

**DEFAULT  
REPORT  
&  
RECOMMENDATION**

IN THE MATTER OF

**NATIONAL POWER ASSOCIATES CORP**

Respondent

for a determination pursuant to Section 909 of the New York Law that violations of Labor Law, Article 30 and/or Code Rule 56 took place as hereinafter described.

Asbestos Case Nos.  
25687319, 25688695,  
25688705  
25688707, 25688776,  
25688891  
25689025, 25694343,  
25694349  
25697548, 25707090

To: Honorable Peter  
Commissioner of Labor  
State of New York

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on May 31, 2012, in Albany, New York. The purpose of the hearing was to provide the parties with an opportunity to be heard on the issues raised in the Notice of Hearing and to establish a record from which the Hearing Officer could prepare this Report and Recommendation for the Commissioner of Labor.

The hearing concerned an investigation conducted by the Asbestos Control Bureau ("Bureau") of the Division of Safety and Health of the New York State Department of Labor ("Department") into whether National Power Associates, Corp. ("Respondent"), complied with the requirements of Labor Law article 30 (§§ 900 *et seq.*) or 12 NYCRR part 56 when Respondent undertook multiple asbestos abatement projects.

**APPEARANCES**

The Bureau was represented by Department Acting Counsel, Pico Ben-Amotz (Steven Pepe, Senior Attorney, of Counsel).

There were no appearances made by or on behalf of Respondent.

## **FINDINGS AND CONCLUSIONS**

On April 2, 2012, the Department duly served copies of the Notice of Hearing on Respondent by first class mail and by certified mail. The U. S. Postal Service confirmed delivery of the Notice (Dept Ex 1). The Notice of Hearing scheduled a May 31 hearing and required Respondent to 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 Respondent violated the particular provisions of the Labor Law or the 12 NYCRR part 56 that are hereinafter particularized.

Additionally, the Department provided evidence as to the seriousness of the violations, Respondent's history with regard to asbestos projects, its size, and the extent to which it cooperated with the Department.

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

## **RECOMMENDATIONS**

Based upon the default of the Respondent in 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:

### **PROJECT NUMBER 25687319**

DETERMINE that Respondent violated Labor Law § 902 (4) and 12 NYCRR 56-3.2.B for permitting uncertified employees to engage in work on the asbestos Project.

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

12 NYCRR 56-11.5.B.1. Controlled Demolition with Asbestos in Place. Respondent did not have a letter of condemnation on site.

12 NYCRR 56-11.5.C.2. Controlled Demolition with Asbestos in Place. Respondent failed to seal a location in close proximity to the Project.

**PROJECT NUMBER 25688695**

12 NYCRR 56-3.4.B.1 Notification. Respondent failed to file separate project notifications with the Department.

**PROJECT NUMBER 25688705**

12 NYCRR 56.11.8.D. Abandoned Pipe/Duct/Conduit Wrap and Cut Removal. Respondent left asbestos debris at the work site.

**PROJECT NUMBER 25688707**

12 NYCRR 56-4.9 (a). Number and Location of Samples Required. Respondent began Project without verifying pre-abatement background air samples existed.

**PROJECT NUMBER 25688776**

12 NYCRR 56-12.3. Applicable Variances (AVs). Respondent did not meet the decontamination system requirements in an existing AV.

**PROJECT NUMBER 25688891**

12 NYCRR 56-4.9 (a). Number and Location of Samples Required. Respondent began Project without verifying pre-abatement background air samples existed.

**PROJECT NUMBER 25689025**

12 NYCRR 56-4.9 (a). Number and Location of Samples Required. Respondent began Project without verifying pre-abatement background air samples existed.

**PROJECT NUMBER 25694343**

12 NYCRR 56-3.6 (d). Notification of Residential and Business Occupants. Respondent failed to post ten day notices at the work site.

12 NYCRR 56-3.4 (b) (4) (i). Notice and Record-keeping Requirements. Respondent failed to notify the Department of the postponement of the Project start date.

**PROJECT NUMBER 25694349**

12 NYCRR 56-3.6 (d). Notification of Residential and Business Occupants. Respondent failed to post ten day notices at the work site.

12 NYCRR 56-3.4 (b) (4) (i). Notice and Record-keeping Requirements. Respondent failed to notify the Department of the postponement of the Project start date.

**PROJECT NUMBER 25697548**

12 NYCRR 56-12.3. Applicable Variances (AVs). Respondent did not meet the decontamination system requirements in an existing AV by failing to cover a waste pile with asbestos containing material.

12 NYCRR 56-12.3. Applicable Variances (AVs). Respondent did not meet the decontamination system requirements in an existing AV by failing to seal the windows of a nearby home.

12 NYCRR 56-12.3. Applicable Variances (AVs). Respondent did not meet the decontamination system requirements in an existing AV by failing to construct a barrier on two sides of the work area of the Project

**PROJECT NUMBER 25707090**

12 NYCRR 56-8.2 (h). Access to and Maintenance of Decontamination Systems and Regulated Abatement Work Area Enclosures. Respondent did not clean the air locks, shower, and equipment room floors properly.

12 NYCRR 56-7.5 (b) (7). Personal and Waste Decontamination System Enclosures. Respondent failed to properly build the personal decontamination enclosure.

DETERMINE & ORDER that, pursuant to the Department's request, Respondent be liable for and shall pay the requested civil penalty totaling \$29,250.00 for the violations of 12 NYCRR part 56 and Labor Law.

ORDER that Respondent immediately remit payment to the Division Of Safety & Health, Asbestos Control Bureau, SOB Campus, Building 12, Room 157, Albany, NY 12240 a check for \$29,250.00, the total amount due on all the Projects, payable to the Commissioner of Labor.

Dated: August 3, 2012  
Albany, New York

Respectfully submitted,

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

Jerome Tracy, Hearing Officer