

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

MICHAEL A. GRILLO
d/b/a
HORIZON CONTRACTING CO.

Respondent's

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

**REPORT and
RECOMMENDATION**

Asbestos Case Nos.
AN-07-05-0466
AC-07-06-0093

To: Honorable M. Patricia Smith
Commissioner of Labor
State of New York

A hearing was held on January 27, 2009 at Syracuse, 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 had investigated whether Michael A. Grillo d/b/a Horizon Contracting Co. ("Respondent") complied with the requirements of Article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR 56 ("Code Rule") when Respondent undertook the performance of asbestos projects located at 515 Stewart Drive, Cicero, New York and 22 Dayton Street, Auburn, New York.

APPEARANCES

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

There was no appearance made by or on behalf of Respondent.

HEARING OFFICER DESIGNATION

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

FINDINGS AND CONCLUSIONS

On December 11, 2008, the Department duly served copies of the Notice of Hearing (Hearing Officer Exhibit 1) on Respondent by first class mail and by certified mail. Although the certified mail was returned as unclaimed (Hearing Officer Ex 2), there is no indication in the record that the first class mail was returned (T. 8). The Notice of Hearing scheduled a January 27, 2009 hearing and required that the Respondent serve an Answer at least 14 days in advance of the scheduled hearing.

Respondent failed to answer the charges contained in the Notice of Hearing or appear at the hearing. As a consequence, Respondent is in default in this proceeding.

At the hearing, the Department produced sworn and credible evidence substantially supporting the Department's charges that, as set forth in detail below, Respondent violated the following particularized provisions of the Labor Law or the Code Rule in connection with the asbestos projects located at 515 Stewart Drive, Cicero, New York and 22 Dayton Street, Auburn, New York.

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

RECOMMENDATIONS

Based upon the default of the Respondent in timely answering and contesting the charges contained in the Department's Notice of Hearing, and upon the sworn testimonial and documentary evidence adduced at 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, Respondent committed the following eight (8) violations of the Labor Law and/or Code Rule with respect to the project located at 515 Stewart Drive, Cicero, New York (Dept. Ex. 6), and six (6) violations of the Labor Law and/or Code Rule with respect to the project located at 22 Dayton Street, Auburn, New York (Dept. Ex. 14):

Project located at 515 Stewart Drive, Cicero, New York

Inspection date: December 8, 2005

12 NYCRR 56-16.1.b.2-Sealing.

Duct tape shall be placed securely around the affected area to form a smooth seal. The glovebag shall then be secured to the duct tape and sealed airtight.

The inspection of December 8, 2005 disclosed that the Respondent failed to seal the glove bags to the affected area as required by Code Rule 56. There was no duct tape on the glovebags showing that it had been sealed to the pipe.

12 NYCRR 56-16.1.b.3-Seal Testing.

The glove bag seal shall be subjected to and pass a smoke test as follows:

56-16.1.b.3i Aspirate the contents of a smoke tube through the water port access of the bag.

56-16.1.b.3.ii After twist sealing the access port, the bag shall be squeezed gently and checked for leakage points which shall be taped airtight.

The inspection of December 8, 2005 disclosed that the Respondent failed to seal test the glove bags as required by Code Rule 56. After abatement had started, there was no smoke kit in the tent; there was no hole in the water port; and there were no bulbs to aspirate the smoke tubes found at the project site.

12 NYCRR 56-16.1.b.9-Tool Segregation.

With the glovebag collapsed and the asbestos material in the bottom of the bag, twist the bag several times and tape the twist to seal the section. The tool pouch shall be separated from the bag by twisting it several times, taping the twist and thus sealing the pouch. Alternatively, the tools may be pulled through with one

or both glove inserts, thus turning the gloves inside out. The gloves shall then be twisted several times, taped and thus sealed.

The inspection of December 8, 2005 disclosed that the Respondent failed to seal test the glove bags as required by Code Rule 56. The glovebag contained mudded joint insulation; both gloves were in tact. The tool pouch could not have been taken out through the gloves (twisted and cut out). The glovebag had not been twisted shut or taped.

Inspection date: December 27, 2005

12 NYCRR 56-16.1.b.2-Sealing.

Duct tape shall be placed securely around the affected area to form a smooth seal. The glovebag shall then be secured to the duct tape and sealed airtight.

The inspection of December 27, 2005 disclosed that the Respondent failed to seal the glove bags to the affected area as required by Code Rule 56. There was no duct tape on the glovebags indicating that the bags were never sealed.

12 NYCRR 56-16.1.b.3-Seal Testing.

The glove bag seal shall be subjected to and pass a smoke test as follows:

56-16.1.b.3i Aspirate the contents of a smoke tube through the water port access of the bag.

56-16.1.b.3.ii After twist sealing the access port, the bag shall be squeezed gently and checked for leakage points which shall be taped airtight.

The inspection of December 27, 2005 disclosed that smoke testing was not done as there was no hole in the water port.

12 NYCRR 56-16.1.b.9-Tool Segregation.

With the glovebag collapsed and the asbestos material in the bottom of the bag, twist the bag several times and tape the twist to seal the section. The tool

pouch shall be separated from the bag by twisting it several times, taping the twist and thus sealing the pouch. Alternatively, the tools may be pulled through with one or both glove inserts, thus turning the gloves inside out. The gloves shall then be twisted several times, taped and thus sealed.

The inspection of December 27, 2005 disclosed that the glove bags were not twisted and taped shut. Both arms were loosely tied around the glove bags.

12 NYCRR 56-18.2-Variances Applicable Variance (AV 87).

Condition 5 A personal decontamination enclosure

Condition 7 A waste decontamination enclosure

The inspection of December 27, 2005 disclosed that the Respondent failed to have a personal decontamination enclosure and a waste decontamination enclosure attached to the work area.

12 NYCRR 56-18.2-Minor Asbestos Projects.

The inspection of December 27, 2005 disclosed that there was loose asbestos on the floor of the tent work area and that the work area required clean up as provided in Section 56-4(a-f).

Project located at 22 Dayton Street, Auburn, New York

Inspection date: May 9, 2006

12 NYCRR 56-8.4 Handling and Removal Procedures.

(b) Dry Removal or Dry Disturbance. No dry removal or dry disturbance of asbestos material shall be permitted.

(c) Wetting Requirements. The asbestos material shall be adequately wetted with amended water. Sufficient time shall be allowed for penetration to occur prior to abatement activities. All friable asbestos materials shall be

thoroughly saturated. All non-hygroscopic (material that resists wetting) asbestos material shall be thoroughly wetted prior to and during abatement.

The inspection of May 9, 2006 disclosed that asbestos insulation that was being scrapped from the boiler was dry. The moisture content of this asbestos containing material was analyzed as 0% moisture. Asbestos insulation in a waste bag was dry. The moisture content of this asbestos containing material was analyzed 2% moisture. Asbestos pipe insulation in glove bags was dry. The moisture content of this asbestos containing material was analyzed as 0% moisture.

12 NYCRR 56-7.5 Personal and Waste Decontamination System Enclosures.

(a) Installation. Personal decontamination system enclosures shall be constructed and functional prior to commencing the remainder of the Phase IIA regulated abatement work area preparation activities. Waste decontamination system enclosures shall be constructed and functional at the completion of Phase IIA preparation activities. After installation of the personal decontamination system enclosure, all access to the regulated abatement work area shall be via the installed personal decontamination system enclosure.

The inspection of May 9, 2006 disclosed that there were no decontamination system enclosures at the abatement work area.

12 NYCRR 56-7.7 Electric Power.

Shutdown and lock out of electric power to all negative pressure containment enclosures within the regulated abatement work areas shall be required as per current applicable OSHA standards. All existing power fixtures, lights, machinery and outlets within the enclosures must be shut down and locked out. The asbestos abatement contractor shall provide temporary power and lighting to the regulated abatement work area, and insure safe installation of temporary power sources and equipment used where high humidity or water shall be sprayed in accordance with all applicable codes. All temporary power to regulated abatement work areas shall

be brought in from outside the regulated abatement work area. The temporary power shall be protected by a ground fault circuit interrupter (GFCI) before the entry point to the regulated abatement work area. The negative air equipment shall be on GFCI protected circuits separate from the remainder of the regulated abatement work area temporary power circuits. The GFCI temporary power connections shall be located outside of the regulated abatement work area, in a secure, dry area, which is accessible to the asbestos abatement contractor.

The inspection of May 9, 2006 disclosed that the electrical house lights in the work area were on indicating that the electric power within the regulated abatement work area was not shutdown and locked out as required by this Code Rule.

12 NYCRR 56-7.11 Regulated Abatement Work Area Enclosure.

(a) Tents with greater than twenty (20) square feet of floor space, or tents that are scheduled for gross removal of friable ACM, PACM, or asbestos material, shall be constructed of two (2) layers of six (6) mil fire-retardant plastic sheeting and shall include walls, ceiling and a floor (except for portions of walls, floors and ceilings that are the removal surface) with double-folded seams. Seams shall be duct taped airtight and then duct taped flush with the adjacent tent wall.

The inspection of May 9, 2006 disclosed that the tent, which had more than 50 square feet of floor area, was not constructed of two (2) layers of six (6) mil fire-retardant plastic sheeting.

12 NYCRR 56-8.4 Handling and Removal Procedures (a) Glovebag Procedures.

The inspection of May 9, 2006 disclosed glovebags on the floor that were not sealed, containing an amount of dry pipe insulation that was four to five times the width of the glovebag.

12 NYCRR 56-4.9 Number and Location of Samples required.

The amount of ACM, PACM or asbestos material to be abated within the regulated abatement work area determines the asbestos project air sampling requirements for that specific regulated abatement work area.

The inspection of May 9, 2006 disclosed that there was no air sampling at the regulated abatement work area as required for a small project.

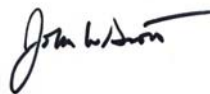
DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed a civil penalty in the amount requested by the Department of \$2,500.00 for each of the enumerated violations, for a civil penalty in the total amount of \$35,000.00; and

DETERMINE & ORDER that, as requested by the Department, the asbestos license assigned number 99-0867, be revoked for a period of two (2) years pursuant to Labor Law §909 (2); and

ORDER that, Respondent immediately remit payment to the Division Of Safety & Health, Asbestos Control Bureau, SOB Campus, Building 12, Room 157, Albany, NY 12240 of the total amount due (\$35,000.00) on the Projects, made payable to the Commissioner of Labor.

Dated: May 21, 2009
Albany, New York

Respectfully submitted,



John W. Scott, Hearing Officer