

STATE OF NEW YORK DEPARTMENT OF LABOR

In the Matter of

REPORT
&
RECOMMENDATION

Environmental Education Associates, Inc.
d/b/a Upper NYS Environmental

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.
25925587, 25943496,
26004116

To: Honorable Roberta Reardon
Commissioner of Labor
State of New York

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on March 15, 2016, in Albany, New York and in Buffalo, New York via videoconference. 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 Environmental Education Associates, Inc., doing business as Upper NYS Environmental (“Respondent”) complied with the requirements of Labor Law article 30 (§§900 *et seq.*) or 12 NYCRR part 56 when Respondent undertook three separate asbestos abatement projects

APPEARANCES

The Bureau was represented by Department Counsel, Pico Ben-Amotz (Jeffrey G. Shapiro, Senior Attorney, of Counsel).

The Respondent's owner, Andrew McLellan, appeared *pro se*.

The Respondent did not file an Answer to the charges incorporated in the Notice of Hearing.

ISSUES

1. Did Respondent violate any of the provisions of Labor Law article 30 or of 12 NYCRR part 56 in its performance of three asbestos projects?
2. Should a civil penalty be assessed, and if so, in what amount?
3. Should Respondent's asbestos handling license be revoked?

FINDINGS OF FACT

The hearing concerned three separate investigations made by the Bureau on projects involving asbestos removal work performed by the Respondent as follows:

- The first project ("Project 1") involved asbestos abatement at a residence at 347 Oakvale Boulevard, Tonawanda, New York (Asbestos Case No. 25943496).
- The second project ("Project 2") involved asbestos monitoring at a vacant industrial site at 4000 River Road, Tonawanda, New York (Asbestos Case No. 26004116).
- The third project ("Project 3") involved asbestos abatement at a former school at 56 Second Street, Albany, NY (Asbestos Case No. 25925587).

PROJECT 1

On September 25, 2012, Respondent submitted an asbestos project notification to the Bureau for Project 1. The notification had a project start date of October 5, 2012, and an end date of October 31, 2012. (DOL 13)

Prior to the start of Project 1, Respondent and the owner of the residence where Project 1 was to be performed entered into an agreement for the removal of floor tiles, and other asbestos containing material. (DOL 1)

During the course of Project 1 and after completion and removal of the plastic barriers erected for the project, the owner and other residents of the residence where Project 1 was

performed identified multiple locations within the residence where Respondent's workers left tape, dust, and other materials. (DOL 2 – 12; T pp. 15 – 119)

On October 18, 2012, a Department inspector conducted an inspection of the Project 1 residence. During the course of his inspection, the inspector found insulation left in place, insulation that was torn, asbestos containing material (“ACM”) paper insulation on the cold air return duct, ACM paper insulation debris on the floor, and remnant black mastic. Of the six samples of materials taken for analysis, five were positive for asbestos (DOL 16, 17, 18)

The inspector subsequently issued a Notice of Violation and Order to Comply dated December 26, 2013, to the Respondent, citing violations of the following sections of 12 NYCRR:

1. 56-9.1.D – Final Cleaning Procedures. Supervisor's visual inspection did not detect in place asbestos containing material;
2. 56-5.1.A – Asbestos Survey Required. No survey conducted prior to project;
3. 56-5.1.H – Removal Required. Contractor did not remove all Asbestos Containing Material;
4. 56-8.4.E – Handling and Removal Procedures. Contractor did not containerize loose asbestos debris;
5. 56-8.5.B – Waste Clean Up Procedures. Contractor did not clean up loose asbestos debris;
6. 56-9.1.B – Final Clean Up Procedures. Contractor did not clean up dust and debris and loose asbestos in multiple locations;
7. 56-9.3.C – Dismantling of Regulated Abatement Work Area. All work area enclosures and barriers were removed with asbestos containing material debris still present;
8. 56-11.7.A – Non-friable Flooring and/or Mastic Removal. No Phase IIB air monitoring was conducted. (DOL 20)

PROJECT 2

On October 4, 2013, Titanium Demolition and Remediation Group, Inc, submitted an asbestos project notification to the Bureau for Project 3, the demolition of a former power house at 4000 River Road, Tonowanda, NY. The notification had a project start date of October 9,

2013, and an end date of January 9, 2014, and listed Respondent as the Air Monitoring Firm for Project 2. (DOL 52, 54)

Subsequent to receipt of the project notification, and Department inspector visited the Project 2 site and conducted an inspection. During the course of the inspection, the inspector determined that Respondent did not have a technician on-site for the duration of the air sample collection and that an air sampling pump was not functioning. (DOL 54)

The inspector subsequently issued a Notice of Violation and Order to Comply dated October 24, 2013, to the Respondent, citing violations of the following sections of 12 NYCRR:

1. 56-4.7.B – Air Sampling. The Air Monitor/Project Monitor left the site and returned a half hour later, while active abatement work was in progress;
2. 56-4.7.b – Air Sampling. The air monitoring contractor failed to maintain operating pumps for the duration of the work shift. (DOL 55)

PROJECT 3

On July 28, 2012, Respondent submitted an asbestos project notification to the Bureau for Project 3, asbestos removal at the former St. Joseph's Academy, 56 Second Street, Albany, NY. The notification had a project start date of July 19, 2012, and an end date of December 31, 2012. (DOL 21)

Respondent took over Project 3 from another contractor that had contaminated the worksite with asbestos. (T p. 182, DOL 24)

A Department inspector conducted inspections of the Project 3 work site on August 14 and 19 and September 7 and 12. The inspector visited the actual work area, took multiple pictures, and found evidence of violations of the relevant asbestos work practice regulations. (T pp. 192 – 206; DOL 33, 34, 35, 36, 37, 38, 39)

As a result of his inspections, the Department inspector issued a Notice of Violation and Order to Comply to Respondent citing violations of the following sections of 12 NYCRR¹:

¹ The Department reissued the Notice of Violation and Order to Comply to Respondent on December 12, 2013, as a result of the inspector determining Respondent's legal name. (DOL 50) The Department issued a revision on

1. 56-7.5.E.3 – Waste Decontamination System Enclosure. The waste decon was filled with so many waste bags that the flaps were torn and held open throughout the waste decon system. The curtained doorways must be allowed to hang freely in order to maintain a seal to the work area;
2. 56-3.4.B.2.VII - Notification. The contractor was working a Sunday shift and was not notified to work on that day;
3. 56-1.6 - Other Codes. According to 29 CFR 1926.1101 (e) (5) of the full caps OSHA Construction Industry Regulations; Prohibited Activities. The employer shall ensure that the employees do not eat, drink, or smoke in the regulated area. There were multiple drinks inside the regulated work area;
4. 56-3.2.B - Employee Certification. Handler Ramanand Rannarine did not have a valid asbestos certification on-site at the time of the DOL inspection;
5. 56-7.3.B – Manometer Readings. The supervisor did not log the to required daily manometer readings for multiple work shifts;
6. 56-7.5.E.3 - Waste Decontamination System and Closure. The waste spill decon was filled with so many waste bags that the flaps were torn and held open throughout the waste decon system. The curtained doorways must be allowed to hang freely in order to maintain a seal to the work area;
7. 56-7.8.A.3 - Engineering Controls. The contractor had sealed off parts of the active work area. This negated the negative pressure environment in these areas;
8. 56-7.11.A - A Regulated Abatement Work Area Enclosure. The contractor had cut open multiple critical barriers to access parts of the building outside of the containment;
9. 56-7.11.B.1 - Regulated Abatement Work Area Enclosure. The contractor did not frame/hard wall isolation barriers greater than 32 sq ft.;
10. 56-8.2.D - Access to and Maintenance of Decon. The supervisor did not perform daily inspections of all barriers;

11. 56-8.3.A.1.III - Regulated Abatement Work Area Entry and Exit Procedures. The asbestos supervisor did not remove his street clothes during entry procedures;
12. 56-8.3.A.2.II - Regulated Abatement Work Area Entry and Exit Procedures. The contractor had cut through critical barriers to exit the work area. Exiting from the work area must always be through the personal decon;
13. 56-8.3.A.2.V - Regulated Abatement Work Area Entry and Exit Procedures. The asbestos supervisor did not shower thoroughly when exiting the work area;
14. 56-8.9 - Equipment and Waste Container Decontamination and Removal Procedures. The contractor did not wash and re-bag waste in the waste decon;
15. 56-1.6 - Other Codes. According to 29 CFR 1926.1101 (e) (5) of the OSHA Construction Industry Regulations; Prohibited Activities. The employer shall ensure that the employees did not eat, drink, or smoke in the regulated area. The contractor had drinks in the work area;
16. 56-3.2 - Certification Requirements and Procedures. Dorothea Cancer and Ramanand Rannarine did not have valid copies of their asbestos certifications on-site at the time of the inspection;
17. 56-7.8.A.4 - Engineering Controls - Negative Air Pressure Equipment. The manometer had a reading of only -0.01 column inches of water pressure differential at the time of the inspection;
18. 56-7.8.A.3 - Engineering Controls - Negative Air Pressure Equipment. A stair tower that was part of the regulated work area was separated from the negative pressure environment by a set of double doors. The entire work area must be kept under negative pressure until satisfactory clearance air sample results are received;
19. 56-7.5.E.3 - Personal and Waste Decontamination System Enclosures. The contractor had taped the flaps to the curtained doorway open;
20. 56-7.5.E.1 - Personal and Waste Decontamination System Enclosures. The washroom of the waste decon was not big enough to fit the equipment, personnel, and waste required to comply with required waste transfer procedures;

21. 56-8.3.A.2.V - Regulated Abatement Work Area Entry and Exit Procedures. The inspector observed a handler remove his respirator while inside the work area, the same handler exited the work area without showering. When he exited the personal decon he was covered with plaster dust and debris from inside the work area;
22. 56-3.2.B - Certification Requirements and Procedures. Ramanand Rannarine and John Randath did not have a copy of their certifications on-site at the time of inspection;
23. 56-7.8.A.4 - Engineering Controls - Negative Air Pressure Equipment. The contractor did not have a functional manometer on site at the time of the inspection;
24. 56-2.1.O - Terms. Asbestos Abatement Contractor Daily Project Log. The supervisors Project log was not bound;
25. 56-3.2.B - Certification Requirements and Procedures. Ramanand Rannarine and John Randath did not have a copy of their certifications on-site at the time of the inspection;²
26. 56-7.8.A.4 - Engineering Controls - Negative Air Pressure Equipment. The contractor did not have a functional manometer on site at the time of the inspection;
27. 56-2.1.O - Terms. Asbestos Abatement Contractor Daily Project Log. The supervisors Project log was not bound;
28. 56-3.4.B.2.VII - Notice and Record-keeping Requirements. The contractor was working a Sunday shift and was not notified to work that day;
29. 56-1.6 - Other Codes. According to 29 CFR 1926.1101 (e) (5) of the OSHA Construction Industry Regulations; Prohibited Activities. The employer shall ensure that the employees did not eat, drink, or smoke in the regulated area. There were multiple drinks inside the regulated work area;

² The Department issued multiple violation notices of the same section of the regulation for different days. (DOL 50)

30. 56-3.2.B - Certification Requirements and Procedures. Handler Ramanand Rannarine did not have a valid asbestos certification on-site at the time of the DOL inspection;
31. 56-7.3.B – Manometer Readings. The supervisor did not log the 2 required daily manometer readings for multiple work shifts;
32. 56-7.5.E.5 - Personal and Waste Decontamination System Enclosures. The waste decon was filled with so many waste bags that the flaps were torn and held open throughout the waste Decon system. The curtained doorways must be allowed to hang freely in order to maintain a seal to the work area;
33. 56-7.8.A.3 - Engineering Controls - Negative Air Pressure Equipment. The contractor had sealed off parts of the active work area. This negated the negative pressure environment in these areas;
34. 56-7.11.A - Regulated Abatement Work Area Enclosure. Critical Barriers. The contractor had cut open multiple critical barriers to access parts of the building outside of the containment;
35. 56-7.11.B - Regulated Abatement Work Area Enclosure. Isolation Barriers. The contractor did not frame/hard wall isolation barriers greater than 32 ft²;
36. 56-8.2.D - Access to and Maintenance of Decontamination Systems and Regulated Abatement Work Area Enclosures. The supervisor did not perform daily inspections of all barriers;
37. 56-8.3.A.1.III - Regulated Abatement Work Area Entry and Exit Procedures. The asbestos supervisor did not remove his street clothes during entry procedures;
38. 56-8.3.A.2.II - Regulated Abatement Work Area Entry and Exit Procedures. The contractor had cut through critical barriers to exit the work area. Exiting from the work area must always be through the personal decon;
39. 56-8.3.A.2.V - Regulated Abatement Work Area Entry and Exit Procedures. The asbestos supervisor did not shower thoroughly when exiting the work area;

40. 56-8.9.C - Equipment and Waste Container Decontamination and Removal Procedures. The contractor did not wash and re-bag waste in the waste decon;
41. 56-1.6 - Other Codes. According to 29 CFR 1926.1101 (e) (5) of the OSHA Construction Industry Regulations; Prohibited Activities. The employer shall ensure that the employees did not eat, drink, or smoke in the regulated area. The contractor had drinks in the work area;
42. 56-3.2.B - Certification Requirements and Procedures. Handler Ramanand Rannarine did not have a valid asbestos certification on-site at the time of the DOL inspection;
43. 56-7.8.A.4 - Engineering Controls - Negative Air Pressure Equipment. The manometer had a reading of only -0.01 column inches of water pressure differential at the time of the inspection;
44. 56-7.8.A.3 - Engineering Controls - Negative Air Pressure Equipment. A stair tower that was part of the regulated work area was separated from the negative pressure environment by a set of double doors. The entire work area must be kept under negative pressure until satisfactory clearance air sample results are received;
45. 56-7.5.E.3 - Personal and Waste Decontamination System Enclosures. The contractor had taped the flaps to the curtained doorway open;
46. 56-7.5.E.1 - Personal and Waste Decontamination System Enclosures. The washroom of the waste decon was not big enough to fit the equipment, personnel, and waste required to comply with required waste transfer procedures;
47. 56-8.3.A.2.V - Regulated Abatement Work Area Entry and Exit Procedures. The inspector observed the handler remove his respirator while inside the work area; the same handler exit the work area without showering. When he exited the personal decon he was covered with plaster dust and debris from inside the work area. (DOL 50)

Respondent had no prior history of violations with the Department; gave little evidence of cooperation with the Department during the inspections of the Projects; worked on at least one

large project that was the subject of this proceeding; and was responsible for numerous serious violations of the asbestos regulations. (T pp. 268, 269)

Based upon the violations cited, the Department requested penalties of \$3000 each for ten violations of 12 NYCRR Part 56, for a total of \$30,000.00, as follows:

1. 56-7.8.a.4 (manometer);
2. 56-3.4.b.2.vii (Sunday work);
3. 56-3.2.b (employee certification);
4. 56-7.3.b (manometer);
5. 56-7.5.e.5 (waste decon system);
6. 56-7.8.a.3 (negative air);
7. 56-7.11.a (critical barriers);
8. 56-7.11.b.1 (isolation barriers);
9. 56-7.8.2.d (decon maintenance);
10. 56-7.8.3.a.2.ii (entry and exit). (T p. 281)

The Department also requested revocation of Respondent's handler's license. (T p.280)

Respondent does not contest that violations occurred, but instead contends that he was new to the field of abatement, addressed problems as they arose, and suffered financial losses as a result of his failures to abide by the controlling regulations. (T pp. 272 – 278; Respondent Proposed Findings of Fact and Conclusions of Law pp. 1 -3) Respondent argues that the penalties requested by the Department are too severe, that he has already paid for his errors, and that he should be allowed to continue operating as a monitoring and planning firm, as permitted by the restricted license he was given by the Department. (T pp. 276, 278)

CONCLUSIONS OF LAW

Based upon personal observation, photographic evidence, and statements from individuals with firsthand knowledge, the inspectors on the projects issued multiple violations to Respondent. The violations set forth the section of the regulation involved and the nature of the violation as set forth in the following descriptions, grouped by project.

PROJECT 1

56-9.1.D – Final Cleaning Procedures. This section requires an appropriately trained and certified project monitor, contracted by the building/structure owner, independent of the asbestos abatement contractor, to complete the visual inspection. Respondent's Supervisor's visual inspection did not detect in place asbestos containing material;

56-5.1.A – Asbestos Survey Required. This section requires an asbestos survey to be completed by a licensed asbestos contractor using inspectors certified in compliance with Section 56-3.2(d), to determine whether or not the building or structure, or portion(s) thereof to be demolished, renovated, remodeled, or have repair work, contains ACM, PACM or asbestos material. Respondent did not conduct a survey prior to project;

56-5.1.H – Removal Required. This section requires all ACM, PACM, suspect miscellaneous ACM assumed to be ACM, or asbestos material impacted by the demolition, renovation, remodeling or repair project to be removed prior to access or disturbance by other uncertified trades or personnel. Respondent did not remove all Asbestos Containing Material;

56-8.4.E – Handling and Removal Procedures. This section requires ACM, PACM and asbestos material, on detachment from the substrate, to be directly bagged or dropped into a flexible catch basin and subsequently bagged or containerized. Respondent did not containerize loose asbestos debris;

56-8.5.B – Waste Clean Up Procedures. This section requires cleanup of all remaining waste generated to be performed at least once prior to close of each workshift. Respondent did not clean up loose asbestos debris;

56-9.1.B – Final Clean Up Procedures. This section requires decontamination system enclosures to remain in place and shall continue to be utilized. Respondent did not clean up dust and debris and loose asbestos in multiple locations;

56-9.3.C – Dismantling of Regulated Abatement Work Area. This section requires once the asbestos abatement contractor receives satisfactory clearance air sample results, or an acceptable visual inspection for an exempt regulated abatement work area, and all tools and equipment are removed, all remaining polyethylene, duct tape, expandable foam and other barrier materials shall be bagged, wrapped or containerized and labeled as asbestos waste. All

work area enclosures and barriers were removed with asbestos containing material debris still present;

56-11.7.A – Non-friable Flooring and/or Mastic Removal. This section requires air sampling and analysis on an asbestos project conducted under this Section shall be conducted in accordance with the requirements of Subpart 56-4. No Phase IIB air monitoring was conducted

PROJECT 2

56-4.7.B – Air Sampling. This section requires the air sampling technician shall be on-site to observe and maintain air sampling equipment for the duration of air sample collection. The Air Monitor/Project Monitor left the site and returned a half hour later, while active abatement work was in progress;

56-4.7.b – Air Sampling. This section requires area air samples, except for background and clearance air samples, shall be collected and air samplers run for each entire work shift. The air monitoring contractor failed to maintain operating pumps for the duration of the work shift.

PROJECT 3

56-7.5.E.3 – Waste Decontamination System Enclosure. This section requires an assembly which consists of at least three (3) overlapping sheets of six (6) mil fire retardant plastic over an existing or temporarily framed doorway. One (1) sheet shall be secured at the top and left side, the second sheet at the top and right side, and the third sheet at the top and left side. All sheets shall have weights attached to the bottom to insure that the sheets hang straight and maintain a seal over the doorway when not in use. The waste decon was filled with so many waste bags that the flaps were torn and held open throughout the waste decon system. The curtained doorways must be allowed to hang freely in order to maintain a seal to the work area;

56-3.4.B.2.VII - Notification. This section requires the commencement and completion dates for the asbestos project, Phase II A through D, and the commencement and completion dates of any intermediate portions of the project. Night, weekend and shift work schedules shall be included. The contractor was working a Sunday shift and was not notified to work on that day;

56-1.6 - Other Codes. This section requires the application of all other Codes. According to 29 CFR 1926.1101 (e) (5) of the full caps OSHA Construction Industry Regulations;

Prohibited Activities. The employer shall ensure that the employees do not eat, drink, or smoke in the regulated area. There were multiple drinks inside the regulated work area;

56-3.2.B - Employee Certification. This section requires any person employed by a asbestos contractor on an asbestos project shall have an appropriate asbestos handling certificate or a copy thereof in his or her possession at all times during his or her work on the project. Handler Ramanand Rannarine did not have a valid asbestos certification on-site at the time of the DOL inspection;

56-7.3.B – Manometer Readings. This section requires manometer readings to be documented twice per workshift. The supervisor did not log the required daily manometer readings for multiple work shifts;

56-7.5.E.3 - Waste Decontamination System and Closure. This section requires an assembly which consists of at least three (3) overlapping sheets of six (6) mil fire retardant plastic over an existing or temporarily framed doorway. One (1) sheet shall be secured at the top and left side, the second sheet at the top and right side, and the third sheet at the top and left side. All sheets shall have weights attached to the bottom to insure that the sheets hang straight and maintain a seal over the doorway when not in use. The waste spill decon was filled with so many waste bags that the flaps were torn and held open throughout the waste decon system. The curtained doorways must be allowed to hang freely in order to maintain a seal to the work area;

56-7.8.A.3 - Engineering Controls. This section requires A negative air pressure, relative to areas outside of the enclosure, shall be maintained at all times in the regulated abatement work area during the asbestos abatement project to ensure that contaminated air in the regulated abatement work area does not escape back to an uncontaminated area. The contractor had sealed off parts of the active work area. This negated the negative pressure environment in these areas;

56-7.11.A - A Regulated Abatement Work Area Enclosure. This section requires Critical barriers shall be constructed to seal off all openings and penetrations to the regulated abatement work area including, but not limited to, operable windows and skylights, doorways and corridors (which shall not be used for passage), ducts, grills, diffusers, HVAC system seams, and any other penetrations to surfaces within the regulated abatement work area. Critical barriers shall be constructed using two (2) independent layers of at least six (6) mil fire-retardant plastic sheeting with each layer sealed separately with duct tape. Caulk and fire-retardant expandable foam may

be used to seal small openings or penetrations. Doorways and corridors, which shall not be used for passage during the asbestos project, shall also be sealed. The contractor had cut open multiple critical barriers to access parts of the building outside of the containment;

56-7.11.B.1 - Regulated Abatement Work Area Enclosure. This section requires isolation barrier partitions shall be constructed of wood or metal framing in all openings larger than thirty-two (32) square feet, except that where any one dimension is one foot or less, framing is not required. Existing walls or framing may be used to support isolation barrier partition framing and sheathing. The contractor did not frame/hard wall isolation barriers greater than 32 sq ft.;

56-8.2.D - Access to and Maintenance of Decon. This section requires all barriers shall be inspected by the asbestos abatement contractor's supervisor at least twice daily, before the start of and following the completion of the day's abatement activities. Inspections are also required on days when there is no Phase II work or support activities scheduled. Inspections and observations shall be documented by the asbestos abatement contractor's supervisor in a daily project log. The supervisor did not perform daily inspections of all barriers;

56-8.3.A.1.III - Regulated Abatement Work Area Entry and Exit Procedures. This section requires all persons shall proceed first to the clean room, remove all street clothing, store these items in lockers and don personal protective equipment as appropriate for the abatement work area. Two (2) layers of protective clothing shall be donned for entry to regulated abatement work areas from remote personal decontamination systems. All authorized visitors shall also don NIOSH-approved respiratory protection for work areas with negative air established. Respirators and personal protective equipment shall be utilized by each authorized visitor for each separate entry into the regulated abatement work area. Respirators shall be inspected prior to each use and tested for proper seal using positive and negative pressure fit checks. The asbestos supervisor did not remove his street clothes during entry procedures;

56-8.3.A.2.II - Regulated Abatement Work Area Entry and Exit Procedures. This section requires all persons shall exit the regulated abatement work area through the personal decontamination system enclosure, or through an airlock when used with an approved remote decontamination unit, except in case of an emergency, when an emergency exit or other means of escape may be used. The contractor had cut through critical barriers to exit the work area. Exiting from the work area must always be through the personal decon;

56-8.3.A.2.V - Regulated Abatement Work Area Entry and Exit Procedures. This section requires still wearing respirators, persons shall proceed to the shower area, clean the outside of the respirator and the exposed face area under running water prior to removal of the respirator, and fully and vigorously shower and shampoo to remove residual asbestos contamination. Respirators shall be washed thoroughly with soap and water. Some types of respirators shall require slight modifications to these procedures. An airline respirator with a HEPA-filtered disconnect protection shall be disconnected in the equipment room and worn into the shower. A powered air-purifying respirator facepiece shall be disconnected from the filter/power pack assembly prior to entering the shower. The asbestos supervisor did not shower thoroughly when exiting the work area;

56-8.9 - Equipment and Waste Container Decontamination and Removal Procedures. This section requires once in the waste decontamination system, external surfaces of the contaminated bags/containers and equipment shall be cleaned an additional time by wet cleaning in the washroom. The contractor did not wash and re-bag waste in the waste decon;

56-1.6 - Other Codes. This section requires the application of all other Codes. According to 29 CFR 1926.1101 (e) (5) of the OSHA Construction Industry Regulations; Prohibited Activities. The employer shall ensure that the employees did not eat, drink, or smoke in the regulated area. The contractor had drinks in the work area;

56-3.2 - Certification Requirements and Procedures. This section requires This section requires any person employed by a asbestos contractor on an asbestos project shall have an appropriate asbestos handling certificate or a copy thereof in his or her possession at all times during his or her work on the project. Dorothea Cancer and Ramanand Rannarine did not have valid copies of their asbestos certifications on-site at the time of the inspection;

56-7.8.A.4 - Engineering Controls - Negative Air Pressure Equipment. This section requires a manometer shall be used to document the pressure differential for all OSHA Class I Large and Small size asbestos project regulated abatement work areas. A minimum of -0.02 column inches of water pressure differential, relative to pressure outside the regulated abatement work area, shall be maintained within the regulated abatement work area, as evidenced by manometric measurements. The manometer had a reading of only -0.01 column inches of water pressure differential at the time of the inspection;

56-7.8.A.3 - Engineering Controls - Negative Air Pressure Equipment. a negative air pressure, relative to areas outside of the enclosure, shall be maintained at all times in the regulated abatement work area during the asbestos abatement project to ensure that contaminated air in the regulated abatement work area does not escape back to an uncontaminated area. This section requires A stair tower that was part of the regulated work area was separated from the negative pressure environment by a set of double doors. The entire work area must be kept under negative pressure until satisfactory clearance air sample results are received;

56-7.5.E.3 - Personal and Waste Decontamination System Enclosures. This section requires an assembly which consists of at least three (3) overlapping sheets of six (6) mil fire retardant plastic over an existing or temporarily framed doorway. One (1) sheet shall be secured at the top and left side, the second sheet at the top and right side, and the third sheet at the top and left side. All sheets shall have weights attached to the bottom to insure that the sheets hang straight and maintain a seal over the doorway when not in use. The contractor had taped the flaps to the curtained doorway open;

56-7.5.E.1 - Personal and Waste Decontamination System Enclosures. This section requires a waste decontamination system enclosure shall be provided outside the regulated abatement work area and shall be attached to the regulated abatement work area. One (1) waste decontamination enclosure for each regulated abatement work area shall be required. This system may utilize adequate existing lighting sources separate from the decontamination system enclosure, or shall be supplied with a GFCI protected temporary lighting system. The waste decontamination system enclosure shall be sized to accommodate the number of workers and equipment for the intended purpose. The washroom of the waste decon was not big enough to fit the equipment, personnel, and waste required to comply with required waste transfer procedures;

56-8.3.A.2.V - Regulated Abatement Work Area Entry and Exit Procedures. This section requires still wearing respirators, persons shall proceed to the shower area, clean the outside of the respirator and the exposed face area under running water prior to removal of the respirator, and fully and vigorously shower and shampoo to remove residual asbestos contamination. Respirators shall be washed thoroughly with soap and water. The inspector observed a handler remove his respirator while inside the work area, the same handler exited the

work area without showering. When he exited the personal decon he was covered with plaster dust and debris from inside the work area;

56-3.2.B - Certification Requirements and Procedures. This section requires any person employed by a asbestos contractor on an asbestos project shall have an appropriate asbestos handling certificate or a copy thereof in his or her possession at all times during his or her work on the project. Ramanand Rannarine and John Randath did not have a copy of their certifications on-site at the time of inspection;

56-7.8.A.4 - Engineering Controls - Negative Air Pressure Equipment. This section requires a manometer shall be used to document the pressure differential for all OSHA Class I Large and Small size asbestos project regulated abatement work areas. The contractor did not have a functional manometer on site at the time of the inspection;

56-2.1.O - Terms. Asbestos Abatement Contractor Daily Project Log. This section requires a bound daily narrative journal maintained by the asbestos abatement contractor, which contains a synopsis of all pertinent events that occur throughout Phase II of the asbestos project. The supervisors Project log was not bound;

56-3.2.B - Certification Requirements and Procedures. This section requires any person employed by a asbestos contractor on an asbestos project shall have an appropriate asbestos handling certificate or a copy thereof in his or her possession at all times during his or her work on the project. Ramanand Rannarine and John Randath did not have a copy of their certifications on-site at the time of the inspection;

56-7.8.A.4 - Engineering Controls - Negative Air Pressure Equipment. This section requires a manometer shall be used to document the pressure differential for all OSHA Class I Large and Small size asbestos project regulated abatement work areas. The contractor did not have a functional manometer on site at the time of the inspection;

56-2.1.O - Terms. Asbestos Abatement Contractor Daily Project Log. This section requires a bound daily narrative journal maintained by the asbestos abatement contractor, which contains a synopsis of all pertinent events that occur throughout Phase II of the asbestos project. The supervisors Project log was not bound;

56-3.4.B.2.VII - Notice and Record-keeping Requirements. This section requires the commencement and completion dates for the asbestos project, Phase II A through D, and the commencement and completion dates of any intermediate portions of the project. Night, weekend and shift work schedules shall be included. The contractor was working a Sunday shift and was not notified to work that day;

56-1.6 - Other Codes. According to 29 CFR 1926.1101 (e) (5) of the OSHA Construction Industry Regulations; Prohibited Activities. This section requires all other Codes shall apply, including but not limited to, "The New York State Uniform Fire Prevention and Building Code" or its successor. The employer shall ensure that the employees did not eat, drink, or smoke in the regulated area. There were multiple drinks inside the regulated work area;

56-3.2.B - Certification Requirements and Procedures. This section requires any person employed by a asbestos contractor on an asbestos project shall have an appropriate asbestos handling certificate or a copy thereof in his or her possession at all times during his or her work on the project. Handler Ramanand Rannarine did not have a valid asbestos certification on-site at the time of the DOL inspection;

56-7.3.B – Manometer Readings. This section requires manometer readings to be documented twice per workshift. The supervisor did not log the 2 required daily manometer readings for multiple work shifts;

56-7.5.E.5 - Personal and Waste Decontamination System Enclosures. This section requires where there is only one (1) exit from the regulated abatement work area, the holding area of the waste decontamination system enclosure may branch off from the equipment room of the personal decontamination system enclosure. The waste decon was filled with so many waste bags that the flaps were torn and held open throughout the waste Decon system. The curtained doorways must be allowed to hang freely in order to maintain a seal to the work area;

56-7.8.A.3 - Engineering Controls - Negative Air Pressure Equipment. This section requires a negative air pressure, relative to areas outside of the enclosure, shall be maintained at all times in the regulated abatement work area during the asbestos abatement project to ensure that contaminated air in the regulated abatement work area does not escape back to an uncontaminated area. The contractor had sealed off parts of the active work area. This negated the negative pressure environment in these areas;

56-7.11.A - Regulated Abatement Work Area Enclosure. Critical Barriers. This section requires critical barriers shall be constructed to seal off all openings and penetrations to the regulated abatement work area including, but not limited to, operable windows and skylights, doorways and corridors (which shall not be used for passage), ducts, grills, diffusers, HVAC system seams, and any other penetrations to surfaces within the regulated abatement work area. Critical barriers shall be constructed using two (2) independent layers of at least six (6) mil fire-retardant plastic sheeting with each layer sealed separately with duct tape. Caulk and fire-retardant expandable foam may be used to seal small openings or penetrations. Doorways and corridors, which shall not be used for passage during the asbestos project, shall also be sealed. The contractor had cut open multiple critical barriers to access parts of the building outside of the containment;

56-7.11.B - Regulated Abatement Work Area Enclosure. Isolation Barriers. This section requires isolation barrier partitions shall be constructed of wood or metal framing in all openings larger than thirty-two (32) square feet, except that where any one dimension is one foot or less, framing is not required. Existing walls or framing may be used to support isolation barrier partition framing and sheathing. The contractor did not frame/hard wall isolation barriers greater than 32 ft²;

56-8.2.D - Access to and Maintenance of Decontamination Systems and Regulated Abatement Work Area Enclosures. This section requires all barriers shall be inspected by the asbestos abatement contractor's supervisor at least twice daily, before the start of and following the completion of the day's abatement activities. The supervisor did not perform daily inspections of all barriers;

56-8.3.A.1.III - Regulated Abatement Work Area Entry and Exit Procedures. This section requires all persons shall proceed first to the clean room, remove all street clothing, store these items in lockers and don personal protective equipment as appropriate for the abatement work area. Two (2) layers of protective clothing shall be donned for entry to regulated abatement work areas from remote personal decontamination systems. All authorized visitors shall also don NIOSH-approved respiratory protection for work areas with negative air established. Respirators and personal protective equipment shall be utilized by each authorized

visitor for each separate entry into the regulated abatement work area. The asbestos supervisor did not remove his street clothes during entry procedures;

56-8.3.A.2.II - Regulated Abatement Work Area Entry and Exit Procedures. This section requires all persons shall exit the regulated abatement work area through the personal decontamination system enclosure, or through an airlock when used with an approved remote decontamination unit, except in case of an emergency, when an emergency exit or other means of escape may be used. The contractor had cut through critical barriers to exit the work area. Exiting from the work area must always be through the personal decon;

56-8.3.A.2.V - Regulated Abatement Work Area Entry and Exit Procedures. This section requires still wearing respirators, persons shall proceed to the shower area, clean the outside of the respirator and the exposed face area under running water prior to removal of the respirator, and fully and vigorously shower and shampoo to remove residual asbestos contamination. Respirators shall be washed thoroughly with soap and water. The contractor had cut through critical barriers to exit the work area. Exiting from the work area must always be through the personal decon. The asbestos supervisor did not shower thoroughly when exiting the work area;

56-8.9.C - Equipment and Waste Container Decontamination and Removal Procedures. This section requires all bagged/containerized contaminated items and asbestos waste shall be passed into the washroom during waste transfer operations. Workers from uncontaminated areas in full protective clothing and appropriate respiratory protection shall enter the washroom and place the appropriate supply of specified clean waste bags/containers within the washroom. One team of workers shall be stationed in the washroom for bag/container cleaning and additional containerization as necessary. The workers shall ensure all curtained doorways are closed during the waste container transfer procedure and that all bags/containers are sealed properly before removing for transport and disposal. The contractor did not wash and re-bag waste in the waste decon;

56-1.6 - Other Codes. According to 29 CFR 1926.1101 (e) (5) of the OSHA Construction Industry Regulations; Prohibited Activities. This section requires all other Codes shall apply, including but not limited to, "The New York State Uniform Fire Prevention and Building Code" or its successor. The employer shall ensure that the employees did not eat, drink, or smoke in the regulated area. The contractor had drinks in the work area;

56-3.2.B - Certification Requirements and Procedures. This section requires any person employed by a asbestos contractor on an asbestos project shall have an appropriate asbestos handling certificate or a copy thereof in his or her possession at all times during his or her work on the project. Handler Ramanand Rannarine did not have a valid asbestos certification on-site at the time of the DOL inspection;

56-7.8.A.4 - Engineering Controls - Negative Air Pressure Equipment. This section requires a manometer shall be used to document the pressure differential for all OSHA Class I Large and Small size asbestos project regulated abatement work areas. A minimum of -0.02 column inches of water pressure differential, relative to pressure outside the regulated abatement work area, shall be maintained within the regulated abatement work area, as evidenced by manometric measurements. The manometer had a reading of only -0.01 column inches of water pressure differential at the time of the inspection;

56-7.8.A.3 - Engineering Controls - Negative Air Pressure Equipment. This section requires a negative air pressure, relative to areas outside of the enclosure, shall be maintained at all times in the regulated abatement work area during the asbestos abatement project to ensure that contaminated air in the regulated abatement work area does not escape back to an uncontaminated area. A stair tower that was part of the regulated work area was separated from the negative pressure environment by a set of double doors. The entire work area must be kept under negative pressure until satisfactory clearance air sample results are received;

56-7.5.E.3 - Personal and Waste Decontamination System Enclosures. This section requires an assembly which consists of at least three (3) overlapping sheets of six (6) mil fire retardant plastic over an existing or temporarily framed doorway. One (1) sheet shall be secured at the top and left side, the second sheet at the top and right side, and the third sheet at the top and left side. All sheets shall have weights attached to the bottom to insure that the sheets hang straight and maintain a seal over the doorway when not in use. The contractor had taped the flaps to the curtained doorway open;

56-7.5.E.1 - Personal and Waste Decontamination System Enclosures. This section requires the waste decontamination system enclosure shall be sized to accommodate the number of workers and equipment for the intended purpose. The washroom of the waste decon was not

big enough to fit the equipment, personnel, and waste required to comply with required waste transfer procedures;

56-8.3.A.2.V - Regulated Abatement Work Area Entry and Exit Procedures. This section requires still wearing respirators, persons shall proceed to the shower area, clean the outside of the respirator and the exposed face area under running water prior to removal of the respirator, and fully and vigorously shower and shampoo to remove residual asbestos contamination. The inspector observed the handler remove his respirator while inside the work area; the same handler exit the work area without showering. When he exited the personal decon he was covered with plaster dust and debris from inside the work area.

In addition to penalties for ten of the cited sections, the Department seeks revocation of Respondent's license and certificate.

CIVIL PENALTY

Labor Law § 909 (1) (b) provides for the assessment of a civil penalty of not more than the greater of 25% of the monetary value of the contract upon which the violation was found to have occurred, or \$5,000.00 per violation. Any contractor who has previously been assessed a civil penalty, shall be subject to a civil penalty of not more than the greater of 50% of the monetary value of the contract upon which the violation was found to have occurred, or \$25,000.00 per violation. In assessing the amount of the civil penalty, the Commissioner shall give due consideration to the size of the contractor's business, the good faith of the contractor, the gravity of the violation, and the history of previous violations.

No evidence was produced establishing the size of Respondent's business. Respondent gave little evidence of cooperation with the Department during the inspections of the Projects but admitted that he did not have the expertise needed to perform the work in question; was responsible for numerous serious violations of the asbestos regulations; and had no prior history of violations with the Department.

Respondent has violated multiple requirements of the 12 NYCRR part 56. Respondent failed to provide a reasonable explanation for the numerous violations that took place.

The Department has not requested the maximum possible penalty of \$5000.00 per violation, nor has it requested the imposition of a penalty on all of the violations. In light of the statutory factors this is a reasonable position, and, as requested by the Bureau, I impose a penalty of \$3,000.00 each for the ten violations set forth by the Department, resulting in a total penalty on all three projects of \$30,000.00.

REVOCATION OF LICENSE

Labor Law § 909 (2) states that if a contractor has “demonstrated a lack of responsibility in the conduct of any job involving asbestos or asbestos material of such seriousness as to warrant the revocation of the contractor’s license... the Commissioner may, by an order which describes in detail the nature of the violation or violations, revoke the contractor’s asbestos handling license... and... such asbestos contractor... shall [not] be eligible to apply for a new asbestos handling license for a period of up to two years.”

The Bureau is requesting revocation of Respondent’s license. The Department did not set forth the period of time during which such revocation will last.

Under these circumstances, given the seriousness of the violations, the Respondent’s license should be revoked for a period of one year. Accordingly, any existing asbestos handling license issued to the Respondent is hereby revoked, or the Respondent should be barred from applying for a new asbestos handling license, for a period of one year from the filing date of the Determination & Order.

RECOMMENDATIONS

I RECOMMEND that the Commissioner of Labor adopt the Findings of Fact and Conclusions of Law as the Commissioner’s determination of the issues raised in this case, and based on those findings and conclusions, the Commissioner should:

PROJECT 1

DETERMINE that Respondent violated eight sections of 12 NYCRR part 56 on Project 1 as follows:

1. 56-9.1.D – Final Cleaning Procedures. Supervisor’s visual inspection did not detect in place asbestos containing material;
2. 56-5.1.A – Asbestos Survey Required. No survey conducted prior to project;
3. 56-5.1.H – Removal Required. Contractor did not remove all Asbestos Containing Material;
4. 56-8.4.E – Handling and Removal Procedures. Contractor did not containerize loose asbestos debris;
5. 56-8.5.B – Waste Clean Up Procedures. Contractor did not clean up loose asbestos debris;
6. 56-9.1.B – Final Clean Up Procedures. Contractor did not clean up dust and debris and loose asbestos in multiple locations;
7. 56-9.3.C – Dismantling of Regulated Abatement Work Area. All work area enclosures and barriers were removed with asbestos containing material debris still present;
8. 56-11.7.A – Non-friable Flooring and/or Mastic Removal. No Phase IIB air monitoring was conducted;

PROJECT 2

DETERMINE that Respondent violated two sections of 12 NYCRR part 56 on Project 2 as follows:

1. 56-4.7.B – Air Sampling. The Air Monitor/Project Monitor left the site and returned a half hour later, while active abatement work was in progress;
2. 56-4.7.b – Air Sampling. The air monitoring contractor failed to maintain operating pumps for the duration of the work shift;

PROJECT 3

DETERMINE that Respondent violated forty-seven sections of 12 NYCRR part 56 on Project 3 as follows:

1. 56-7.5.E.3 – Waste Decontamination System Enclosure. The waste decon was filled with so many waste bags that the flaps were torn and held open throughout the waste decon system. The curtained doorways must be allowed to hang freely in order to maintain a seal to the work area;

2. 56-3.4.B.2.VII - Notification. The contractor was working a Sunday shift and was not notified to work on that day;
3. 56-1.6 - Other Codes. According to 29 CFR 1926.1101 (e) (5) of the full caps OSHA Construction Industry Regulations; Prohibited Activities. The employer shall ensure that the employees do not eat, drink, or smoke in the regulated area. There were multiple drinks inside the regulated work area;
4. 56-3.2.B - Employee Certification. Handler Ramanand Rannarine did not have a valid asbestos certification on-site at the time of the DOL inspection;
5. 56-7.3.B – Manometer Readings. The supervisor did not log the to required daily manometer readings for multiple work shifts;
6. 56-7.5.E.3 - Waste Decontamination System and Closure. The waste spill decon was filled with so many waste bags that the flaps were torn and held open throughout the waste decon system. The curtained doorways must be allowed to hang freely in order to maintain a seal to the work area;
7. 56-7.8.A.3 - Engineering Controls. The contractor had sealed off parts of the active work area. This negated the negative pressure environment in these areas;
8. 56-7.11.A - A Regulated Abatement Work Area Enclosure. The contractor had cut open multiple critical barriers to access parts of the building outside of the containment;
9. 56-7.11.B.1 - Regulated Abatement Work Area Enclosure. The contractor did not frame/hard wall isolation barriers greater than 32 sq ft.;
10. 56-8.2.D - Access to and Maintenance of Decon. The supervisor did not perform daily inspections of all barriers;
11. 56-8.3.A.1.III - Regulated Abatement Work Area Entry and Exit Procedures. The asbestos supervisor did not remove his street clothes during entry procedures;
12. 56-8.3.A.2.II - Regulated Abatement Work Area Entry and Exit Procedures. The contractor had cut through critical barriers to exit the work area. Exiting from the work area must always be through the personal decon;

13. 56-8.3.A.2.V - Regulated Abatement Work Area Entry and Exit Procedures. The asbestos supervisor did not shower thoroughly when exiting the work area;
14. 56-8.9 - Equipment and Waste Container Decontamination and Removal Procedures. The contractor did not wash and re-bag waste in the waste decon;
15. 56-1.6 - Other Codes. According to 29 CFR 1926.1101 (e) (5) of the OSHA Construction Industry Regulations; Prohibited Activities. The employer shall ensure that the employees did not eat, drink, or smoke in the regulated area. The contractor had drinks in the work area;
16. 56-3.2 - Certification Requirements and Procedures. Dorothea Cancer and Ramanand Rannarine did not have valid copies of their asbestos certifications on-site at the time of the inspection;
17. 56-7.8.A.4 - Engineering Controls - Negative Air Pressure Equipment. The manometer had a reading of only -0.01 column inches of water pressure differential at the time of the inspection;
18. 56-7.8.A.3 - Engineering Controls - Negative Air Pressure Equipment. A stair tower that was part of the regulated work area was separated from the negative pressure environment by a set of double doors. The entire work area must be kept under negative pressure until satisfactory clearance air sample results are received;
19. 56-7.5.E.3 - Personal and Waste Decontamination System Enclosures. The contractor had taped the flaps to the curtained doorway open;
20. 56-7.5.E.1 - Personal and Waste Decontamination System Enclosures. The washroom of the waste decon was not big enough to fit the equipment, personnel, and waste required to comply with required waste transfer procedures;
21. 56-8.3.A.2.V - Regulated Abatement Work Area Entry and Exit Procedures. The inspector observed a handler remove his respirator while inside the work area, the same handler exited the work area without showering. When he exited the personal decon he was covered with plaster dust and debris from inside the work area;

22. 56-3.2.B - Certification Requirements and Procedures. Ramanand Rannarine and John Randath did not have a copy of their certifications on-site at the time of inspection;
23. 56-7.8.A.4 - Engineering Controls - Negative Air Pressure Equipment. The contractor did not have a functional manometer on site at the time of the inspection;
24. 56-2.1.O - Terms. Asbestos Abatement Contractor Daily Project Log. The supervisors Project log was not bound;
25. 56-3.2.B - Certification Requirements and Procedures. Ramanand Rannarine and John Randath did not have a copy of their certifications on-site at the time of the inspection;³
26. 56-7.8.A.4 - Engineering Controls - Negative Air Pressure Equipment. The contractor did not have a functional manometer on site at the time of the inspection;
27. 56-2.1.O - Terms. Asbestos Abatement Contractor Daily Project Log. The supervisors Project log was not bound;
28. 56-3.4.B.2.VII - Notice and Record-keeping Requirements. The contractor was working a Sunday shift and was not notified to work that day;
29. 56-1.6 - Other Codes. According to 29 CFR 1926.1101 (e) (5) of the OSHA Construction Industry Regulations; Prohibited Activities. The employer shall ensure that the employees did not eat, drink, or smoke in the regulated area. There were multiple drinks inside the regulated work area;
30. 56-3.2.B - Certification Requirements and Procedures. Handler Ramanand Rannarine did not have a valid asbestos certification on-site at the time of the DOL inspection;
31. 56-7.3.B – Manometer Readings. The supervisor did not log the 2 required daily manometer readings for multiple work shifts;

³ The Department issued multiple violation notices of the same section of the regulation for different days. (DOL 50)

32. 56-7.5.E.5 - Personal and Waste Decontamination System Enclosures. The waste decon was filled with so many waste bags that the flaps were torn and held open throughout the waste Decon system. The curtained doorways must be allowed to hang freely in order to maintain a seal to the work area;
33. 56-7.8.A.3 - Engineering Controls - Negative Air Pressure Equipment. The contractor had sealed off parts of the active work area. This negated the negative pressure environment in these areas;
34. 56-7.11.A - Regulated Abatement Work Area Enclosure. Critical Barriers. The contractor had cut open multiple critical barriers to access parts of the building outside of the containment;
35. 56-7.11.B - Regulated Abatement Work Area Enclosure. Isolation Barriers. The contractor did not frame/hard wall isolation barriers greater than 32 ft²;
36. 56-8.2.D - Access to and Maintenance of Decontamination Systems and Regulated Abatement Work Area Enclosures. The supervisor did not perform daily inspections of all barriers;
37. 56-8.3.A.1.III - Regulated Abatement Work Area Entry and Exit Procedures. The asbestos supervisor did not remove his street clothes during entry procedures;
38. 56-8.3.A.2.II - Regulated Abatement Work Area Entry and Exit Procedures. The contractor had cut through critical barriers to exit the work area. Exiting from the work area must always be through the personal decon;
39. 56-8.3.A.2.V - Regulated Abatement Work Area Entry and Exit Procedures. The asbestos supervisor did not shower thoroughly when exiting the work area;
40. 56-8.9.C - Equipment and Waste Container Decontamination and Removal Procedures. The contractor did not wash and re-bag waste in the waste decon;
41. 56-1.6 - Other Codes. According to 29 CFR 1926.1101 (e) (5) of the OSHA Construction Industry Regulations; Prohibited Activities. The employer shall ensure that the employees did not eat, drink, or smoke in the regulated area. The contractor had drinks in the work area;

42. 56-3.2.B - Certification Requirements and Procedures. Handler Ramanand Rannarine did not have a valid asbestos certification on-site at the time of the DOL inspection;
43. 56-7.8.A.4 - Engineering Controls - Negative Air Pressure Equipment. The manometer had a reading of only -0.01 column inches of water pressure differential at the time of the inspection;
44. 56-7.8.A.3 - Engineering Controls - Negative Air Pressure Equipment. A stair tower that was part of the regulated work area was separated from the negative pressure environment by a set of double doors. The entire work area must be kept under negative pressure until satisfactory clearance air sample results are received;
45. 56-7.5.E.3 - Personal and Waste Decontamination System Enclosures. The contractor had taped the flaps to the curtained doorway open;
46. 56-7.5.E.1 - Personal and Waste Decontamination System Enclosures. The washroom of the waste decon was not big enough to fit the equipment, personnel, and waste required to comply with required waste transfer procedures;
47. 56-8.3.A.2.V - Regulated Abatement Work Area Entry and Exit Procedures. The inspector observed the handler remove his respirator while inside the work area; the same handler exit the work area without showering. When he exited the personal decon he was covered with plaster dust and debris from inside the work area; and

ORDER that a penalty of \$3000.00 shall be assessed for each of the following ten violations, resulting in a total penalty of \$30,000.00:

1. 56-7.8.a.4 (manometer);
2. 56-3.4.b.2.vii (Sunday work);
3. 56-3.2.b (employee certification);
4. 56-7.3.b (manometer);
5. 56-7.5.e.5 (waste decon system);
6. 56-7.8.a.3 (negative air);

7. 56-7.11.a (critical barriers);
8. 56-7.11.b.1 (isolation barriers);
9. 56-7.8.2.d (decon maintenance);
10. 56-7.8.3.a.2.ii (entry and exit).

ORDER that any existing asbestos handling license issued to Respondent be revoked, or alternatively, that Respondent be barred from applying for a new asbestos handling license, for a period of one year from the date of the Notice of Filing of the Commissioner of Labor's Determination & Order;

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 (\$30,000) on all the Projects, made payable to the Commissioner of Labor.

Dated: October 27, 2016
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jerome Tracy", with a long horizontal line extending to the right.

Jerome Tracy, Hearing Officer