

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

EUGENE E. HOLIDAY, SR. d/b/a  
ENVIRONMENTAL SPECIALTY CONTRACTOR  
and  
MYRA E. HOLIDAY d/b/d  
ENVIRONMENTAL SPECIALTY CONTRACTOR

Contractor – Respondent

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

**DEFAULT REPORT and  
RECOMMENDATION**

Asbestos Case Nos.

13424; 13426; 14296; 15511;  
15515; 17881; 17901; 19324;  
20596; 23557; 23558; 23560;  
24139; 24145; 24467; 24749;  
24750; 24752; 24753; 24754;  
24755; 24756; 24818; 24819;  
24820; 24821; 24822; 24823;  
24824; 24825; 24826; 24827;  
24828; 24829;  
AC-02-05-0085 and 25626597

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

A hearing was held on June 10 and June 11, 2008, at Buffalo, 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 Eugene E. Holiday, Sr. and/or Myra E. Holiday d/b/a Environmental Specialty Contractor (“Respondents” or “contractor”) complied with the requirements of Article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR 56 (“Code Rule”) when the Respondents undertook thirty-six (36) asbestos projects located in the City of Buffalo, NY during the period of July 2005 through October 2007.

**APPEARANCES**

The Bureau was represented by Department Counsel, Maria Colavito (Tsvi J. Gold, Senior Attorney, of Counsel).

There was no appearance by or on behalf of the Respondents at the hearing.

## **HEARING OFFICER DESIGNATION**

John W. Scott was designated as Hearing Officer and conducted the hearing in this matter.

## **FINDINGS AND CONCLUSIONS**

The hearing was originally scheduled to be conducted in Buffalo, NY on December 19 and 20, 2007 and this matter was initially commenced by service of the Notice of Hearing dated November 6, 2007 (Hearing Officer Ex. 1) on the Respondents by first class mail and certified mail, return receipt requested, on November 8, 2007. The record contains evidence indicating that the Respondents received the Notice of Hearing by certified mail at 598 East Delavan Avenue, Buffalo, NY 14211 (Hearing Officer Ex. 2). Thereafter, on notice to the Respondents, the hearing was adjourned on two occasions at the request of the Department (Dept. Exs. 3, 4, 5, and 6). The hearing was conducted on June 10 and 11, 2008 in Buffalo, NY. Although the Respondents had notice of these hearing dates, there was no appearance at either hearing day by the Respondents. The Respondents were found in default for failing to appear at the hearing or to serve an Answer responding to the allegations contained in the Notice of Hearing. The hearing proceeded to conclusion in the absence of the Respondents.

Counsel for the Department received correspondence from the Respondents dated June 25, 2008, indicating that Respondent, Eugene E. Holiday, Sr., was unable to appear at the June 10-11, 2008 hearing dates due to health issues and requesting that the hearing be rescheduled. Counsel for the Department responded, objecting to reopening the record of the hearing, but consenting to the Respondents submitting an affidavit of merit indicating a likelihood of success on the merits if the default was vacated. A conference call was conducted when it was agreed that the Department would provide the Respondents with copies of the hearing transcripts and exhibits and further allowing the Respondents ninety (90) days to serve a post-hearing submission containing any defenses to the allegations made by the Department at the hearing. The exhibits and transcripts were provided to the Respondents under cover letter dated January 29, 2009, and the Respondents had until May 1, 2009 to serve their defenses. By letter dated April 30,

2009, the Respondents notified the Department that they had retained Terrance D. McKelvey, Esq. to represent them in this matter. Neither the department nor the Administrative Adjudication Office has received any notification from Attorney McKelvey confirming his representation of the Respondents in this matter, and there has been no correspondence or post-hearing submission received from either the Respondents or Attorney McKelvey following the above referenced April 30, 2009 correspondence. By letter dated July 9, 2009, Counsel for the Department, on notice to the Respondents, requested that the record be closed based upon the Respondents failure to submit a post-hearing submission raising defenses to the allegations made at the hearing. Neither the Administrative Adjudication Office nor Counsels Office have been contacted by the Respondents regarding the request made by Counsel in the referenced July 9, 2009 correspondence. Copies of the referenced correspondence dated June 25, 2008, January 29, 2009, April 30, 2009, and July 9, 2009 are made a part of the record as Hearing Officer Exhibits 7, 8, 9, and 10, respectively.

The Notice of Hearing required that the Respondents serve an Answer at least 14 days in advance of the scheduled hearing. Respondents failed to answer the charges contained in the Notice of Hearing or appear at the hearing. Additionally, although the Department and the Hearing Officer had contact with the Respondents after the hearing was concluded, the Respondents have failed to serve any post-hearing submission responding to the allegations contained in the Notice of Hearing or the evidence adduced at the hearing during the nine (9) months since they were provided with copies of the hearing transcripts and Department exhibits. As a consequence, the Respondents are in default in this proceeding for failing to serve an Answer to the allegations contained in the Notice of Hearing, failing to appear at the hearing, and failing to serve any post-hearing brief or other submissions.

At the hearing, the Department produced sworn and credible evidence substantially supporting the Department's charges that, as set forth in detail below, the Respondents violated the following particularized provisions of the Labor Law or the Code Rule in connection with the 36 asbestos projects located in the City of Buffalo, NY.

For the foregoing reasons, the findings, conclusions and determinations of the Department should be sustained.

## **RECOMMENDATIONS**

Based upon the default of the Respondents 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 Respondents committed violations of the Labor Law and/or the Code Rule as follows:

### **Project 1: 147 Rodney Street, Buffalo, NY**

(This project was inspected on 7/11/05. Notices of Violation were issued on 7/12/05 and 11/10/05, and reissued on 5/3/07.)

#### **12 NYCRR Part 56 [56-2.1.c]**

##### **Licensing and Certification – Display of license**

The air monitor did not have a copy of their license posted on site while preparation and abatement activities took place and while air monitoring was being conducted. (T. 29-43; DOL Exs. 3 and 7)

#### **12 NYCRR Part 56 [56-17.5.b]**

##### **Air Sampling, Monitoring and Analysis**

##### **Duration flow rate and calibration**

Full shift air monitoring did not take place during abatement activities. Air monitoring sampling pumps were not operating for the entire one and one-half hour duration of the inspection. No air monitor was on site until the end of the inspection. (T.29-43; Dept. Exs. 3, 7)

## **Labor Law Article 30 [Section 904(2)]**

### **Notice and recordkeeping requirements**

**Item 1:** The contractor failed to provide ten-day notice to the Commissioner of Labor as required. The notification was received in Albany on June 30, 2005 and the project was scheduled to begin on July 5, 2005.

**Item 2:** The contractor listed 2500 linear feet on the notification for wall plaster. This should have been listed under friable square feet. The total square footage of asbestos material, based on the survey provided by the City of Buffalo, should have been 2675 square feet. (T. 29-43; Dept, Exs. 3, 8, 10, 10A, 10B)

## **12 NYCRR Part 56 [56-2.1.c]**

### **Licensing and Certification – Display of license**

The contractor did not have a copy of their license on site at the start of the inspection. The owner of the company, Eugene E. Holiday, Sr., came on site and provided a copy of the license. (T. 29-43; DOL Exs.3, 8, 10, 10A, 10B)

## **12 NYCRR Part 56 [56-2.2.b]**

### **Employee certification**

An employee of the contractor, Earl Bishop, did not have a valid copy of his asbestos-handling certificate as required. Mr. Bishop had a copy of an expired certificate and the DOL records did not note any recertification. (T. 29-43; DOL Exs. 3, 8, 10, 10A, 10B)

## **12 NYCRR Part 56 [56-6.1.a]**

### **Engineering Controls**

#### **Negative air pressure equipment**

Negative air pressure equipment was not used during abatement activity. (T. 29-43; DOL Exs. 2, 8, 10, 10A, 10B)

## **12 NYCRR Part 56 [56-8.1.d]**

### **Work Area Preparation**

#### **Start of project—enclosure installation or construction**

The contractor failed to install an attached personal and waste decontamination enclosure system prior to abatement activities. A non-functional remote personal decontamination trailer was on site. (T. 29-43; DOL Exs. 3, 8, 10, 10A, 10B)

**12 NYCRR Part 56 [56-9.1.g]**

**Personal Decontamination Enclosure System**

**Clean room**

The contractor stored negative air equipment and other supplies throughout the clean room, rendering it unusable. (T. 29-43; DOL Exs. 3, 8, 10, 10A, 10B)

**12 NYCRR Part 56 [56-12.1.a]**

**Handling And Removal Procedures**

**Dry removal or disturbance**

The contractor removed asbestos duct wrap using dry methods, removing the entire duct system and leaving the asbestos material attached. (T. 29-43; DOL Exs. 3, 8, 10, 10A, 10B)

**12 NYCRR Part 56 [12.1.f]**

**Sharp-edged components**

The contractor removed HVAC duct materials with asbestos wrap insulation attached. These materials had sharp edges that penetrated and tore the plastic bags. (T. 29-43; DOL Exs. 3, 8, 10, 10A, 10B)

**12 NYCRR Part 56 [56-18.2]**

**Variance**

**Applicable Variance (AV) 108 – Glovebag Operations**

The contractor did not comply with Condition 8 of AV 108 in that the contractor reused glovebags on different/separate pipe runs with multiple lengths in one glovebag. A total of two (2) glovebags were found used for 150 linear feet of duct wrap insulation. (T. 29-43; DOL Exs. 3, 9, 10, 10A, 10B)

**Project 2: 23 Roebling Street, Buffalo, NY**

(This project was inspected on 7/14/05, 8/2/05, 8/9/05, 8/15/05, 10/13/05, 10/21/05, 10/24/05, and 10/8/05. Notices of Violation were issued on 5/3/07 and 5/4/07)

**12 NYCRR Part 56 [56-1.6.b.3]**

**Notice and record keeping requirements  
Postponement or Cancellation of Projects**

The contractor failed to send a notification postponing the project with a new start date until after the project began. An amended notification was received on 10/22/05 with a new start date of 10/28/05. (T. 47-55; DOL Exs. 11, 12, 15, 15A, and 15B)

**12 NYCRR Part 56 [56-1.6.b.2]**

**Content**

The contractor did not list the site-specific variance for the project on the amended notification. (T. 47-55; DOL Exs. 11, 12, 15, 15A, and 15B)

**12 NYCRR Part 56 [56-18.2]**

**Variances**

**Condition 6 of AV 103**

An employee of the contractor was working on site on 10/21/05 with an initial training certificate (DOH #441651) that was issued on 7/29/05. (T. 47-55; DOL Exs. 11, 12, 15, 15A, and 15B)

**12 NYCRR Part 56 [56-4.1.d]**

**Personal protective equipment**

An employee of the contractor was inside the work area without protective clothing. (T. 47-55; DOL Exs. 11, 12, 15, 15A, and 15B)

**12 NYCRR Part 56 [56-18.2]**

**Variances**

**Condition 3 of Site Specific Variance 05-1282**

The contractor had a remote decontamination trailer located in the driveway immediately adjacent to the front porch of the building. The trailer was not attached to the work areas. (T. 47-55; DOL Exs. 11, 12, 15, 15A, and 15B)

**12 NYCRR Part 56 [56-6.1.i.2]**

**Engineering Controls, Ventilation, and Airtight system**

A negative air machine was operating at the rear of the work area with an open door leading outside the work area. The exhaust tube and negative air machine were not secured to maintain an airtight system. (T. 47-55; DOL Exs. 11, 12, 15, 15A, and 15B)

**12 NYCRR Part 56 [56- 8.1.j]**

**Work Area Preparation, Isolation barriers-general**

Two separate doorways leading outside the work area were totally exposed, with no isolation barriers present. In addition, the second floor windows were not sealed off in any way. (T. 47-55; DOL Exs. 11, 12, 15, 15A, and 15B)

**12 NYCRR Part 56 [56-9.1.b ]**

**Personal Decontamination Enclosure System, Large asbestos projects, Rooms and configuration**

The decontamination trailer did not have any airlocks between the three rooms. (T. 47-55; DOL Exs. 11, 12, 15, 15A, and 15B)

**12 NYCRR Part 56 [56-9.1.h ]**

**Shower room**

The shower was not operational at the time of the inspection. There was no water attached to the decontamination trailer. (T. 47-55; DOL Exs. 11, 12, 15, 15A, and 15B)

**12 NYCRR Part 56 [56-10.1.a ]**

**Waste Decontamination Enclosure System, Large and small asbestos projects, Rooms and configuration**

The waste decontamination enclosure system did not have a washroom/clean-up room or a holding area. (T. 47-55; DOL Exs. 11, 12, 15, 15A, and 15B)



**12 NYCRR Part 56 [56-10.2 ]**

**Restricted entry**

The waste decontamination enclosure system was not secured to prevent unauthorized entry. (T. 47-55; DOL Exs. 11, 12, 15, 15A, and 15B)

**12 NYCRR Part 56 [56-11.1.d ]**

**Access to and Maintenance of Decontamination Enclosure Systems and Work Area Barriers, General Requirements, Repairs to barriers and/or enclosure systems**

The large tear in the barrier covering the south facing window in the clean room was present at the time of the inspection. (T. 47-55; DOL Exs. 11, 12, 15, 15A, and 15B)

**12 NYCRR Part 56 [56-15.1.a]**

**Cleanup Procedures, Frequency for containerizing**

The contractor failed to clean up loose asbestos transite material. Several pieces of material were left behind after the project was completed. The presence of asbestos transite material was confirmed by samples taken on 12/8/05. (T. 47-55; DOL Exs. 11, 12, 14, 15C, and 16)

**Project 3: 40 Young Street, Buffalo, NY**

(This project was inspected on 8/22/05. Notices of Violation were issued on 9/2/05 and re-issued on 5/4/07)

**12 NYCRR Part 56 [56-15.1.a]**

**Cleanup Procedures, Frequency for containerizing**

The contractor failed to clean up loose asbestos transite material. Several pieces of material were left behind after the project was completed. The presence of asbestos transite material was confirmed by samples taken on 8/22/05. (T. 59-61; DOL Exs. 19, 20, 21, 22, and 22A)

**Project 4: 743 Best Street, Buffalo, NY**

(This project was inspected on 10/17/05. A Notice of Violation was issued on 11/8/05)

## **12 NYCRR Part 56 [56-17.1]**

### **Air Sampling, Monitoring and Analysis, Schedules and methods**

The contractor engaged in a large asbestos project by removing approximately 2200 square feet of asbestos containing roofing material and did not perform any abatement (work in progress) air sampling and analysis as required by Code Rule 56. (T. 65-68; DOL Exs. 24 and 26)

#### **Project 5: 382 Fargo Street, Buffalo, NY**

(This project was inspected on 10/8/05 and 11/3/05. Notices of Violation were issued on 11/4/05 and re-issued on 5/4/07)

## **12 NYCRR Part 56 [56-1.6.b.1]**

### **General Provisions, Notice and recordkeeping requirements, When required**

The contractor performed asbestos abatement on 10/4/05, four days prior to the listed start date on the notification. (T. 72-76; DOL Exs. 27, 30, 34, and 34A)

## **12 NYCRR Part 56 [56-4.1.a]**

### **Work Area Entry and Exit Procedures, General requirements, Entry and exit**

The contractor's employees were seen exiting the work area without using a personal decontamination enclosure system. (T. 72-76; DOL Exs. 30, 34, and 34A)

## **12 NYCRR Part 56 [56-6.1.a]**

### **Engineering Controls, Negative air pressure equipment**

The contractor did not use any negative pressure equipment for the large asbestos project. (T. 72-76; DOL Exs. 27, 30, 34, and 34A)

## **12 NYCRR Part 56 [56-8.1.d]**

### **Work Area Preparation, General requirements-Large and Small Asbestos Projects, Start of Project-Enclosure Installation or Construction**

The contractor did not install a personal or waste decontamination enclosure system at any time during the project. (T. 72-76; DOL Exs. 27, 30, 34, and 34A)

## **12 NYCRR Part 56 [56-8.1.j]**

### **Isolation barriers-general**

No isolation barriers of any kind were used during the course of the large asbestos project. (T. 72-76; DOL Exs. 27, 30, 34, and 34A)

**12 NYCRR Part 56 [56-9.1.a]**

**Personal Decontamination Enclosure System, Large asbestos projects, Enclosure-general**

No personal decontamination enclosure system was used during abatement of 10/4/05. (T. 72-76; DOL Exs. 27, 30, 34, and 34A)

**12 NYCRR Part 56 [56-10.1.a]**

**Waste Decontamination Enclosure System, Large and small asbestos projects, Rooms and configuration**

No waste decontamination system was used during the course of the project. (T. 72-76; DOL Exs. 27, 30, 34, and 34A)

**12 NYCRR Part 56 [56-15.1.a]**

**Cleanup Procedures, General requirements, Frequency for containerizing**

The contractor left behind several areas of debris on pipes, joints, on the ground, and on shelves throughout the basement work area. (T. 72-76; DOL Exs. 27, 30, 34, and 34A)

**Project 6: 47 Rapin Street, Buffalo, NY**

(This project was inspected on 2/8/06. A Notice of Violation was issued on 2/10/06 and re-issued on 4/30/07)

**12 NYCRR Part 56 [56-1.6.b.3]**

**Postponement or Cancellation of Projects**

The contractor did not start the Project on the Notification date of 2/2/06 and no amended Notification of postponement was given or sent to the Department of Labor. (T. 77-81; DOL Exs. 36, 38, and 38A)

**Project 7: 523 Busti Street, Buffalo, NY**

(This project was inspected on 2/8/06, 2/13/06, 2/17/06, 3/1/06, 3/7/06, 3/15/06, and 4/12/06. Notices of Violation were issued on 2/13/06 and 5/15/06, and re-issued on 4/30/07)

**12 NYCRR Part 56 [56-1.6.b.3.i]**

**Postponement or Cancellation of Projects**

The contractor did not start the Project on the Notification date of 2/2/06 and no amended Notification of postponement was given or sent to the Department of Labor. (T. 84-89; DOL Exs. 43, 44, and 44A)

**12 NYCRR Part 56 [56-17.2.f.1]**

**Air Sampling, Monitoring and Analysis, Aggressive sampling techniques,  
Pre-sampling agitation**

The aggressive sampling technique of pre-sampling agitation was not employed on this project as required by the large amount of loose dust and asbestos debris found throughout the work area. (T. 84-89; DOL Exs. 43, 44, and 44A)

**12 NYCRR Part 56 [56-15.2.h]**

**Cleanup Procedures, Clearance air monitoring**

The contractor conducted, and reported passage of clearance air monitoring with loose dust and asbestos debris and un-abated asbestos throughout the work area. (T. 84-89; DOL Exs. 43, 44, and 44A)

**Project 8: 400 North Union Street, Olean, NY**

(This project was inspected on 4/7/06. Notices of Violation were issued on 4/11/06 and re-issued on 4/30/07)

**12 NYCRR Part 56 [56-1.8.a.1 and 2]**

**Notification of residential and business occupants, Ten-day notice, Notification procedure detail**

The contractor did not have the requisite notices posted. (T. 92-94; DOL Exs. 46, 47, and 47A)

**12 NYCRR Part 56 [56-1.6.b.2]**

**Content**

The contractor entered Allegany County not Cattaraugus County on the written notification to the Department of Labor, Division of Safety and Health Asbestos Control Bureau. (T. 92-94; DOL Exs. 46, 47, and 47A)

**Project 9: 1095 Niagara Street, Buffalo, NY**

(This project was inspected on 7/18/06 and 7/24/06. Notices of Violation were issued on 9/8/06 and re-issued on 4/30/07)

**Labor Law Article 30 [Section 904(2)]**

**Notice and recordkeeping requirements**

The contractor's notification only listed 200 square feet for a \$100.00 fee and did not include the 1000 square feet of siding for a total fee of \$1000.00. (T. 98-117; DOL Exs. 54, 56, and 56A)

**12 NYCRR Part 56 [56-1.6.a.2]**

**Surrender of records**

The contractor did not send in the records requested on 7/28/06. (T. 98-117; DOL Exs. 54, 56, and 56A)

**12 NYCRR Part 56 [56-5.1.d]**

**Recontainerizing**

The contractor had four (4) single bags of asbestos material in a cart that were not re-containerized in a second bag. (T. 98-117; DOL Exs. 54, 55, 56, and 56A)

**12 NYCRR Part 56 [56-5.1.g]**

**Holding carts**

The contractor's cart did not have a top and it was in an unsecure area. (T. 98-117; DOL Exs. 54, 55, 56, and 56A)

**12 NYCRR Part 56 [56-12.1.g]**

**Cleaning of surfaces**

The contractor did not clean all of the asbestos material from the boiler and associated pipes. (T. 98-117; DOL Exs. 54, 55, 56, and 56A)

**12 NYCRR Part 56 [56-15.1.a]**

**Frequency for containerizing**

The asbestos material not cleaned off of the boiler and associated pipes and the asbestos debris on the floor of the boiler was not kept wet. (T. 98-117; DOL Exs. 54, 55, 56, and 56A)

**12 NYCRR Part 56 [56-15.2, 15.2.b, 15.2.d, 15.2.e]**

**Post-abatement requirements, First cleaning, Second cleaning and sheeting removal, Third cleaning**

The contractor did not clean all the asbestos in the boiler room. (T. 98-117; DOL Exs. 54, 55, 56, and 56A)

**12 NYCRR Part 56 [56-15.2.i]**

**Removal of isolation barriers**

The contractor removed all the barriers with asbestos still present and the area was not ready for clearance air monitoring. (T. 98-117; DOL Exs. 54, 55, 56, and 56A)

**12 NYCRR Part 56 [56-3.1.c.4]**

The contractor left damaged pieces of asbestos containing transite siding attached to the exterior of the building that was going to be demolished. The contractor left precariously attached pieces of asbestos containing transite siding on the side of the building that was a parking lot/driveway for another business. (T. 98-117; DOL Exs. 54, 55, 56, and 56A)

**12 NYCRR Part 56 [56-17.1]**

**Air Sampling, Monitoring and Analysis, Schedules and methods**

The contractor conducted asbestos abatement without the requisite air monitoring. (T. 98-117; DOL Exs. 54, 56, and 56A)

**Project 10: 524 Grant Street, Buffalo, NY**

(This project was inspected on 9/7/06. A Notice of Violation was issued on 9/7/06 and re-issued on 4/30/07)

**12 NYCRR Part 56 [56-3.4.b.4]**

**Notice and Record Keeping Requirements, Notification, Postponement, Cancellation or Changes to Completion Dates of Projects**

The contractor did not start the Project on the Notification date of 9/1/06 and no amended Notification of postponement was given or sent to the Department of Labor. (T. 120-124; DOL Exs. 57, 59, 60, and 60A)

**Project 11: 377 Woodlawn, Buffalo, NY**

(This project was inspected on 9/5/06 and 9/8/06. Notices of Violation were issued on 9/11/06 and re-issued on 4/27/07)

**12 NYCRR Part 56 [56-7.5.b.8]**

**Clean Room**

The clean room of the remote decontamination enclosure system was inaccessible due to cab seats in the front of the trailer. The clean room had several objects located within the decontamination enclosure system, including a steel milk crate and an empty commercial water bottle, which prevented access to the room. (T. 127-130; DOL Exs. 63, 64, and 64A)

**12 NYCRR Part 56 [56-7.5.b.10]**

**Equipment Room**

The equipment room had contaminated tools and other equipment stored in such a way as to keep the curtained doorway open from the shower room to the equipment room. The curtained doorway of the equipment room leading to the work area was torn and ripped in several places. (T. 127-130; DOL Exs. 63, 64, and 64A)

**Project 12: 60 Grace Street, Buffalo, NY**

(This project was inspected on 9/5/06 and 9/8/06. A Notice of Violation was issued on 9/8/06 and re-issued on 4/27/07)

**12 NYCRR Part 56 [56-11.1.6]**

**In-Plant Operations**

The contractor left debris in and around the work area and left the site without barriers and asbestos warning tape and signage. This allowed persons other than those directly involved in the work access to the site. The presence of asbestos material was confirmed by samples taken on 9/5/06. (T. 133-137; DOL Exs. 66, 67, 68, 69, and 69A)

**Project 13: 138 French Street, Buffalo, NY**

(This project was inspected on 9/26/06 and 11/15/06. Notices of Violation were issued on 10/2/06 and 11/15/06, and re-issued on 5/1/07)

**12 NYCRR Part 56 [56-3.4.b.4]**

**Notice and Recordkeeping Requirements, Notification, Postponement, Cancellation or Changes to Completion Dates of Projects**

The contractor did not start the Project on the Notification date of 9/25/06 and no amended Notification of postponement was given or sent to the Department of Labor. (T. 139, 142-149; DOL Exs. 72, 73, and 73A)

**Labor Law Article 30 [Section 904(2)]**

**Notice and recordkeeping requirements**

The contractor notified for 3600 square feet of asbestos material and did not pay the required fee of \$1000.00. (T. 139, 142-149; DOL Exs. 72, 73, and 73A)

**12 NYCRR Part 56 [56-7.11. b. 2]**

**Required Abatement Work Area Enclosure, Isolation barriers, Sheathing**

The contractor's opening in the abatement enclosure to employ negative air pressure exhaust to the outside was not separated from the work area by using a sheathing material of at least 3/8-inch thickness. An open window was used and was covered only with plastic sheeting. (T. 139, 142-149; DOL Exs. 72, 73, and 73A)

**12 NYCRR Part 56 [56-7.11. g]**

**Required Abatement Work Area Enclosure, Toilet Facilities**

The contractor did not have any adequate toilet facilities readily accessible to the personal decontamination enclosure on site during inspection. (T. 139, 142-149; DOL Exs. 72, 73, and 73A)

**Project 14: 330 Purdy, Buffalo, NY**

(This project was inspected on 9/26/06. Notices of Violation were issued on 10/2/06, and re-issued on 5/1/07)



**12 NYCRR Part 56 [56-3.4.b.4]**

**Notice and Recordkeeping Requirements, Notification, Postponement, Cancellation or Changes to Completion Dates of Projects**

The contractor did not start the Project on the Notification date of 9/25/06 and no amended Notification of postponement was given or sent to the Department of Labor. (T. 153-155; DOL Exs. 74, 76, 77, and 77A)

**Labor Law Article 30 [Section 904]**

**Notice and recordkeeping requirements**

The contractor notified for 550 square feet of asbestos material and did not pay the required fee of \$500.00. (T. 153-155; DOL Exs. 76, 77, and 77A)

**Project 15: 250 Cortland Avenue, Buffalo, NY**

(This project was inspected on 10/4/06. Notices of Violation were issued on 10/12/06 and 11/9/06, and re-issued on 5/2/07)

**12 NYCRR Part 56 [56-3.4.b.4]**

**Notice and Recordkeeping Requirements, Notification, Postponement, Cancellation or Changes to Completion Dates of Projects**

The contractor did not start the Project on the Notification date of 10/2/06 and no amended Notification of postponement was given or sent to the Department of Labor. (T. 159-162; DOL Exs. 78, 81, 82, and 82A)

**Labor Law Article 30 [Section 904]**

**Notice and recordkeeping requirements**

The contractor notified for 15,300 square feet of asbestos material and did not pay the required fee of \$1000.00. (T. 159-162; DOL Exs. 80, 81, 82, and 82A)

**Project 16: 16 Townsend, Buffalo, NY**

(This project was inspected on 10/19/06. A Notice of Violation was issued on 10/23/06, and re-issued on 4/27/07)

**12 NYCRR Part 56 [56-3.4.b.1]**

**Administrative, Notice and Recordkeeping Requirements, Notification, When Required**

The contractor failed to send the required fee of \$200.00 with the project notification. (T. 166-169; DOL Exs. 85, 86, 88, and 88A)

**Project 17: 55 Townsend, Buffalo, NY**

(This project was inspected on 10/19/06, 10/24/06, and 10/26/06. Notices of Violation were issued on 10/23/06, 11/6/06, and 11/8/06, and re-issued on 4/27/07)

**12 NYCRR Part 56 [56-11.6.b.1]**

**Establishment and Isolation of Regulated Abatement Work Area**

The contractor failed to cordon off the work area at a distance of twenty-five feet on the north and south of the house. A distance of ten feet separated the work area from the adjacent houses. (T. 173-178; DOL Exs. 91, 92, and 92A)

**12 NYCRR Part 56 [56-11.6.b.2 and 56-7.5]**

**Personal Decontamination System Enclosure-Large Project**

The contractor failed to provide a personal decontamination system enclosure during the preparation and abatement phases of the project. A remote personal decontamination trailer was brought on site during the inspection after over half the asbestos transite exterior siding material had been abated. (T. 173-178; DOL Exs. 91, 92, and 92A)

**12 NYCRR Part 56 [56-3.4.b.1]**

**Administrative, Notice and Recordkeeping Requirements, Notification, When Required**

The contractor failed to send the required fee of \$1,000.00 with the project notification. (T. 173-178; DOL Exs. 90, 91, 92, and 92A)

**Project 18: 256 Jewett, Buffalo, NY**

(This project was inspected on 10/19/06, 10/24/06, and 11/2/06. Notices of Violation were issued on 10/23/06, 11/8/06, corrected and reissued on 11/20/06, and re-issued on 4/27/07)

**12 NYCRR Part 56 [56-3.4.b.1]**

**Administrative, Notice and Recordkeeping Requirements, Notification, When Required**

The contractor failed to send the required fee of \$1,000.00 with the project notification. (T. 182-188; DOL Exs. 94, 97, 98, and 98A)

**12 NYCRR Part 56 [56-7.11.f.1.i]**

**Work Area Preparation, Regulated Abatement Work Area Enclosure, Where Allowed**

**(This Notice of Violation was issued on 11/8/06 and re-issued with corrected inspection dates on 11/20/06)**

The contractor failed to maintain a negative pressure tent enclosure during the asbestos abatement project. (T. 182-188; DOL Exs. 97, 98, and 98A)

**12 NYCRR Part 56 [56-7.8.a.1]**

**Work Area Preparation, Engineering Controls, Operation**

The contractor failed to continuously employ negative air pressure equipment ventilation during the asbestos abatement project. (T. 182-188; DOL Exs. 97, 98, and 98A)

**(This Notice of Violation was issued on 11/8/06 and re-issued with corrected inspection dates on 11/20/06)**

**12 NYCRR Part 56 [56-7.5.d]**

**Work Area Preparation, Personal and Waste Decontamination System Enclosures, Remote Personal Decontamination System Enclosure**

**(This Notice of Violation was issued on 11/8/06 and re-issued with corrected inspection dates on 11/20/06)**

The contractor did not have a remote decontamination system enclosure on site and operational as required for an active abatement project. (T. 182-188; DOL Exs. 97, 98, and 98A)

**12 NYCRR Part 56 [56-7.4.c]**

**Work Area Preparation, Signs**

**(This Notice of Violation was issued on 11/8/06 and re-issued with corrected inspection dates on 11/20/06)**

The contractor did not maintain a regulated work area and restricted access while the asbestos abatement project was unfinished. Asbestos debris on the ground and unabated asbestos pipe insulation remained in the work area. The presence of asbestos was determined by samples taken on 11/2/06. (T. 182-188; DOL Exs. 96, 97, 98, and 98A)

**Project 19: 219 Herman, Buffalo, NY**

(This project was inspected on 10/19/06. A Notice of Violation was issued on 10/23/06 and re-issued on 4/27/07)

**12 NYCRR Part 56 [56-3.4.b.1]**

**Administrative, Notice and Recordkeeping Requirements, Notification, When Required**

The contractor failed to send the required fee of \$1,000.00 with the project notification. (T. 195-197; DOL Exs. 100, 102, 103, and 103A)

**Project 20: 215 May, Buffalo, NY**

(This project was inspected on 10/19/06. Notices of Violation were issued on 10/23/06 and re-issued on 4/25/07)

**12 NYCRR Part 56 [56-3.4.b.1]**

**Administrative, Notice and Recordkeeping Requirements, Notification, When Required**

The contractor failed to send the required fee of \$1,000.00 with the project notification. (T. 199-201; DOL Exs. 105, 107, 108, and 108A)

**Project 21: 223 Pershing, Buffalo, NY**

(This project was inspected on 10/19/06, 10/24/06, 10/27/06, and 11/2/06. Notices of Violation were issued on 10/23/06, 11/8/06 and re-issued on 4/25/07)

**12 NYCRR Part 56 [56-3.4.b.1]**

**Administrative, Notice and Recordkeeping Requirements, Notification, When Required**

The contractor failed to send the required fee of \$1,000.00 with the project notification. (T. 203-208; DOL Exs. 110, 111, 114, 115 and 115B)

**12 NYCRR Part 56 [56-11.1.6.ii]**

**In-Plant Operations**

The contractor left asbestos transite siding debris in and around the work area and left the site without maintaining barriers and asbestos warning tape and signage. This allowed persons other than those directly involved in the work access to the site. The presence of asbestos material was confirmed by samples taken on 11/2/06. (T. 203-208; DOL Exs. 113, 114, 115A, and 115B)

**Project 22: 20 Rohr, Buffalo, NY**

(This project was inspected on 10/19/06. A Notice of Violation was issued on 10/23/06 and re-issued on 4/25/07)

**12 NYCRR Part 56 [56-3.4.b.1]**

**Administrative, Notice and Recordkeeping Requirements, Notification, When Required**

The contractor failed to send the required fee of \$100.00 with the project notification. (T. 210-212; DOL Exs. 117, 119, 120, and 120A)

**Project 23: 583 Grider Street, Buffalo, NY**

(This project was inspected on 10/20/06, 10/23/06, 10/24/06, and 10/26/06. A Notice of Violation was issued on 11/8/06 and re-issued on 4/25/07)

**12 NYCRR Part 56 [56-11.1.6.ii]**

**In-Plant Operations**

The contractor left asbestos transite siding debris in and around the work area and left the site without maintaining barriers and asbestos warning tape and signage. This allowed persons other than those directly involved in the work access to the site. The presence of asbestos material was confirmed by samples taken on 10/26/06. (T. 214-218; DOL Exs. 123, 124, 125, and 125A)

**Project 24: 109 Scoville Street, Buffalo, NY**

(This project was inspected on 10/20/06, 10/24/06, and 11/9/06. Notices of Violation was issued on 10/23/06 and 11/17/06, and re-issued on 4/25/07)

**12 NYCRR Part 56 [56-3.4.b.1]**

**Administrative, Notice and Recordkeeping Requirements, Notification, When Required**

The contractor failed to send the required fee of \$1,000.00 with the project notification. (T. 220-227; DOL Exs. 126, 129, 130, and 130A)

**12 NYCRR Part 56 [56-7.4.c]**

**Work Area Preparation, Signs**

The contractor did not maintain a regulated work area and restrict access while the small asbestos abatement project was unfinished. Asbestos debris remained in the basement and crawlspace work area. The presence of asbestos was determined by samples taken on 11/9/06. (T. 220-227; DOL Exs. 129, 130, and 130A)

**12 NYCRR Part 56 [56-7.5.d]**

**Work Area Preparation, Personal and Waste Decontamination System Enclosures, Remote Personal Decontamination System Enclosure**

The contractor did not have a remote decontamination system enclosure on site and operational as required for an active small abatement project. (T. 220-227; DOL Exs. 129, 130, and 130A)

**12 NYCRR Part 56 [56-7.8.a.1]**

**Work Area Preparation, Engineering Control, Operation**

The contractor failed to continuously employ negative air pressure equipment ventilation during the asbestos abatement project. (T. 220-227; DOL Exs. 129, 130, and 130A)

**12 NYCRR Part 56 [56-11.f.1.i]**

**Work Area Preparation, Regulated Abatement Work Area Enclosure, Where Allowed**

The contractor failed to maintain a negative pressure tent enclosure during the asbestos abatement project. (T. 220-227; DOL Exs. 129, 130, and 130A)

**Project 25: 118 Tenth Street, Buffalo, NY**

(This project was inspected on 10/20/06. A Notice of Violation was issued on 10/23/06 and re-issued on 4/25/07)

**12 NYCRR Part 56 [56-3.4.b.1]**

**Administrative, Notice and Recordkeeping Requirements, Notification, When Required**

The contractor failed to send the required fee of \$1,000.00 with the project notification. (T. 229-232; DOL Exs. 132, 134, 135, and 135A)

**Project 26: 289 Box, Buffalo, NY**

(This project was inspected on 10/20/06. A Notice of Violation was issued on 10/23/06 and re-issued on 4/25/07)

**12 NYCRR Part 56 [56-3.4.b.1]**

**Administrative, Notice and Recordkeeping Requirements, Notification, When Required**

The contractor failed to send the required fee of \$1,000.00 with the project notification. (T. 234-236; DOL Exs. 137, 139, 140, and 140A)

**Project 27: 496 7<sup>th</sup> Street, Buffalo, NY**

(This project was inspected on 10/20/06. A Notice of Violation was issued on 10/23/06 and re-issued on 4/25/07)

**12 NYCRR Part 56 [56-3.4.b.1]**

**Administrative, Notice and Recordkeeping Requirements, Notification, When Required**

The contractor failed to send the required fee of \$1,000.00 with the project notification. (T. 238-239; DOL Exs. 142, 144, 145, and 145A)

**Project 28: 255 Landon, Buffalo, NY**

(This project was inspected on 10/20/06, 10/24/06, and 11/16/06. Notices of Violation was issued on 10/23/06 and 11/17/06, and re-issued on 4/25/07)

**12 NYCRR Part 56 [56-3.4.b.1]**

**Administrative, Notice and Recordkeeping Requirements, Notification, When Required**

The contractor failed to send the required fee of \$1,000.00 with the project notification. (T. 242-245; DOL Exs. 149, 150, and 150A)

**12 NYCRR Part 56 [56-11.6.c.1]**

**Special Projects, Exterior Projects Removal of Non-friable ACM Roofing, Siding, Caulking, Glazing Compound, Transite, Tars, Sealers, Coatings, and Other NOB ACMs**

The contractor left several pieces of asbestos transite siding along the ground throughout the perimeter of the house and attached to the exterior walls. The presence of asbestos was confirmed by samples taken on 11/16/06. (T. 242-245; DOL Exs. 148, 149, 150, and 150A)

**Project 29: 28 S. Putman, Buffalo, NY**

(This project was inspected on 10/20/06, 10/24/06, and 11/16/06. Notices of Violation was issued on 10/23/06 and 11/17/06, and re-issued on 4/25/07)

**12 NYCRR Part 56 [56-3.4.b.1]**

**Administrative, Notice and Recordkeeping Requirements, Notification, When Required**

The contractor failed to send the required fee of \$1,000.00 with the project notification. (T. 248-251; DOL Exs. 154, 155, and 155A)

**12 NYCRR Part 56 [56-11.6.c.1]**

**Special Projects, Exterior Projects Removal of Non-friable ACM Roofing, Siding, Caulking, Glazing Compound, Transite, Tars, Sealers, Coatings, and Other NOB ACMs**

The contractor left several pieces of asbestos transite siding along the ground throughout the perimeter of the house and attached to the exterior walls. The presence of asbestos was confirmed by samples taken on 11/16/06. (T. 248-251; DOL Exs. 153, 154, 155, and 155A)

**Project 30: 121 Hirschbeck, Buffalo, NY**

(This project was inspected on 10/20/06, 10/24/06, and 11/9/06. Notices of Violation was issued on 10/23/06 and 11/13/06, and re-issued on 4/24/07)



**12 NYCRR Part 56 [56-3.4.b.1]**

**Administrative, Notice and Recordkeeping Requirements, Notification, When Required**

The contractor failed to send the required fee of \$1,000.00 with the project notification. (T. 253-257; DOL Exs. 158, 159, and 159A)

**12 NYCRR Part 56 [56-11.6.c.1]**

**Special Projects, Exterior Projects Removal of Non-friable ACM Roofing, Siding, Caulking, Glazing Compound, Transite, Tars, Sealers, Coatings, and Other NOB ACMs**

The contractor left several pieces of asbestos transite siding along the ground throughout the perimeter of the house and attached to the exterior walls. The presence of asbestos was confirmed by samples taken on 11/9/06. (T. 253-257; DOL Exs. 157, 158, 159, and 159A)

**Project 31: 342 Guilford, Buffalo, NY**

(This project was inspected on 10/20/06, 10/24/06, and 11/9/06. Notices of Violation was issued on 10/23/06 and 11/17/06, and re-issued on 4/24/07)

**12 NYCRR Part 56 [56-3.4.b.1]**

**Administrative, Notice and Recordkeeping Requirements, Notification, When Required**

The contractor failed to send the required fee of \$1,000.00 with the project notification. (T. 259-264; DOL Exs. 163, 164, and 164A)

**12 NYCRR Part 56 [56-11.6.c.1]**

**Special Projects, Exterior Projects Removal of Non-friable ACM Roofing, Siding, Caulking, Glazing Compound, Transite, Tars, Sealers, Coatings, and Other NOB ACMs**

The contractor left several pieces of asbestos transite siding along the ground throughout the perimeter of the house and attached to the exterior walls. The presence of asbestos was confirmed by samples taken on 11/9/06. (T. 259-264; DOL Exs. 162, 163, 164, and 164A)

**Project 32: 298 Hampshire, Buffalo, NY**

(This project was inspected on 10/20/06, 10/24/06, 10/26/06, and 11/2/06. Notices of Violation was issued on 10/23/06 and 11/8/06, and re-issued on 4/24/07)

**12 NYCRR Part 56 [56-3.4.b.1]**

**Administrative, Notice and Recordkeeping Requirements, Notification, When Required**

The contractor failed to send the required fee of \$1,000.00 with the project notification. (T. 266-270; DOL Exs. 168, 169, and 169A)

**12 NYCRR Part 56 [56-11.6.c.1]**

**Special Projects, Exterior Projects Removal of Non-friable ACM Roofing, Siding, Caulking, Glazing Compound, Transite, Tars, Sealers, Coatings, and Other NOB ACMs**

The contractor left several pieces of asbestos transite siding along the ground throughout the perimeter of the house and attached to the exterior walls. The presence of asbestos was confirmed by samples taken on 11/2/06. (T. 266-270; DOL Exs. 167, 168, 169, and 169A)

**Project 33: 49 Deshler, Buffalo, NY**

(This project was inspected on 10/20/06. A Notice of Violation was issued on 10/23/06 and re-issued on 4/24/07)

**12 NYCRR Part 56 [56-3.4.b.1]**

**Administrative, Notice and Recordkeeping Requirements, Notification, When Required**

The contractor failed to send the required fee of \$1,000.00 with the project notification. (T. 272-274; DOL Exs. 171, 173, 174, and 174A)

**Project 34: 1319 Bailey, Buffalo, NY**

(This project was inspected on 10/20/06. A Notice of Violation was issued on 10/23/06 and re-issued on 4/24/07 and /07)

**12 NYCRR Part 56 [56-3.4.b.1]**

**Administrative, Notice and Recordkeeping Requirements, Notification, When Required**

The contractor failed to send the required fee of \$1,000.00 with the project notification. (T. 276-279; DOL Exs. 176, 178, 179, and 179A)

**Project 35: 111 East Parade, Buffalo, NY**

(This project was inspected on 11/3/05. Notices of Violation were issued on 11/7/05 and 11/9/05, and re-issued on 10/16/07)

**12 NYCRR Part 56 [56-4.1.a]**

**Work Area Entry and Exit Procedures, General requirements, Entry and exit**

The contractor's employees were seen exiting the work area without using a personal decontamination enclosure system. (T. 281-295; DOL Exs. 183, 183A, 184A, and 184B)

**12 NYCRR Part 56 [56-6.1.a]**

**Engineering Controls, Negative air pressure equipment**

The contractor did not use any negative air pressure equipment for the small asbestos project. 150 linear feet of pipe wrap insulation was removed from the basement of the house. (T. 281-295; DOL Exs. 183, 183A, 184A, and 184B)

**12 NYCRR Part 56 [56-8.1.d]**

**Work Area Preparation, General requirements – Large and Small Asbestos Projects, Start of Project – Enclosure Installation or Construction**

The contractor did not install a personal or waste decontamination enclosure system at any time during the project. (T. 281-295; DOL Exs. 183, 183A, 184A, and 184B)

**12 NYCRR Part 56 [56-8.1.j]**

**Isolation barriers – general**

No isolation barriers of any kind were used during the course of the small asbestos project. (T. 281-295; DOL Exs. 183, 183A, 184A, and 184B)

**12 NYCRR Part 56 [56-9.2.a]**

**Personal Decontamination Enclosure System, Small asbestos projects, Enclosure requirements**

The contractor did not employ a personal decontamination enclosure for the small project. (T. 281-295; DOL Exs. 183, 183A, 184A, and 184B)

**12 NYCRR Part 56 [56-10.1.a]**

**Waste Decontamination Enclosure System, Large and small asbestos projects, Rooms and configuration**

No waste decontamination system was used during the course of the project. (T. 281-295; DOL Exs. 183, 183A, 184A, and 184B)

## **12 NYCRR Part 56 [56-15.1.a]**

### **Cleanup Procedures, General requirements, Frequency of containerizing**

The contractor left behind several areas of debris on pipes, joints, on the ground, and on shelves throughout the basement work area. The debris was scattered in an area measuring 42' x 6', creating a large abatement project. (T. 281-295; DOL Exs. 183, 183A, 184A, and 184B)

## **12 NYCRR Part 56 [56-17.1]**

### **Air Sampling, Monitoring and Analysis, Schedules and methods**

No air sampling was done for a small project as per the table in the above section. (T. 281-295; DOL Exs. 183, 183A, 184A, and 184B)

## **12 NYCRR Part 56 [56-18.2]**

### **Variances**

The contractor did not comply with the conditions of Applicable Variance 108. The contractor reused glovebags on different/separate pipe runs with multiple lengths in one glovebag. A total of three glovebags were found used for 150 linear feet of pipe insulation. (T. 281-295; DOL Exs. 183, 183A, 184, and 184B)

### **Project 36: 180 Laurel Street, Buffalo, NY**

(This project was inspected on 10/17/07 and 10/22/07. A Notice of Violation was issued on 10/23/07)

## **12 NYCRR Part 56 [56-3.4.B.4.1]**

### **Postponement, Cancellation or Changes to Completion Dates of Projects**

The contractor failed to notify the Asbestos Control Bureau of the postponement of the project. The project was scheduled to start on 10/13/07 and had not started as of the inspection on 10/17/07. (T. 297-298; DOL Exs. 185, 186, and 187)

### **Civil Penalty**

Labor Law § 909 (1) (a) provides for a maximum civil penalty of \$1,500.00 for the initial violation of Labor Law § 902, and up to \$2,500.00 for the second or subsequent violation of such section. The Department has produced sufficient evidence to sustain a finding that on two occasions the Respondents failed to have their license on

site while abatement activities were taking place (project 1). This constitutes two violations of Labor Law § 902. Furthermore, Respondents' employment of uncertified workers (projects 1 and 2) constitutes two additional separate and distinct violations of Labor Law § 902.

The Department has offered no evidence of prior violations of Labor Law § 902 so all four violations of this section are deemed to be initial violations. Furthermore, although the Department's Counsel requested in his Opening Statement the imposition of the maximum civil penalty for all alleged violations, the Department failed during the hearing or in post-hearing submissions to offer any argument or analysis to support this request. It appears that the Respondents were properly licensed at all times relevant to the violations alleged in the Notice of Hearing. However, it further appears that, based upon the number of projects included in this hearing, the Respondents must have been aware of the need to display their license on site and to employ properly certified employees for the asbestos abatement work. I find that there is sufficient evidence to warrant the imposition of the maximum penalty of \$1,500.00 for each of the four violations of Labor Law § 902 for a total civil penalty of \$6,000.00.

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(s), and the history of previous violations.

The Department failed to offer any evidence during the hearing or in post-hearing submissions of the size of Respondents' business, the Respondents' good faith, the gravity (seriousness) of the violation (s), or the Respondents' history of previous violations. It is clear from the caption of the case that Eugene E. Holiday and Myra E. Holiday personally conduct their asbestos abatement activities using the business name of

Environmental Specialty Contractor. The Respondents apparently do not operate in a corporate capacity and, therefore, any financial liability resulting from this case will personally attach to Eugene E. Holiday and Myra E. Holiday, the sole proprietors of Environmental Specialty Contractor.

In addition, the record is silent on the issues of the Respondents' good or bad faith or history of prior violations.

On the issue of the gravity of the violations, the Department alleged a total of 104 violations in the Notice of hearing that do not involve Labor Law § 902. Of these 104 violations, 36 Notices of Violation involve the Respondents' failure to comply with the Labor Law § 904/ Code Rule 56 requirements to notify the Bureau of delayed start dates or to pay the requisite fees with the Asbestos Project Notification. There is no evidence that the Respondents failed to file the requisite Asbestos Project Notifications which allowed the Bureau's to perform its statutory obligation to verify that asbestos abatement is performed within all the safety and health guidelines. Additionally, there is no evidence that the Respondents failed to ultimately pay the required fee immediately after a Stop Work Order was placed on the project. (See, for example, Project 19, T. 195-197; Project 21, T. 203-208; Project 23, T. 214-218; Project 24, T. 220-227; Project 25, T. 229-232; Project 26, T. 234-236; Project 32, T. 266-270; Project 33, T. 272-274; and Project 34, T. 276-279.)

The remaining 68 violations involve work practice violations committed by the Respondents' employees during actual asbestos abatement activities, which could have exposed the Respondents' employees and/or the general public to harmful asbestos containing material. While the majority of these violations involve the failure to provide employees with proper personal and waste decontamination facilities, and failure to ensure that the employees followed the required abatement methods, 27 of these violations involved the Respondents failure to properly contain the abatement site and abate all of the asbestos containing material at the project sites thereby leaving the public exposed to asbestos containing material after the Respondents quit the project. (See, Projects 1, 2, 3, 5, 7, 9, 12, 17, 18, 21, 23, 24, 28, 29, 30, 31, 32, and 35.)

A review of the photographs of the inspections of all of the projects included in this case and the documentary and testimony evidence offered by the Department indicates that virtually all of these 27 projects involved structures that either were or are in areas of a general residential character. (See, for example, T. 115, 124, 136, 225, 261 and 269.) Even in the absence of evidence of the gravity of the violations, I find that the record supports a finding that leaving asbestos containing material in residential neighborhoods following the completion of the abatement projects to be serious violations of the applicable sections of the Labor Law and Code Rule 56.

The Respondents neither answered nor appeared in this matter to proffer justifications for the violations. Although the nature and number of violations are serious, there is no evidence in the record of any prior violations. The Counsel for the Department requested in his Opening Statement that the Commissioner assess the maximum penalty for each violation. However, the Department failed to produce any evidence or analysis to support this request. Under the circumstances, a penalty of \$2,000.00 for each of the above referenced 27 violations that have been deemed serious or \$54,000.00, and a civil penalty of \$5000.00 for the remaining 77 violations not involving Labor Law § 902 is not unreasonable and should be imposed. The total civil penalty for all of the 108 violations alleged in the Notice of Hearing that should be imposed against the Respondents is \$65,000.00.

### **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 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 the Respondent be barred for the maximum period allowed by law.

The sheer quantity of violations, including the above referenced 27 serious violations that subjected the public to exposure to potential asbestos containing material, establishes the Respondents' lack of regard for the necessity of conducting their asbestos abatement business in conformity with the provisions of the Labor Law and Code Rule 56. The Department has produced sufficient credible evidence to support a finding that the Respondents have demonstrated a very serious lack of responsibility in the conduct of all of the asbestos abatement projects involved in this case. Under the circumstances presented herein, the Respondents, Eugene E. Holiday, SR. and Myra E. Holiday, should be barred from performing asbestos abatement in New York State for the maximum period of two years. Accordingly, any existing asbestos handling license or certificate issued to the Respondents should be revoked, and the Respondent should be barred from applying for a new asbestos handling license or certificate, for a period of two years 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:

**DETERMINE**, that Respondents have violated each and every section of the Labor Law and Code Rule alleged in the Notice of Hearing as aforesaid; and

**ORDER**, that a total civil penalty of \$65,000.00 be imposed and assessed against the Respondents as aforesaid; and

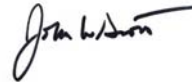
**ORDER**, that any existing asbestos handling license or certificate issued to Respondents be revoked and that Respondents, Eugene E. Holiday, Sr. and Myra E. Holiday, be barred from applying for a new asbestos handling license or certificate, for a period of two years from the date of the Notice of Filing of the Commissioner of Labor's Determination & Order; and



**ORDER**, that Respondents 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 (\$65,000.00) on all the Projects, made payable to the Commissioner of Labor.

Dated: May 13, 2011  
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John W. Scott", written in a cursive style.

John W. Scott, Hearing Officer