

IN THE MATTER OF

**ALLIED ENVIRONMENTAL, INC.**

Respondent

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

**DEFAULT  
REPORT  
&  
RECOMMENDATION**

Asbestos Case Nos.  
25623127, 25634021,  
25651023, 25659653

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 September 28, 2011, between Albany, New York, Utica, New York, Syracuse, 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 Allied 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 four asbestos abatement projects located at 8101 St. Highway 68, Ogdensburg, New York (“Ogdensburg Project”); 2309-2341 James Street, Syracuse, New York (“2309-2341 James Street Project”); 2331 James Street, Syracuse, New York (“2331 James Street Project”); and O’Brian Hall, Putnam Way, SUNY Buffalo Amherst Campus, Buffalo, New York (“SUNY Buffalo 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 June 30, 2011, the Department duly served copies of the Notice of Hearing on Respondent by personal service on the Respondent by Certified Mail, return receipt requested, and first class mail. The Department produced an Affidavit of Service and a Receipt for Certified Mail service from the Respondent. (Hearing Officer Ex 1). The Notice of Hearing scheduled a September 28, 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:

## **OGDENSBURG PROJECT**

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

12 NYCRR 56-7.5.A: Personal and Waste Decontamination System Enclosures- Installation: The Inspector observed that the Respondent's personal and waste decontamination system enclosures were not functional during the course of Phase IIB abatement work as the supply of water to both decontamination units was frozen. (DOL Exs. 3, 4; T.14-15)

12 NYCRR 56-7.5.B.1: Personal Decontamination System Enclosure – Large Project: The decontamination systems were not operational and climate controlled at all times due to the frozen water supply entering the units. (DOL Exs. 3, 4; T.15)

12 NYCRR 56:8.3.A.III: Regulated Abatement Work Area Entry and Exit Procedures- Personal Protective Equipment: The Respondent's employees did not remove their street clothes prior to donning Tyvek coveralls due to the extremely cold climate of the personal decontamination unit. (DOL Exs. 3, 4; T.15-16)

12 NYCRR 56-8.3.A.2.V: Regulated Abatement Work Area Entry and Exit Procedures- Showering: The Respondent's employees did not shower as required by this Code Rule because running water was not available in the personal decontamination system enclosure due to the frozen water supply. (DOL Exs. 3, 4; T.16)

12 NYCRR 56-4.10: Work Stoppage Criteria During Phase II A through II C: The Respondent did not document clean-up activities and barrier inspections in the project logs after unsatisfactory air sampling results. (DOL Exs. 6, 7; T.23-24)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$1,000.00 for each of the five violations, for a total civil penalty on the Ogdensburg Project of \$5,000.00. (T. 82-83)

### **2309-2341 JAMES STREET PROJECT**

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

12 NYCRR 56-6.2.A: Phase 1 B Background Sampling – Large Asbestos Project: The project start date was December 7, 2007 and the Respondent started interior demolition of non-asbestos containing material and cleaning without background air samples. The first background air samples were taken on December 21, 2007 and December 26, 2007 overloaded because of dust. (DOL Exs. 9, 11; T. 34)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$1,000.00 for this violation. (T. 82-83)

### **2331 JAMES STREET PROJECT**

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

12 NYCRR 56-3.4.B.1: Notification: The Respondent did not pay the required project fee of \$200.00 when the project notification was filed. (DOL Exs. 12, 13; T. 36-38)

DETERMINE & ORDER that, as required by 12 NYCRR 56-3.4.B.1 and Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$200.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$1,000.00 for this violation. (T. 82-83)

### **SUNY BUFFALO PROJECT**

DETERMINE that Respondent committed 22 violations of 12 NYCRR part 56 as follows:

#### **DATE OF INSPECTION: JUNE 6, 2008**

12 NYCRR 56-7.8.A.10.V: Engineering Controls – Negative Air Pressure Equipment: The Respondent had three square to rounded exhaust openings that were too small to accommodate the exhaust duct tubing. (DOL Exs. 16, 19; T. 50-51)

#### **DATE OF INSPECTION: JUNE 26, 2008<sup>1</sup>**

12 NYCRR 56-8.4.C: Handling and Removal Procedures – Wetting Requirement: There was dry dust on the floor poly throughout the work area. The Respondent had not kept the material wet. (DOL Exs. 16, 20-a, 20-b, 20-c; T. 65)

12 NYCRR 56-7.8.A.10.V: Engineering Controls – Negative Air Pressure Equipment – Installation and Care: The Respondent had exhaust tubes from two negative air pressure machines combined into one tube inside the work area. Each negative air machine was not separately vented to the outside of the building. (DOL Exs. 16, 20-a, 20-b, 20-c; T. 65)

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<sup>1</sup> The ten (10) violations issued after the June 26, 2008 inspection were issued on July 9, 2008 (DOL Ex. 20-a), and re-issued on August 11, 2008 (DOL Ex. 20-b) and August 25, 2008 (DOL Ex. 20-c). The violations were reissued to the Respondent to make sure the Respondent was served at all known addresses. (T. 62-65)

12 NYCRR 56-7.8.A.10.V: Engineering Controls – Negative Air Pressure Equipment - Manometer: The Respondent was not maintaining a minimum negative 0.02 differential reading relative to pressure outside the regulated abatement work area. (DOL Exs. 16, 20-a, 20-b, 20-c; T. 65-66)

12 NYCRR 56-8.2.D: Access to and Maintenance of Decontamination Systems and Regulated Abatement Work Area Enclosure – Inspection of Barriers: There was no indication in the Supervisor’s log that a minimum of two inspections per day of the barriers were performed on the weekend of June 7, 2008 and June 8, 2008. (DOL Exs. 16, 20-a, 20-b, 20-c; T. 66-67)

12 NYCRR 56-7.8.A.10.VII: Engineering Controls – Negative Air Pressure Equipment – Installation and Care: There was no indication in the Supervisor’s log that a daily inspection to insure the airtight integrity of the system was performed on the weekend of June 7, 2008 and June 8, 2008. (DOL Exs. 16, 20-a, 20-b, 20-c; T. 67)

12 NYCRR 56-7.8.A.10.VII: Engineering Controls – Negative Air Pressure Equipment – Installation and Care: There was no indication in the Supervisor’s log that a daily inspection to insure the airtight integrity of the system was performed for the second shift on June 11, 2008. (DOL Exs. 16, 20-a, 20-b, 20-c; T. 67-68)

12 NYCRR 56-7.8.A.4: Engineering Controls – Negative Air Pressure Equipment - Manometer: There was no entry in the Supervisor’s log indicating that the Supervisor documented the maintenance of a minimum negative 0.02 differential reading relative to pressure outside the regulated abatement work area for the second shift on June 24, 2008. (DOL Exs. 16, 20-a, 20-b, 20-c; T. 68)

12 NYCRR 56-7.8.A.4: Engineering Controls – Negative Air Pressure Equipment - Manometer: There was no entry in the Supervisor’s log indicating that the Supervisor documented the maintenance of a minimum negative 0.02 differential reading relative to pressure outside the regulated abatement work area for the second shift on June 11, 2008. (DOL Exs. 16, 20-a, 20-b, 20-c; T. 68)

12 NYCRR 56-8.2.D: Access to and Maintenance of Decontamination Systems and Regulated Abatement Work Area Enclosure – Inspection of Barriers: There was no indication in

the Supervisor's log that a minimum of two inspections per day of the barriers were performed for the second shift on June 24, 2008. (DOL Exs. 16, 20-a, 20-b, 20-c; T. 69)

12 NYCRR 56-8.5.C: Waste Clean-Up Procedures – Frequency for Dust or Debris: On June 26, 2008, the Inspector noted that the dried up dust and debris on the floor poly was not cleaned up from the previous day's night shift. (DOL Exs. 16, 20-a, 20-b, 20-c; T. 69)

**DATE OF INSPECTION: JULY 14, 2008<sup>2</sup>**

12 NYCRR 56-8.2.D: Access to and Maintenance of Decontamination Systems and Regulated Abatement Work Area Enclosure – Inspection of Barriers: There was no indication in the Supervisor's log that a minimum of two inspections per day of the barriers were performed for the weekend of July 12, 2008 and July 13, 2008. (DOL Exs. 16, 21-a, 21-b, 21-c; T. 71)

12 NYCRR 56-7.8.A.10.VII: Engineering Controls – Negative Air Pressure Equipment – Installation and Care: There was no indication in the Supervisor's log that a daily inspection to insure the airtight integrity of the system was performed for the weekend of July 12, 2008 and July 13, 2008. (DOL Exs. 16, 21-a, 21-b, 21-c; T. 71)

**DATE OF INSPECTION: JULY 29, 2008<sup>3</sup>**

12 NYCRR 56-7.5.E.2: Waste Decontamination System Enclosure – Large and Small Projects – Rooms and Configuration: The Inspector found that the waste decontamination system enclosure was unlocked at a time when the Respondent was not on site. (DOL Exs. 16, 22-a, 22-b; T. 73)

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<sup>2</sup> The two (2) violations issued after the July 14, 2008 inspection were issued on July 16, 2008 (DOL Ex. 21-a), and re-issued on August 11, 2008 (DOL Ex. 21-b) and August 11, 2008 (DOL Ex. 21-c). The violations were reissued to the Respondent to make sure the Respondent was served at all known addresses. (T. 71-72)

<sup>3</sup> The one (1) violation issued after the July 29, 2008 inspection was issued on August 11, 2008 (DOL Ex. 22-a), and re-issued on August 25, 2008 (DOL Ex. 22-b). The violation was reissued to the Respondent to make sure the Respondent was served at all known addresses. (T. 73)

**DATE OF INSPECTION: AUGUST 1, 2008<sup>4</sup>**

12 NYCRR 56-7.5.B.9: Personal Decontamination System Enclosure – Large Project: The Respondent did not provide soap and/or shampoo in one of the two required showers. The Respondent had dish detergent in the other shower. (DOL Exs. 16, 23-a, 23-b; T. 76)

12 NYCRR 56-7.5.B.8: Personal Decontamination System Enclosure – Large Project: The Respondent did not provide hooks and a shelf in the clean room. (DOL Exs. 16, 23-a, 23-b; T. 76)

12 NYCRR 56-8.3.A.1.II: Required Abatement Work Area Entry and Exit Procedures - Knowledge of Procedures: The Respondent's Entry/Exit log did not have signatures of the Respondent's employees acknowledging that prior to entry, they reviewed and understood all posted regulations, personal protection requirements, including regulated abatement work area entry and exit procedures and emergency procedures. (DOL Exs. 16, 23-a, 23-b; T. 76-77)

12 NYCRR 56-7.8.A.10.VII: Engineering Controls – Negative Air Pressure Equipment – Installation and Care: There was no indication in the Supervisor's log that a daily inspection to insure the airtight integrity of the system was performed for the weekend of July 26, 2008 and July 27, 2008. (DOL Exs. 16, 23-a, 23-b; T. 77)

12 NYCRR 56-8.2.D: Access to and Maintenance of Decontamination Systems and Regulated Abatement Work Area Enclosure – Inspection of Barriers: There was no indication in the Supervisor's log that a minimum of two inspections per day of the barriers were performed for the weekend of July 26, 2008 and July 27, 2008. (DOL Exs. 16, 23-a, 23-b; T. 77)

12 NYCRR 56-8.3.A.2.IV: Regulated Abatement Work Area Entry and Exit Procedures – Removal of Personal Protective Equipment: An employee of the Respondent exited the work area side of the personal decontamination enclosure system without his respirator. (DOL Exs. 16, 23-a, 23-b; T. 77-78)

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<sup>4</sup> The seven (7) violations issued after the August 1, 2008 inspection were issued on August 11, 2008 (DOL Ex. 23-a), and re-issued on August 25, 2008 (DOL Ex. 23-b). The violations were reissued to the Respondent to make sure the Respondent was served at all known addresses. (T. 78)

12 NYCRR 56-8.9.B: Equipment and Waste Container Decontamination and Removal Procedure – First Cleaning: An employee of the Respondent exited the work area through the personal decontamination enclosure system with a dry contaminated piece of 2 x 4 wood and a hammer. (DOL Exs. 16, 23-a, 23-b; T. 78)

**DATE OF INSPECTION: AUGUST 7, 2008**

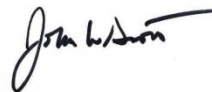
12 NYCRR 56-3.1.E.4: Application for License renewal: The Respondent did not notify the Department of the discontinuance of its mailing address (PO Box). (HO Ex. 1; T. 79)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$1,000.00 for each of the 22 violations, for a total civil penalty on the SUNY Buffalo Project of \$22,000.00. (T. 82-83)

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 Project Notification fee in the amount of \$200.00 and civil penalties in total the amount of \$31,000.00 for the 31 violations 12 NYCRR part 56 in all Projects that are the subject of the within proceeding, for the total amount due of \$31,200.00, made payable to the Commissioner of Labor.

Dated: January 3, 2012  
Albany, New York

Respectfully submitted,



John W. Scott, Hearing Officer



