

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

CAPITAL ENVIRONMENTAL SERVICE, INC.
Respondent

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.

**DEFAULT
REPORT
&
RECOMMENDATION**

Asbestos Case Nos.

25650315, 25674659, 25678769
25688527, 25694150, 25695560
25720049, 25722953, 25728332
25733618, 25737721, 25748478

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

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on December 6, 2011, in Albany, New York. The purpose of the hearing was to provide the parties with 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 Capital Environmental Services, Inc. ("Respondent") complied with the requirements of Labor Law Article 30 (§§ 900 *et seq.*) or 12 NYCRR part 56 when Respondent undertook twelve asbestos abatement projects more specifically identified below.

APPEARANCES

The Bureau was represented by Acting Department Counsel, Pico Ben-Amotz (Steven Pepe, Senior Attorney, of Counsel). There was no appearance made by or on behalf of Respondent.

FINDINGS AND CONCLUSIONS

On September 26, 2011, the Department duly served copies of the Notice of Hearing on Respondent by first class mail and by certified mail. U.S. postal return receipt cards were signed on Respondent's behalf evidencing its receipt of the document (HO Ex 1). The Notice of Hearing scheduled a November 4, 2011 hearing and required that the Respondent serve an Answer at least 14 days in advance of the scheduled hearing. The hearing date was subsequently adjourned at the Respondent's request to December 6, 2011.

Respondent failed to timely 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 supporting the Department's charges that Respondent engaged in twelve separate asbestos projects and violated the particular provisions of the Labor Law or the regulations that are hereinafter particularized.

For the foregoing reasons, the findings, conclusions and determinations of the Bureau 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 the following twelve cases:

Slingerlands Elementary School, Delmar, NY

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

1. Respondent violated 12 NYCRR 56-3.4 (b) (4) (i) by failing to amend the project notification to advise the asbestos control unit of the postponed project start date.
2. Respondent violated 12 NYCRR 56-7.5 (b) (3) by failing to construct the curtained doorway to the work area airlock with at least three overlapping sheets of fire retardant plastic (“Poly”) as required.
3. Respondent violated 12 NYCRR 56-56-7.5 (d) (1) by failing to have a supply of protective clothing in the airlock attached to the regulated work area.
4. Respondent violated 12 NYCRR 56-7.5 (d) (4) by failing to have a cordoned off and properly signed walkway from the remote decontamination enclosure to delineate it from public areas.

751 Briggs Highway, Ellenville, NY

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

1. Respondent violated 12 NYCRR 56-8.3 (a) (2) (i) by failing to have all persons leaving the regulated work area remove gross contamination from protective clothing by HEPA vacuuming or wet cleaning.
2. Respondent violated 12 NYCRR 56-7.5 (b) (1) by failing to have the decontamination unit of this large project attached to the regulated abatement work area.

Cumberland Head Elementary School, Plattsburgh, NY

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

1. Respondent violated 12 NYCRR 56-7.2 (o) by using floor buffers that were not equipped with HEPA-filtered local exhaust ventilation.
2. Respondent violated 12 NYCRR 56-7.5 (b) (1) by failing use required reinforced poly on the floor decontamination system enclosure.

3. Respondent violated 12 NYCRR 56-7.5 (d) (3) by failing to construct an airlock at the entrance to the equipment room of the personal decontamination system enclosure.
4. Respondent violated 12 NYCRR 56-7.5 (d) (4) by failing to have a cordoned off and properly signed walkway from the remote decontamination enclosure to delineate it from public areas.
5. Respondent violated 12 NYCRR 56-7.5 (f) (2) (i) by failing to have a washroom chamber installed in the regulated work area.

Beekmantown High School, Plattsburgh, NY

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

1. Respondent violated 12 NYCRR 56-7.11 (a) (2) by failing *inter alia* to completely cover with a critical barrier an electrical panel box in the regulated work area.
2. Respondent violated 12 NYCRR 56-7.7 by failing on a July 28, 2009 to turn off electricity to the work area.
3. Respondent violated 12 NYCRR 56-7.8 (a) (10) (viii) by failing to cordon off the negative air exhaust location by the required 10 feet.
4. Respondent violated 12 NYCRR 56-7.7 by failing on July 23, 2009 to turn off electricity to the work area.
5. Respondent violated 12 NYCRR 56-7.11 (a) by failing to prevent asbestos handlers from breaching multiple critical barriers that seal off the regulated work area in order to access water fountains, restrooms and custodian closets.
6. Respondent violated 12 NYCRR 56-8.3 (a) (2) by failing to have handlers exit the regulated work area through the personal decontamination system, as observed in a July 23, 2009 inspection.

7. Respondent violated 12 NYCRR 56-3.4 (b) (4) (i) by failing to timely amend the project commencement date on the project notification provided to the Department.
8. Respondent violated 12 NYCRR 56-8.3 (a) (2) by a handler exiting the regulated work area through the waste decontamination unit, as observed in an August 21, 2009 inspection.
9. Respondent violated 12 NYCRR 56-7.5 (b) (1) by having a small project size personal decontamination system installed for a large work area (the decontamination system lacked hooks, lockers and benches).
10. Respondent violated 12 NYCRR 56-8.3 (a) (2) when three handlers were observed exiting the regulated work area through the waste decontamination unit during a September 1, 2009 inspection.

The Cohoes Eddy, Cohoes, NY

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

1. Respondent violated 12 NYCRR 56-3.4 (b) (4) (i) by failing to timely amend the project commencement date on the project notification provided to the Department.
2. Respondent violated 12 NYCRR 56-7.5 (b) (9) (i) by failing to have water supplied to the personal decontamination unit at the time of inspection.
3. Respondent violated 12 NYCRR 56-7.7 by failing to turn off electricity to the work area.

1 Eddy Street, Ft. Edward, NY

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

1. Respondent violated 12 NYCRR 56-7.3 by failing to maintain an entry log for second floor work area and to record all manometer readings required for the project.

2. Respondent violated 12 NYCRR 56-3.2 (b) when its acting supervisor failed to produce a copy of his asbestos handling certificate on a January 14, 2009 inspection.
3. Respondent violated 12 NYCRR 56-7.8 (a) (4) by failing to have a working manometer on site.
4. Respondent violated 12 NYCRR 56-3.2 (b) when its supervisor failed to produce a copy of his asbestos handling certificate on a January 26, 2009 inspection.

Morrisonville Elementary School, Morristown, NY

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

1. Respondent violated 12 NYCRR 56-3.4 (b) (1) by failing to pay the project notification fee before the project start date.

Former Seton High School, Plattsburgh, NY

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

1. Respondent violated 12 NYCRR 56-3.4 (b) (1) by failing to timely pay the project notification fee.

140 New Scotland Ave, Albany, NY

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

1. Respondent violated 12 NYCRR 56-3.4 (b) (1) by failing to timely pay the project notification fee.

Former Mason Lodge, Ausable Forks, NY

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

1. Respondent violated 12 NYCRR 56-3.4 (b) (1) by failing to timely pay the project notification fee.
2. Respondent violated 12 NYCRR 56-3.4 (b) (4) (i) by failing to amend the project start date.

207 Nelson Ave, Saratoga Springs, NY

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

1. Respondent violated 12 NYCRR 56-3.4 (b) (1) by failing to timely pay the project notification fee.

Dupree Building, Meadowmount School of Music, Westport, NY

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

1. Respondent violated 12 NYCRR 56-11.2 (d) by failing to provide notification of an emergency cleanup.

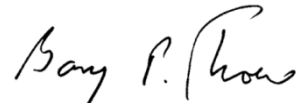
DETERMINE and ORDER that, with regard to the 13 administrative type violations involving project fee payment and amendment of project notifications, on site production of handlers certificates, and a project log maintenance violation, all of which are of a less serious nature than work practice violations, Respondent be assessed the Department's requested civil penalty of \$300.00 per violation for a total of \$3,900.00.

DETERMINE and ORDER that, with respect to the 23 work practice violations, Respondent be assessed the Department's requested civil penalty of \$750.00 for each violation, for a total amount of \$17, 250.00.

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 (\$21,150.00), made payable to the Commissioner of Labor.

Dated: January 23, 2012
Albany, New York

Respectfully submitted,

A handwritten signature in black ink that reads "Gary P. Troue". The signature is written in a cursive style with a large, looping initial "G".

Gary P. Troue, Hearing Officer