

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

AAA ENVIRONMENTAL, INC.
Respondent

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

**DEFAULT REPORT
&
RECOMMENDATION**

Asbestos Case Nos.
25665322

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

A hearing was held on July 14, 2009 at New York, 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 AAA Environmental, Inc. ("Respondent") complied with the requirements of Article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR 56 ("Code Rule") when the Respondent undertook an asbestos project located at the corner of Dale Road and Leewood Drive, Eastchester, NY in or about July 2008.

APPEARANCES

The Bureau was represented by Department Counsel, Maria Colavito (Tsvi J. Gold, Senior Attorney, of Counsel).

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

HEARING OFFICER DESIGNATION

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

FINDINGS AND CONCLUSIONS

On June 10, 2009, the Department duly served copies of the Notice of Hearing (HO Ex. A) on the Respondent by first class mail and by certified mail at 6679 Moore Road, Syracuse, NY 13211. The certified mailing was returned unclaimed (HO Ex. B). However, Counsel for the Department represented

at the hearing that the first class was not returned and that service was effectuated by the first class mailing the Notice of Hearing to the Respondent at the Moore Road address (T. 5; HO Ex. B).

The Notice of Hearing scheduled a July 14, 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, the 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, the Respondent violated the following particularized provisions of the Labor Law or the Code Rule in connection with the asbestos project located at the corner of Dale Road and Leewood Drive, Eastchester, NY in or about July 2008.

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 the Respondent committed two (2) violations of the Labor Law and/or the Code Rule as follows:

- **12 NYCRR 56-11.6.b.3 –Exterior project removal of non-friable ACM and other NOB ACM's-regulated abatement work area preparation.**

The Respondent failed to install a remote personal decontamination enclosure system for an asbestos roof abatement project which was performed without air monitoring. (Dept. Exs. 2, 3; T. 12-15)

- **12 NYCRR 56-7.4.c Signs.**

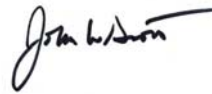
The Respondent failed to maintain asbestos caution signs around the work area or the structure. (Dept. Ex. 2, 3; T. 12)

DETERMINE and ORDER, that, pursuant to Labor Law § 909 (1) (b), the Respondent be assessed the requested civil penalty of \$5,000.00 for each of the two (2) violations, for a civil penalty in the total amount of \$10,000.00; and

ORDER that the 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 (\$10,000.00) on the Project, made payable to the Commissioner of Labor.

Dated: December 16, 2009
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