice of Hearing scheduled a May 15, 2009 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, as set forth in detail below, Respondent violated the following particularized provisions of the Labor Law or the Code Rule in connection with the two (2) asbestos projects located at 315-319 S. Clinton Street, Syracuse, NY.

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 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:

DETERMINE that Respondent committed ten (10) violations of the Labor Law and/or the Code Rule as follows:

May 6, 2005 Inspection

12 NYCRR Part 56 Licensing and Certification

56-2.1(a) License Required

No contractor shall engage in an asbestos project unless such contractor has a valid asbestos handling license issued by the Commissioner. All firms, corporations or other business entities providing management planning, product design, monitoring, inspection and/or air monitoring services shall obtain an asbestos handling license.

Labor Law § 902 (1) also makes it unlawful for any contractor to engage in an asbestos project without a valid asbestos handling license.

The Respondent did not hold a valid asbestos handling license and yet performed asbestos abatement on the Project (T. 17; DOL Ex.5).

56-2.2(a) Certification and Training Required

No contractor shall engage in or permit a person employed by the contractor to engage in or supervise work on an asbestos project unless each such person has a valid asbestos handling certificate issued by the commissioner appropriate to the work performed by such person on an asbestos project....”¹

Labor Law § 902 (4) also makes it unlawful for any contractor to engage in or to permit an employee to engage in work on an asbestos project without a valid asbestos handling certificate.

The persons performing the asbestos removal on the Project did not possess a valid asbestos handling certificate (DOL Ex. 5).

¹ Code Rule 56-1.4 (o) defines, in part, that “An asbestos project shall include the planning, design, monitoring, inspection and air sampling of abatement work, as well as the supervising of such activities.”

12 NYCRR Part 56 Air Sampling, Monitoring and Analysis

56-17.1 Schedules and Methods

Air sampling and analysis shall be conducted in accordance with the following table: ...

The Respondent removed asbestos on the Project without air monitoring (T. 17; DOL Ex. 5).

12 NYCRR Part 56 Notice requirements.

56-1.6(b)(1) When Required

Any contractor engaged in an asbestos project involving more than two hundred sixty linear feet or more than one hundred sixty square feet of asbestos or asbestos material shall notify in writing ... the Asbestos Control Bureau of the department's Division of Safety and Health ... ten days prior to the commencement of the project All project notifications shall be accompanied by a nonrefundable fee ... made payable to the commissioner of labor in the amounts set forth in the Labor Law.

The Respondent failed to notify the Bureau of the commencement of the Project or to pay the project notification fees (T. 17; DOL Ex. 5).

September 15, 2005 Inspection

12 NYCRR Part 56 Licensing and Certification

56-2.1(a) License Required

No contractor shall engage in an asbestos project unless such contractor has a valid asbestos handling license issued by the Commissioner. All firms, corporations or other business entities providing management planning, product design, monitoring, inspection and/or air monitoring services shall obtain an asbestos handling license.

Labor Law § 902 (1) also makes it unlawful for any contractor to engage in an asbestos project without a valid asbestos handling license.

The Respondent did not hold a valid asbestos handling license and yet performed asbestos abatement on the Project (T. 20; DOL Ex. 9).

56-2.2(a) Certification and Training Required

No contractor shall engage in or permit a person employed by the contractor to engage in or supervise work on an asbestos project unless each such person has a valid asbestos handling certificate issued by the commissioner appropriate to the work performed by such person on an asbestos project....”²

Labor Law § 902 (4) also makes it unlawful for any contractor to engage in or to permit an employee to engage in work on an asbestos project without a valid asbestos handling certificate.

The persons performing the asbestos removal on the Project did not possess a valid asbestos handling certificate (T. 20; DOL Ex. 9).

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The Respondent failed to notify the Bureau of the commencement of the projects or to pay the project notification fees (T. 19; DOL Ex. 9).

May 6, 2005 and September 15, 2005 Inspections

12 NYCRR Part 56 Licensing and Certification

Labor Law Article 2, §26 Examination of Books and Papers and 56-3.4(a)(3)

Surrender of Records

Within ten (10) working days of the expiration, revocation, or non-renewal of an asbestos contractor's asbestos handling license, or upon receipt of the written request of the commissioner, or his or her duly authorized representative, any records kept pursuant to this Part shall be delivered to the Asbestos Control Bureau.

The Respondent failed to submit any of the information requested in the Bureau's October 6, 2006 letter (T. 22; DOL Ex. 11-12).

§ 56-1.5 Responsibility for cleanup of uncontrolled disturbance

If there is an incidental disturbance or other disturbance (not as part of a controlled asbestos project) of ACM, PACM, asbestos material, or suspect miscellaneous ACM assumed to be ACM at a building or structure, upon discovery of the disturbance the property owner shall be responsible for contracting with a licensed asbestos contractor for immediate isolation of the disturbance and cleanup in accordance with all provisions of this Part.

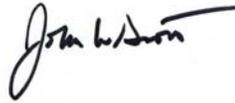
This demolition site was required to be abated by a licensed asbestos contractor pursuant to Code Rule 56 (T. 24; DOL Ex. 12).

DETERMINE and ORDER, that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$1,000.00 for each of the four (4) violations issued following the May 23, 2005 inspection, and \$2,000.00 for each of the six (6) succeeding violations, for a total civil penalty in the total amount of \$16,000.00;

ORDER that Respondent immediately remit payment to the Division Of Safety & Health, Asbestos Control Bureau, SOB Campus, Building 12, Room 157, Albany, NY 12240 of the total amount due in civil penalties (\$16,000.00) on the Projects, made payable to the Commissioner of Labor.

Dated: June 15, 2009
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John W. Scott".

John W. Scott, Hearing Officer