

DEFAULT

REPORT

&

RECOMMENDATION

IN THE MATTER OF

AAA ENVIRONMENTAL, 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.

Asbestos Case Nos.
25608354 25663845,
25665938, 25668698,
25672502, 25686414
25665945

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

Pursuant to a Notice of Hearing issued in this matter, a video hearing was held on October 12, 2011, between Albany, New York and Buffalo, 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 AAA Environmental, Inc. (“Respondent”) complied with the requirements of Article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR part 56 when Respondent undertook seven asbestos abatement projects located at 568 Shore Airport Road, Ticonderoga, New York (“Ticonderoga Project”); 4363 Route 104, Williamson, New York (“Williamson Project”); 132 State Street, Albany, New York (25665938) (“132 State Street Project #1”); 134 State Street, Albany New York (“134 State Street Project”); 136 State Street, Albany, New York (“136 State Street Project”); 138 State Street, Albany, New York (“138 State

Street Project”), and 132 State Street, Albany, New York (25686414) (“132 State Street Project #2”).

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 12, 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:

TICONDEROGA PROJECT

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

12 NYCRR 56-7.5.F.2.1: Small and Large Regulated Abatement Work Areas – Washroom: The Respondent had only one airlock/chamber attached to tents where friable glovebag abatement was taking place with remote decontamination facilities. An additional washroom chamber attached to the airlock is required. (DOL Exs. 2, 3; T.10-11, 13-14)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$5,000.00 for this violation. (T.78)

WILLIAMSON PROJECT

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

12 NYCRR 56-7.8.A.10.V: Engineering Controls – Negative Air Pressure Equipment – Installation and Care: The ends of four ducts were taped, restricting the shape dimensions of the ducts to less than that of the negative air pressure equipment exhaust. (DOL Exs. 5, 6, 7; T. 18-19, 21)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$5,000.00 for this violation. (T.78)

132 STATE STREET PROJECT #1

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

Inspection Date: 8/26/2008, Notices of Violation issued on 8/27/2008

12 NYCRR 56-8.9.C.2: Equipment and Waste Container Decontamination and Removal Procedure – Washroom Procedures – Additional Containerizing: The Respondent was not using the proper waste out procedures. (DOL Exs. 15, 19; T. 42)

12 NYCRR 56-7.11A: Regulated Abatement Work Area Enclosure – Critical Barriers: There were no critical barriers on the building. (DOL Exs. 15, 19; T. 42)

12 NYCRR 56-7.8.A.4: Engineering Controls – Negative Air Pressure Equipment - Manometer: There was no manometer used on the project. (DOL Exs. 15, 19; T. 43)

12 NYCRR 56-7.8.A.3: Engineering Controls – Negative Air Pressure Equipment – Negative Air Pressure: The work area was not under a full containment for the non-glovebag friable abatement. (DOL Exs. 15, 19; T. 43)

12 NYCRR 56-7.3: Asbestos Abatement Contractor Daily Project Log: There were insufficient barrier checks and manometer readings for the abatement. (DOL Exs. 15, 19; T. 43-44)

12 NYCRR 56-1.6: Other Codes: The Respondent was in violation of building fire codes. (DOL Exs. 15, 19; T. 44)

12 NYCRR 56-12.2: Variances: The variance required critical barriers and negative pressure containment on the project. Neither was in use. (DOL Exs. 15, 19; T. 44)

12 NYCRR 56-7.11.B.3: Regulated Abatement Work Area Enclosure-Isolation Barrier-Sealing and Isolation Barriers: There were openings greater than thirty-two square feet which lacked proper isolation barriers. (DOL Exs. 15, 19; T. 45)

12 NYCRR 56-7.5.D: Remote Personal Decontamination System Enclosure: The Respondent was using a remote personal decontamination enclosure system with non-glovebag abatement practices. (DOL Exs. 15, 19; T. 45)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$5,000.00 for each these nine violations for a total civil penalty of \$45,000.00. (T.78)

134 STATE STREET PROJECT

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

Inspection Date: 8/27/2008, Notice of Violation issued on 8/27/2008

12 NYCRR 56-1.6: Other Codes: The Respondent was in violation of building fire codes. (DOL Exs. 22, 23; T. 58-59)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$5,000.00 for this violation. (T.78)

136 STATE STREET PROJECT

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

Inspection Date: 8/26/2008, Notices of Violation issued on 8/27/2008

12 NYCRR 56-7.5.D: Remote Personal Decontamination System Enclosure: The Respondent was using a remote personal decontamination enclosure system with non-glovebag abatement practices. (DOL Exs. 15, 16, 20; T. 45, 48)

12 NYCRR 56-12.2: Variances: The variance required critical barriers and negative pressure containment on the project. Neither was in use. (DOL Exs. 15, 16, 20; T. 48)

12 NYCRR 56-8.9.C.2: Equipment and Waste Container Decontamination and Removal Procedure – Washroom Procedures – Additional Containerizing: The holding area contained waste that was double bagged. However, the inner bag was both dirty and very wet. (DOL Exs. 15, 16, 20; T. 48)

12 NYCRR 56-7.11A: Regulated Abatement Work Area Enclosure – Critical Barriers: No critical barriers were installed on this project. (DOL Exs. 15, 16, 20; T. 48)

12 NYCRR 56-7.8.A.4: Engineering Controls – Negative Air Pressure Equipment - Manometer: There was no manometer in use on this friable abatement project. (DOL Exs. 15, 16, 20; T. 48-49)

12 NYCRR 56-7.8.A.3: Engineering Controls – Negative Air Pressure Equipment – Negative Air Pressure: There was no negative pressure containment established for the project. (DOL Exs. 15, 16, 20; T. 49)

12 NYCRR 56-7.8.A.8: Engineering Controls – Negative Air Pressure Equipment –Air Changes: The Respondent had no negative air traps in the work area, and therefore could not obtain the required air changes for the project. (DOL Exs. 15, 16, 20; T. 49)

12 NYCRR 56-7.5.E.2: Waste Decontamination System Enclosure – Large and Small Projects – Rooms and Configuration: The Respondent was using a waste decontamination system enclosure which consisted of only one room. (DOL Exs. 15, 16, 20; T. 49)

12 NYCRR 56-7.3: Asbestos Abatement Contractor Daily Project Log: The Respondent had no barrier or monometer checks in his log. (DOL Exs. 15, 16, 20; T. 49-50)

12 NYCRR 56-8.6.B.2.1: Multiple Removals within a Single Regulated Abatement Work Area – Requirements for Sequential Abatement – Order of Sequential Abatement: The Respondent was removing non-friable asbestos containing material in areas that were littered with friable asbestos containing material. (DOL Exs. 15, 16, 20; T. 50)

12 NYCRR 56-7.11.B.4: Regulated Abatement Work Area Enclosure – Isolation Barriers – Plasticizing Isolation Barriers: The Respondent had no isolation barriers installed. (DOL Exs. 15, 16, 20; T. 50)

12 NYCRR 56-8.3.A.1: Regulated Abatement Work Area Entry and Exit Procedures - Entry to the Work Area: The Respondent's supervisor was witnessed passing through the containment in street clothes. He did not don a respirator or personal protective equipment of any kind. (DOL Exs. 15, 16, 20; T. 51)

12 NYCRR 56-8.3.A.2: Regulated Abatement Work Area Entry and Exit Procedures - Entry to the Work Area: One of the Respondent's employees was witnessed passing through the personal decontamination enclosure system from the work area to the clean room and then back

again while gathering tools in contaminated personal protective equipment. (DOL Exs. 15, 16, 20; T. 51)

12 NYCRR 56-8.4.B: Handling and Removal Procedures – Dry removal or Dry Disturbance: The Respondent was using dry removal methods. (DOL Exs. 15, 16, 20; T. 51-52)

Inspection Date: 8/27/2008, Notice of Violation issued on 8/27/2008

12 NYCRR 56-1.6: Other Codes: The Respondent was in violation of building fire codes. (DOL Exs. 22, 24; T. 59)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$5,000.00 for each these fifteen violations for a total civil penalty of \$75,000.00. (T.78)

138 STATE STREET PROJECT

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

Inspection Date: 8/26/2008, Notices of Violation issued on 8/27/2008

12 NYCRR 56-7.11.B.4: Regulated Abatement Work Area Enclosure – Isolation Barriers – Plasticizing Isolation Barriers: The Respondent had no isolation barriers for the work area at 138 State Street. (DOL Exs. 15, 16, 21; T. 52)

12 NYCRR 56-12.2: Variances: Friable material was disturbed at 138 State Street prior to negative pressure tents being constructed. (DOL Exs. 15, 16, 21)

12 NYCRR 56-8.4.C: Handling and Removal Procedures – Wetting Requirements: The Respondent did not adequately wet the asbestos containing material. (DOL Exs. 15, 16, 21; T. 52-53)

12 NYCRR 56-7.11A: Regulated Abatement Work Area Enclosure – Critical Barriers: No critical barriers were installed at 138 State Street. (DOL Exs. 15, 16, 21; T. 53)

12 NYCRR 56-7.8.A.4: Engineering Controls – Negative Air Pressure Equipment - Manometer: The Respondent had no manometer for the project. (DOL Exs. 15, 16, 21; T. 53)

12 NYCRR 56-7.8.A.3: Engineering Controls – Negative Air Pressure Equipment – Negative Air Pressure: There was no negative pressure containment set up for the project. (DOL Exs. 15, 16, 21; T. 53)

12 NYCRR 56-7.3: Asbestos Abatement Contractor Daily Project Log: The Respondent had no barrier or monometer readings in his log. (DOL Exs. 15, 16, 21; T. 53)

12 NYCRR 56-8.6.B.2.1: Multiple Removals within a Single Regulated Abatement Work Area – Requirements for Sequential Abatement – Order of Sequential Abatement: The Respondent was removing non-friable asbestos containing material prior to friable asbestos containing material in the same work area. (DOL Exs. 15, 16, 21; T. 53-54)

12 NYCRR 56-7.5.D: Remote Personal Decontamination System Enclosure: The Respondent was using a remote personal decontamination enclosure system with a friable material abatement. Glovebag methods were not in use. (DOL Exs. 15, 16, 21; T. 54)

12 NYCRR 56-7.8.A.8: Engineering Controls – Negative Air Pressure Equipment –Air Changes: The Respondent had no negative air traps installed in the work area, therefore the required air changes were not achieved (DOL Exs. 15, 16, 21; T. 54)

Inspection Date: 8/27/2008, Notice of Violation issued on 8/27/2008

12 NYCRR 56-1.6: Other Codes: The Respondent was in violation of building fire codes. (DOL Exs. 22, 25; T. 59)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$5,000.00 for each these eleven violations for a total civil penalty of \$55,000.00. (T.78)

132 STATE STREET PROJECT #2

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

Inspection Date: 11/24/2008, Notices of Violation issued on 11/28/2008

12 NYCRR 56-7.5.B.9: Personal Decontamination System Enclosure – Large Project:
The Respondent did not have hot water in the showers for the personal decontamination enclosure system. (DOL Exs. 27, 29; T. 66)

12 NYCRR 56-7.5.B.8: Personal Decontamination System Enclosure – Large Project:
The Respondent’s clean room was undersized and lacked benches, hooks, and lockers. (DOL Exs. 27, 29; T. 66)

12 NYCRR 56-7.8.A.4: Engineering Controls – Negative Air Pressure Equipment –
Manometer: The Respondent’s manometer was not calibrated properly. (DOL Exs. 27, 29; T. 66)

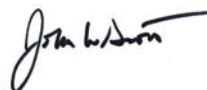
DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$5,000.00 for each these three violations for a total civil penalty of \$15,000.00. (T.78)

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 the civil penalties in the total amount of \$205,000.00 for the 41 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,



John W. Scott, Hearing Officer