

STATE OF NEW YORK      DEPARTMENT OF LABOR

IN THE MATTER OF

ALL CLEAR ENVIRONMENTAL CONSULTANTS, INC.  
Respondent

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

**DEFAULT  
REPORT & RECOMMENDATION**

Asbestos Case Nos.  
25608143

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

A hearing was held on July 28, 2009 at Garden City, 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 All Clear Environmental Consultants, 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 an asbestos project located at 73 Spring Street, Ossining, NY in or about July 2007.

**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 19, 2009, the Department duly served copies of the Notice of Hearing on Respondent by first class mail and by certified mail at the following address: 207 Plymouth Court, Brightwaters, NY

11718 (HO Ex. A). The certified mailing was returned as undeliverable. (HO Ex. B) However, the first class mailing to the Plymouth Court address was not returned, and Counsel for the Department represented at the hearing that service was effectuated on the Respondent by the first class mailing of the Notice of Hearing to the Respondent at the Plymouth Court address (T. 6).

The Notice of Hearing scheduled a July 28, 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 provision of the Labor Law or the Code Rule in connection with the asbestos project located at 73 Spring Street, Ossining, NY in or about July 2007.

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 one (1) violation of the Labor Law and/or the Code Rule as follows:

- **12 NYCRR 56-8.1 –Waste Clean-up Procedures: Tools and Equipment. All accumulations of asbestos waste material shall be adequately wetted and containerized.**

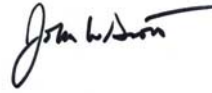
Respondent failed to adequately remove floor tile pieces and debris from the 2<sup>nd</sup> and 3<sup>rd</sup> floor work areas and the stairwell between the 1<sup>st</sup> and 2<sup>nd</sup> floors. (Dept. Exs. 2, 3; T. 13-15).

DETERMINE and ORDER, that, pursuant to Labor Law § 909 (1) (b), the Respondent be assessed the requested civil penalty of \$5,000.00 for the one (1) violation; 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 of the civil penalty (\$5,000.00) on the Project, made payable to the Commissioner of Labor.

Dated: December 16, 2009  
Albany, New York

Respectfully submitted,



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John W. Scott, Hearing Officer