

**DEFAULT
REPORT
&
RECOMMENDATION**

IN THE MATTER OF

F.L.S.E. Corp.,

and

its substantially owned-affiliated entity,

SAFETY LEAD SERVICES CORP

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.
25748732; 25765154; 25765155
25779632; 25817378; 25819644;
25824451; 25828722; 25835477,
25835480; 25835481; 25835484
25835485; 25835486; 25835487
25835490; 25835491; 25835493,
25835494; 25835499; 25835500,
25835504; 25835505; 25835523
25835524; 25835525; 25835526,
25835527; 25835528; 25835529,
25835530; 25835531 ; 25835532,
25835545, 25835547, 25835548
25835549, 25835551, 25835552,
25835553; b25835554; 25835555,
25835556; 25835557; 25835558,
25835559; 25835560

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

Pursuant to a Notice of Hearing issued in this matter, a video hearing was held on August 18, 2011, between Albany, New York and New York, New York. The purpose of the hearing was to provide all parties an opportunity to be heard on the issues raised in the Notice of Hearing and to establish a record from which the Hearing Officer could prepare this Report and Recommendation for the Commissioner of Labor.

The hearing concerned an investigation conducted by the Asbestos Control Bureau (“Bureau”) of the Division of Safety and Health of the New York State Department of Labor (“Department”) into whether F.L.S.E. Corp. (“Respondent”) complied with the requirements of Article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR 56 (“Code Rule”) when Respondent

undertook 46 asbestos abatement projects¹ located at: 39-20 Greenpoint Avenue, Queens, NY, Asbestos Control No. 25748732 (hereinafter referred to as “Project 1”); 1701 Albemarle Road, Brooklyn, NY, Asbestos Control No. 25765154 (hereinafter referred to as “Project 2”); 45 North Ocean Avenue, Freeport, NY, Asbestos Control No. 25779632 (hereinafter referred to as “Project 3”); 190 Mineola Blvd., Mineola, NY, Asbestos Control No. 25817378 (hereinafter referred to as “Project 4”); 120 Clinton Avenue, Mineola, NY, Asbestos Control No. 25819644 (hereinafter referred to as “Project 5”); 225 1st Street, Mineola, NY, Asbestos Control No. 25824451 (hereinafter referred to as “Project 6”); 240 Central Avenue, Lawrence, NY, Asbestos Control No. 25828722 (hereinafter referred to as “Project 7”); 175-35 Hillside Avenue, Queens, NY, Asbestos Control No. 25835477 (hereinafter referred to as “Project 8”); 3777 Independence Avenue, Bronx, NY, Asbestos Control No. 25835480 (hereinafter referred to as “Project 9”); 101 West 121st Street, New York, NY, Asbestos Control No. 25834581 (hereinafter referred to as “Project 10”); 101 West 15th Street, New York, NY, Asbestos Control No. 25835484 (hereinafter referred to as “Project 11”); 1082 East 23rd Street, Brooklyn, NY, Asbestos Control No. 25835485 (hereinafter referred to as “Project 12”); 1092 East 22nd Street, Brooklyn, NY, Asbestos Control No. 25835486 (hereinafter referred to as “Project 13”); 11 East 68th Street, New York, NY, Asbestos Control No. 25835487 (hereinafter referred to as “Project 14”); 118-18 Metropolitan Avenue, Queens, NY, Asbestos Control No. 25835490 (hereinafter referred to as “Project 15”); 1228 54th Street, Brooklyn, NY, Asbestos Control No. 25835491 (hereinafter referred to as “Project 16”); 1268 42nd Street, Brooklyn, NY, Asbestos Control No. 25835493 (hereinafter referred to as “Project 17”); 1268 42nd Street, Brooklyn, NY, Asbestos Control No. 25835494 (hereinafter referred to as “Project 18”); 141-55 77th Avenue, Queens, NY, Asbestos Control No. 25835499 (hereinafter referred to as “Project 19”); 143-30 38th Avenue, Queens, NY, Asbestos Control No. 25835500 (hereinafter referred to as “Project 20”); 1449 41st Street, Brooklyn, NY, Asbestos Control No. 25835504 (hereinafter referred to as “Project 21”); 145 Skillman Street, Brooklyn, NY, Asbestos Control No. 25835505 (hereinafter referred to as “Project 22”); 145 Skillman Street, Brooklyn, NY, Asbestos Control No. 25835523 (hereinafter referred to as “Project 23”); 1462 East 27th Street, Brooklyn, NY, Asbestos Control No. 25835524 (hereinafter referred to as “Project 24”); 147-25 78th Avenue, Queens, NY, Asbestos Control No. 25835525 (hereinafter referred to as “Project 25”); 1623 Flatbush Avenue,

¹ At the hearing, the Department withdrew Asbestos Case No. 25765155 because of erroneous duplication. (T. 4)

Brooklyn, NY, Asbestos Control No. 25835526 (hereinafter referred to as “Project 26”); 1660 East 13th Street, Brooklyn, NY, Asbestos Control No. 25835527 (hereinafter referred to as “Project 27”); 1735 54th Street, Brooklyn, NY, Asbestos Control No. 25835528 (hereinafter referred to as “Project 28”); 175-41 Hillside Avenue, Queens, NY, Asbestos Control No. 25835529 (hereinafter referred to as “Project 29”); 225 East 202, Bronx, NY, Asbestos Control No. 25835530 (hereinafter referred to as “Project 30”); 2345 Crotona Avenue, Bronx, NY, Asbestos Control No. 25835531 (hereinafter referred to as “Project 31”); 2345 Crotona Avenue, Bronx, NY, Asbestos Control No. 25835532 (hereinafter referred to as “Project 32”); 27 West 55th Street, New York, NY, Asbestos Control No. 25835545 (hereinafter referred to as “Project 33”); 359 West 45th Street, New York, NY, Asbestos Control No. 25835547 (hereinafter referred to as “Project 34”); 359 West 45th Street, New York, NY, Asbestos Control No. 25835548 (hereinafter referred to as “Project 35”); 37-51 86 Street, Queens, NY, Asbestos Control No. 25835549 (hereinafter referred to as “Project 36”); 37-51 86 Street, Queens, NY, Asbestos Control No. 25835551 (hereinafter referred to as “Project 37”); 410 Cathedral Parkway, New York, NY, Asbestos Control No. 25835552 (hereinafter referred to as “Project 38”); 41-72 Judge Street, Queens, NY, Asbestos Control No. 25835553 (hereinafter referred to as “Project 39”); 425 West 24th Street, New York, NY, Asbestos Control No. 25835554 (hereinafter referred to as “Project 40”); 45 Christopher Street, New York, NY, Asbestos Control No. 25835555 (hereinafter referred to as “Project 41”); 55 Winthrop Street, Brooklyn, NY, Asbestos Control No. 25835556 (hereinafter referred to as “Project 42”); 610 West 110th Street, New York, NY, Asbestos Control No. 25835557 (hereinafter referred to as “Project 43”); 711 West End Avenue, New York, NY, Asbestos Control No. 25835558 (hereinafter referred to as “Project 44”); 788 Ninth Avenue, New York, NY, Asbestos Control No. 25835559 (hereinafter referred to as “Project 45”); and 8606 5th Avenue, Brooklyn, NY, Asbestos Control No. 25835560 (hereinafter referred to as “Project 46”);.

APPEARANCES

The Bureau was represented by Department Counsel, Maria Colavito, Steven J. Pepe, Senior Attorney, of Counsel.

Respondent F.L.S.E. Corp. appeared by and through Melvin J. Kalish, Esq. There was no appearance made by or on behalf of Respondent Safety Lead Services Corp.

HEARING OFFICER DESIGNATION

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

FINDINGS AND CONCLUSIONS

On June 14, 2011, the Department duly served copies of the Notice of Hearing on Respondent F.L.S.E. Corp. by first class mail and by certified mail. The Department produced a signed Return Receipt evidencing the Respondent's receipt of the document on June 21, 2011 (Hearing Officer Ex. 1). The Notice of Hearing scheduled a July 15, 2011 hearing and required that the Respondent serve an Answer at least 14 days in advance of the scheduled hearing.

The Hearing was adjourned and a new hearing date was scheduled for August 18, 2011. The Notice of Adjournment and Rescheduled Hearing was served on F.L.S.E. Corp. and Attorney Melvin J. Kalish. (See, Hearing Officer Ex. 2) However, by letter dated August 16, 2011, Attorney Kalish informed the Hearing Officer that neither he nor F.L.S.E. Corp. intended to attend the hearing to contest the issues raised by the Department in the Notice of Hearing (Hearing Officer Ex. 3)

Respondents failed to answer the charges contained in the Notice of Hearing or appear at the hearing. As a consequence, Respondents F.L.S.E. Corp. and Safety Lead Services Corp. are in default in this proceeding.

At the hearing, the Department produced sworn and credible evidence substantially supporting the Department's charges that Respondent F.L.S.E. Corp. violated the particular provisions of the Labor Law or the Code Rule that are hereinafter particularized. Additionally, the Department produced sworn and credible evidence of the size of the Respondent's business as a medium sized asbestos abatement contractor working primarily in the New York City area (T. 81); the Respondent's lack of good faith as evidenced by its penchant for making the same work practice errors and failing to fulfill the terms of stipulations (T. 82); the gravity of the work practice violations that create a potential risk to peoples' safety and health, and the purposeful or intentional failure to notify the Bureau of asbestos projects (T. 81); and the history of previous violations by the Respondent (DOL Ex. 24; T. 63, 82) and its substantially owned-affiliated entity, Safety Lead Services Corp. (DOL Ex. 31; T. 77-79, 82). The record contains sufficient

evidence to substantially support the Department's request for civil penalties for each project in the amount of \$2,500.00.

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 the hearing in support of those charges, I recommend that the Commissioner of Labor make the following determinations and orders in connection with the issues raised in this case:

Project 1

DETERMINE that Respondent committed one violation of the Code Rule as follows:

12 NYCRR 56-3.4.B.1, Notification, requires that any asbestos abatement contractor who proposes to engage in a large asbestos project shall notify or cause to be notified, in writing, the Asbestos Control Bureau. Such Notice must be received at least ten (10) days prior to commencement of Phase II A. The Respondent engaged in a large scale asbestos clean-up at this project site for which they did not notify the Asbestos Control Bureau and pay the notification filing fee of \$2,000.00. (DOL Exs. 16, 17, 18; T. 47-50) The notification fee was ultimately paid by the Respondent. (DOL Ex. 23)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 2

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 New York City Department of Environmental Protection (“NYCDEP”) computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 2, but

did not notify the Bureau or pay the required notification fee of \$600.00. (DOL Exs. 19, 20; T.52-54) The notification fee was ultimately paid by the Respondent. (DOL Ex. 23)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 3

DETERMINE that Respondent committed five violations of the Code Rule as follows:

12 NYCRR 56-7.5.B.1, Personal Decontamination System Enclosure-Large Project, requires that a personal decontamination system shall be provided outside the regulated abatement work area and attached to all locations where personnel shall enter or exit the regulated abatement work area. On inspection, it was determined that the decontamination unit was not attached to the work area thereby allowing a potential release of asbestos fibers into the environment. (DOL Exs. 2, 3; T. 15-17)

12 NYCRR 56-7.5.B.8, Personal Decontamination System Enclosure-Large Project, requires that the clean room with a minimum of thirty-two (32) square feet of floor space be provided for every six (6) full shift abatement workers with benches, lockers, and hooks provided for street clothes. On inspection, it was determined that the clean room was a three (3) foot by three (3) foot air lock without any lockers, benches or hooks. (DOL Exs. 2, 3; T. 17)

12 NYCRR 56-7.5.E.1, Waste Decontamination System Enclosure-Large and Small Projects-Enclosure-General, requires that a waste decontamination system enclosure be provided outside the regulated abatement work area and attached to the regulated abatement work area. On inspection, it was determined that the respondent did not have a waste decontamination system at the project. (DOL Exs. 2, 3; T. 18)

12 NYCRR 56-8.3.A.1.III, Regulated Abatement Work Area Entry and Exit Procedures-Personal Protective Equipment, requires that 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. The Safety and Health Inspector observed the respondent's employees when they were getting ready to enter the work area. They had assembled outside the airlock in full personal protective equipment, but they had not changed in

the personal decontamination system and there was no street clothing inside the personal decontamination system. (DOL Exs. 2, 3; T. 18-19)

12 NYCRR 56-7.11.B.1, Regulated Abatement Work Area Enclosure-Isolation Barriers-Framing, requires that 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. On inspection of this large asbestos abatement project involving friable asbestos material the inspector observed that the Respondent was using plastic sheeting in lieu of the required hard wall barriers. (DOL Exs. 2, 3; T. 19-20)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 4

DETERMINE that Respondent committed one violation of the Code Rule as follows:

12 NYCRR 56-7.11.F.1.I, Where Allowed, requires that for tent enclosures with gross abatement of friable materials, attached (contiguous) decontamination system enclosures shall be constructed, maintained and utilized as per this Part. On inspection of this asbestos abatement project it was determined that the Respondent removed asbestos pipe insulation in the basement hallway without an attached personal decontamination unit. (DOL Exs. 5, 6; T. 22)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 5

DETERMINE that Respondent committed one violation of the Code Rule as follows:

12 NYCRR 56-3.4.B.4.I, Postponement, Cancellation or Changes to Completion Dates of Projects, requires that, whenever the commencement date of a project for which notification has already been submitted is postponed, the asbestos abatement contractor shall notify the Asbestos Control Bureau of the postponement or cancellation or change of completion date by telephone or written notice. This notice shall be received at least one (1) calendar day prior to the initial start or completion date set forth on the previously submitted notification. In addition, written

notification of new start dates on projects postponed for one (1) week or longer must be received at least three (3) calendar days prior to the new start date. On this project, the Respondent filed a project notification indicating a start date of December 13, 2010. (DOL Ex. 7) On December 15, 2010, the inspector arrived at the project location and found that the Respondent had not started the project. (DOL Exs. 8, 9, T. 27) As of December 31, 2010, the Respondent had failed to amend the start date of this project. (DOL Exs. 8, 9; T. 27-28)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 6

DETERMINE that Respondent committed four violations of the Code Rule as follows:

12 NYCRR 56-7.5.B.8, Personal Decontamination System Enclosure-Large Project, requires that the clean room with a minimum of thirty-two (32) square feet of floor space be provided for every six (6) full shift abatement workers with benches, lockers, and hooks provided for street clothes. On inspection of this asbestos abatement project it was determined that the clean room was a pop-up chamber measuring nine (9) square feet without any lockers, benches or hooks. (DOL Exs. 11, 12; T. 34-35)

12 NYCRR 56-7.5.F.2.I, Small and Large Size regulated Abatement Work Areas-Washroom, requires that an additional chamber be constructed within the regulated work area that is attached to the existing airlock used to access the work area. This chamber must be supplied with equipment consistent with a waste decontamination system enclosure washroom to be used for waste bag decontamination. On inspection of this asbestos abatement project it was determined that the Respondent had erected a remote decontamination unit that was not connected to the work area as required. (DOL Exs. 11, 12; T. 35-36)

12 NYCRR 56-8.3.A.2.III, Regulated Abatement Work Area Entry and Exit Procedures-Exit Procedures Utilizing Remote Decontamination Systems, requires that, if at any time a person has to travel through an uncontaminated area to access the personal or waste decontamination enclosure system, the person shall HEPA vacuum and/or wet wipe his/her outer protective clothing while in the regulated abatement work area, then proceed into the airlock where he/she shall remove his/her outer clothing and don a clean set of protective clothing. The

inspector observed that the workers were wearing protective coveralls with the foot covering cut off. When the workers exited the tent in which the abatement was being done, they walked out without changing suits or covering their work boots contrary to the requirements of the Code Rule. (DOL Exs. 11, 12; T. 36-37)

12 NYCRR 56-9.1.B, Final Cleaning Procedures-First Cleaning, Lockdown Encapsulation and Top Layer removal, requires that in no event shall a lockdown encapsulant agent be applied to any surface which was the subject of removal or other abatement response activity, prior to obtaining satisfactory clearance air results for the abatement work area. The inspector observed that the pipes from which insulation was removed in the regulated abatement work area were coated with encalsulant prior to receipt of satisfactory clearance air sampling. (DOL Exs. 11, 12; T. 37-38)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 7

DETERMINE that Respondent committed one violation of the Code Rule as follows:

12 NYCRR 56-7.5.B.8, Personal Decontamination System Enclosure-Large Project, requires that the clean room with a minimum of thirty-two (32) square feet of floor space be provided for every six (6) full shift abatement workers with benches, lockers, and hooks provided for street clothes. On inspection of this asbestos abatement project it was determined that the personal decontamination unit consisted of three pop-up chambers measuring nine (9) square feet each, without any lockers, benches or hooks. (DOL Exs. 14, 15; T. 41-43)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 8

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the

Respondent notified NYCDEP of Project 8, but did not notify the Bureau or pay the required notification fee of \$2,000.00. (DOL Ex. 21-01, 22-01)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$2,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 9

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 9, but did not notify the Bureau or pay the required notification fee of \$1,000.00. (DOL Ex. 21-02, 22-02)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$1,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 10

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 10, but did not notify the Bureau or pay the required notification fee of \$2,000.00. (DOL Ex. 21-03, 22-03)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$2,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 11

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 11, but did not notify the Bureau or pay the required notification fee of \$400.00. (DOL Ex. 21-04, 22-04) The notification fee was ultimately paid by the Respondent. (DOL Ex. 23; T. 62)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 12

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 12, but did not notify the Bureau or pay the required notification fee of \$2,000.00. (DOL Ex. 21-05, 22-05)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$2,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 13

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 13, but did not notify the Bureau or pay the required notification fee of \$1,000.00. (DOL Ex. 21-06, 22-06)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$1,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 14

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 14, but did not notify the Bureau or pay the required notification fee of \$400.00. (DOL Ex. 21-07, 22-07) The notification fee was ultimately paid by the Respondent. (DOL Ex. 23; T. 62)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 15

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 15, but did not notify the Bureau or pay the required notification fee of \$400.00. (DOL Ex. 21-08, 22-08) The notification fee was ultimately paid by the Respondent. (DOL Ex. 23; T. 62)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 16

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 16, but did not notify the Bureau or pay the required notification fee of \$1,000.00. (DOL Ex. 21-09, 22-09)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$1,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 17

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 17, but did not notify the Bureau or pay the required notification fee of \$1,000.00. (DOL Ex. 21-10, 22-10)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$1,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 18

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 18, but did not notify the Bureau or pay the required notification fee of \$2,000.00. (DOL Ex. 21-11, 22-11)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$2,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 19

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 19, but did not notify the Bureau or pay the required notification fee of \$400.00. (DOL Ex. 21-12, 22-12)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$400.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 20

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 20, but did not notify the Bureau or pay the required notification fee of \$400.00. (DOL Ex. 21-13, 22-13)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$400.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 21

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 21, but did not notify the Bureau or pay the required notification fee of \$1,000.00. (DOL Ex. 21-14, 22-14)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$1,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 22

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 22, but did not notify the Bureau or pay the required notification fee of \$200.00. (DOL Ex. 21-15, 22-15)

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

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 23

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 23, but did not notify the Bureau or pay the required notification fee of \$2,000.00. (DOL Ex. 21-16, 22-16)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$2,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 24

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the

Respondent notified NYCDEP of Project 24, but did not notify the Bureau or pay the required notification fee of \$1,000.00. (DOL Ex. 21-17, 22-17)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$1,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 25

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 25, but did not notify the Bureau or pay the required notification fee of \$1,000.00. (DOL Ex. 21-18, 22-18)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$1,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 26

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 26, but did not notify the Bureau or pay the required notification fee of \$2,000.00. (DOL Ex. 21-19, 22-19)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$2,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 27

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 27, but did not notify the Bureau or pay the required notification fee of \$200.00. (DOL Ex. 21-20, 22-20) The notification fee was ultimately paid by the Respondent. (DOL Ex. 23; T. 62)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 28

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 28, but did not notify the Bureau or pay the required notification fee of \$1,000.00. (DOL Ex. 21-21, 22-21)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$1,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 29

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 29, but did not notify the Bureau or pay the required notification fee of \$1,000.00. (DOL Ex. 21-22, 22-22) The notification fee was ultimately paid by the Respondent. (DOL Ex. 23; T. 62)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 30

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 30, but did not notify the Bureau or pay the required notification fee of \$200.00. (DOL Ex. 21-23, 22-23) The notification fee was ultimately paid by the Respondent. (DOL Ex. 23; T. 62)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 31

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 31, but did not notify the Bureau or pay the required notification fee of \$1,000.00. (DOL Ex. 21-24, 22-24)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$1,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 32

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 32, but did not notify the Bureau or pay the required notification fee of \$200.00. (DOL Ex. 21-25, 22-25)

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

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 33

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 33, but did not notify the Bureau or pay the required notification fee of \$2,000.00. (DOL Ex. 21-26, 22-26)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$2,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 34

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 34, but did not notify the Bureau or pay the required notification fee of \$2,000.00. (DOL Ex. 21-27, 22-27)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$2,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 35

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 35, but did not notify the Bureau or pay the required notification fee of \$400.00. (DOL Ex. 21-28, 22-28)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$400.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 36

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 36, but did not notify the Bureau or pay the required notification fee of \$2,000.00. (DOL Ex. 21-29, 22-29)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$2,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 37

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 37, but did not notify the Bureau or pay the required notification fee of \$2,000.00. (DOL Ex. 21-30, 22-30)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$2,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 38

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 38, but did not notify the Bureau or pay the required notification fee of \$400.00. (DOL Ex. 21-31, 22-31) The notification fee was ultimately paid by the Respondent. (DOL Ex. 23; T. 62)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 39

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 39, but did not notify the Bureau or pay the required notification fee of \$1,000.00. (DOL Ex. 21-32, 22-32)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$1,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 40

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 40, but did not notify the Bureau or pay the required notification fee of \$2,000.00. (DOL Ex. 21-33, 22-33)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$2,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 41

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 41, but did not notify the Bureau or pay the required notification fee of \$1,000.00. (DOL Ex. 21-34, 22-34)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$1,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 42

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 42, but did not notify the Bureau or pay the required notification fee of \$1,000.00. (DOL Ex. 21-35, 22-35)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$1,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 43

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 43, but did not notify the Bureau or pay the required notification fee of \$400.00. (DOL Ex. 21-36, 22-36) The notification fee was ultimately paid by the Respondent. (DOL Ex. 23; T. 62)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 44

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 44, but did not notify the Bureau or pay the required notification fee of \$2,000.00. (DOL Ex. 21-37, 22-37)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$2,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 45

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 45, but did not notify the Bureau or pay the required notification fee of \$1,000.00. (DOL Ex. 21-38, 22-38)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$1,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

Project 46

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 46, but did not notify the Bureau or pay the required notification fee of \$400.00. (DOL Ex. 21-39, 22-39)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$400.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 for this Labor Law violation.

SUBSTANTIALLY OWNED-AFFILIATED ENTITIES

In pertinent part, Labor Law § 901(18)(c) defines a substantially owned-affiliated entity in relation to any asbestos contractor, to include any successor of the asbestos contractor, or an entity in which one or more of the top five shareholders of the asbestos contractor individually or collectively also owns a controlling share of the voting stock. Labor Law § 901(19) defines a successor to mean “an entity engaged in work substantially similar to that of the predecessor, where there is substantial continuity of operation with that predecessor.” Labor Law § 909(1)(b) provides that the asbestos contractor and any substantially owned-affiliated entity of such asbestos contractor shall be jointly and severally liable for the payment of any civil penalty assessed by the Commissioner after a finding that an asbestos contractor violated any provision of Article 30 of the Labor Law.

The record contains evidence that Chaya Bistritzky is the duly authorized representative and sole owner of the Respondent and Safety Lead Services Corp. (DOL Exs. 25, 26, 27, 28, 29, 30; T. 65, 69, 71, 72-73, 74, 80), and that there is a continuity of the operation of these two companies under the same ownership. (T. 80) The record contains evidence that both the Respondent and Safety Lead Services Corp. were or are engaged in asbestos abatement work. (DOL Exs. 26, 27, 28, 29; T. 70, 71, 74) The record contains evidence that Safety Lead Services Corp. entered into a Stipulation with the Department evidencing the assessment of civil penalties in the amount of \$24,400.00 (DOL Ex. 31; T. 78), of which \$13,600.00 in civil penalties remains

due and payable under the terms of the Stipulation. (T. 88) Finally, the record contains evidence that as of January 26, 2011, Safety Lead Services Corp. is an inactive corporation as a result of a Dissolution by Proclamation/Annulment of Authority. (DOL Ex. 30)

The record contains sufficient evidence indicating that through identical ownership and engaging in virtually the same type of business activity, the Respondent and Safety Lead Services Corp. are Substantially owned-affiliated entities as that term is defined in Labor Law § 901(18)(c). Therefore, the Commissioner shall

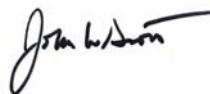
DETERMINE & ORDER that, pursuant to Labor Law § 909(1)(b), Respondent is liable for and shall pay the unpaid civil penalties assessed against Safety Lead Services Corp. in the amount of \$13,600.00.

Finally

ORDER that Respondent immediately remit payment to the Division Of Safety & Health, Asbestos Control Bureau, State Office Campus, Building 12, Room 157, Albany, NY 12240 of Project Notification fees in the amount of \$38,600.00 and civil penalties in the amount of \$128,600.00 (46 projects x \$2,500.00 = \$115,000.00 + \$13,600.00), for the total amount due \$167,200.00 on all the Projects, inclusive of the balance of civil penalties due under the stipulation entered into by Safety Lead Services Corp. (DOL Ex. 31), made payable to the Commissioner of Labor.

Dated: October 17, 2011
Albany, New York

Respectfully submitted,



John W. Scott, Hearing Officer