STATE OF NEW YORK DEPARTMENT OF LABOR
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In the Matter of

ENVIROSCOPE CORPORATION, MOLLY REICHMAN

NEXTEK SOLUTIONS LLC., HOWARD REICHMAN

AIRTIGHT MONITORING SERVICES LLC., DAVID RIBNER

WINDSOR ENVIRONMENTAL CORP., ANDREW REICHMAN

ENV AIR PRO INC., ESTHER KAMINETZKY

As Substantially Owned-Affiliated Entities,

for a determination pursuant to Section 909 of the New York Labor Law that asbestos handling license no. 171282 be revoked or for a determination pursuant to Labor Law, Article 30 and/or Code Rule 56 took place as hereinafter described.

REPORT & RECOMMENDATION

File Nos.
Enviroscope: DSH - 0012943
Nextek: DSH-0001771
Airtight: DSH-0002453
Windsor: DSH-0003557
Env. Air Pro: DSH-0008664

Resolution Case Nos.
Enviroscope: 80122368
Nextek: 80098304
Airtight: 80098305
Windsor: 80027907
Env Air Pro: 831689423

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

Pursuant to a Notice of Hearing issued by the Department of Labor on August 14, 2023, a videoconference hearing was held on October 24, 2023, and October 25, 2023, in Albany, New York with participating parties and/or witnesses appearing remotely at various other locations. The purpose of the hearing was to provide all 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 Enviroscope Corporation, and Molly Reichman ("Enviroscope");

Nextek Solutions LLC., and Howard Reichman ("Nextek"); Airtight Monitoring Services LLC., and David Ribner ("Airtight"); Windsor Environmental Corp., and Andrew Reichman ("Windsor"); and ENV Air Pro Inc., and Esther Kaminetzky ("ENV Air Pro"); (hereinafter all referred to as "Respondent", individually, "Respondents", collectively) complied with the requirements of Article 30 of the Labor Law (§§ 900 *et seq.*) and/or 12 NYCRR Part 56 ("Industrial Code Rule 56" or "ICR 56") when Respondents undertook an asbestos abatement project located at: 70 Pinewood Road Apt. 2A Hartsdale, New York, Asbestos Inspection Case Number: 26631532 ("Project")[1].

HEARING OFFICER

Marshall H. Day was designated as Hearing Officer and conducted the hearing in this matter.

APPEARANCES

The Bureau was represented by Department Deputy Commissioner and General Counsel, Jill Archambault (Debra Collura, Senior Attorney, of Counsel).

Respondent, David Ribner, appeared *pro se*. There were no appearances made by or on behalf of the remaining Respondents.

PROCEDURE

The Parties were afforded the opportunity to submit Proposed Findings of Fact and Conclusions of Law. Post-Hearing Submissions were due January 12, 2024.

ISSUES

1. Did Respondents violate any of the provisions of Labor Law Article 30 or of 12 NYCRR part 56 when they undertook the named asbestos abatement project they were involved in?
2. Whether Respondents are substantially owned-affiliated entities as defined by Labor Law § 30?

[1] The hearing also touched on issues related to a prior asbestos abatement project previously litigated in a separate forum in front of another Hearing Officer in the Administrative Adjudication Unit back in 2021.

3. Whether a civil penalty should be assessed, and if so, in what amount?

4. Whether Respondents are jointly and severally liable for Windsor's $53,500.00 unpaid civil penalties?

FINDINGS OF FACT

On August 14, 2023, the Department duly served a copy of the Notice of Hearing on Respondents by first class mail and by certified mail. Respondent, ENV Air Pro Inc. signed a Return Receipt evidencing its receipt of the document. However, all the other Respondents' certified mailings came back as undeliverable, excluding the first-class mail which were not returned. The Notice of Hearing scheduled October 24, 2023, and October 25, 2023, hearing dates, and required that the Respondent serve an Answer at least 14 days in advance of the scheduled hearing.

Respondents failed to serve an Answer to the charges contained in the Notice of Hearing. However, as mentioned above, Respondent, David Ribner, appeared as a *pro se* litigant at the hearing.

At the hearing, the Department produced sworn and credible evidence substantially supporting the Department's charges that Respondents violated multiple provisions of the Labor Law or the Code Rule that are hereinafter particularized.

Additionally, the Department provided evidence as to the seriousness of those violations, Respondents' history with regard to this and a prior asbestos project, the size of the entities involved, and the extent to which the various named Respondents cooperated with the Department.

Finally, the Department outlined the connection of the various named entities listed above through continuity of operations, identical ownership, same type of business activity, shared addresses and employees, and same level of control which patently shows that those various named entities are substantially owned-affiliated entities and/or subsidiaries of one another.

Project

On or about March 25, 2021, Respondent, Nextek, submitted an asbestos project notification ("Notification") for an asbestos project ("No. 26631532") beginning on April 5,

2021, at 70 Pinewood Road, Apt. 2A, Hartsdale, New York 11230 ("Hartsdale"). The purpose of the project was to remove asbestos containing parquet mastic flooring from a residential apartment. At the time of this project, Nextek held an asbestos handling license number 171282 which has since expired. In the notification, Nextek indicates that Airtight would perform the air monitoring services associated with the Project, and that Enviroscope was the general contractor on the Project.

On April 6, 2021, the Bureau's Safety and Health Inspector David Ramos visited the worksite in Hartsdale. Upon entering the work site, Mr. Ramos found that the abatement contractor, Nextek and its associated entities, were not in compliance with Code Rule 56 and subsequently issued multiple Notices of Violations, citing six violations against Respondent, Nextek, six violations against Respondent, Airtight, and finally citing one violation against Respondent, Enviroscope.

Mr. Ramos found that Nextek failed to do the following: to post a written notice ten calendar days prior to the start of the Phase II-A of an asbestos abatement project; wait the required four hour waiting and drying period prior to final clearance of the asbestos project; have a supervisor and project monitor sign the abatement contractor's supervisor's logbook; to construct the proper size clean room or decontamination unit for a large asbestos project; to post a written notice ten days prior to the start of asbestos removal; and finally, the asbestos abatement contractor failed to have an independent third party air sampling firm involved with the asbestos Project.

Mr. Ramos also observed and documented non-compliance with air sampling requirements for which six violations were issued to Respondent, Airtight, those violations were: the air sampling technician that signed the chain of custody did not actually perform the air sampling in conjunction with the samplings that were submitted to the laboratory; that Airtight failed to sketch and identify all project air sample locations; that Airtight failed to collect an exterior ambient air sample and that Airtight failed to collect the correct number of air samples as required; that Airtight failed to have a project monitor sign the abatement supervisor's logbook; and that Airtight failed to collect the correct number of air samples prior to project clearance. Lastly, Mr. Ramos found that the third-party air sampling firm was not completely independent of all asbestos abatement contactors involved with the asbestos Project.

Finally, Mr. Ramos found that Respondents, Environscope, Nextek and Airtight were substantially owned affiliated entities who were not completely independent of one another and therefor issued an additional violation against Respondent, Environscope, for violating 12 NYCRR 56-4.3 for not being an independent third party involved in the project.

CONCLUSIONS OF LAW

Based upon personal observation, photographic evidence, and statements from individuals with firsthand knowledge, the inspector on the Project issued multiple violations to the various Respondents involved in the Project. The violations set forth the section of the regulation involved, and the nature of the violation as set forth in the following descriptions.

NEXTEK

12 NYCRR 56-3.6. (a) (1) – Ten (10) Day Notice. Requires contractors to provide a ten-day notice to residential and business occupants. Mr. Ramos determined that Nextek failed to post a written notice ten calendar days prior to the start of the asbestos abatement project, and as such, Nextek is in violation of 12 NYCRR 56-3.6. (a)(1).

12 NYCRR 56-4.3 – Independent Third Party Sampling and Analysis. Requires asbestos contractors to be completely independent from the air sampling firm on the asbestos project. The entity performing asbestos abatement on the project should be a separate third-party entity from the entity performing the air monitoring services on the project. The record establishes that Respondents, Enviroscope, Nextek, and Airtight, are substantially owned affiliated entities, not independent entities from one another, as such Nextek violated 12 NYCRR 56 4.3.

12 NYCRR 56-7.5 (b) (8) – Personal Decontamination System Enclosure-Large Project. Requires that the cleanroom of the decontamination unit has sufficient amount of space so employees can properly don their personal protective equipment prior to entering the work area. Mr. Ramos observed that the cleanroom was not the proper size for this project, and as such Nextek is in violation of 12 NYCRR 56-7.5 (b) (8).

12 NYCRR 56-8.2 (b) – Access to and Maintenance of Decon. Systems and Regulated Abatement Work Area Enclosure – Waiting Periods. Requires that the abatement contractor wait the required minimum waiting period to allow asbestos fibers to settle. Mr. Ramos determined

that Nextek failed to wait the required four-hour waiting period after work area preparation. Therefore, Nextek violated 12 NYCRR 56 8.2 (b).

12 NYCRR 56-9.1 (d) (1) – Final Cleaning Procedures - Third or Final Cleaning and Visual Inspection – Project Monitor Visual Inspection. Requires proper visual inspection to ensure that all the required material has been removed. Mr. Ramos observed that Nextek failed to have a supervisor and project monitor sign the logbook and/or fully detail the finding of their visual inspection. Therefore, Nextek violated 12 NYCRR 56-9.1 (d)(1).

12 NYCRR 56-9.1 (f) (1) Waiting/Settling and Drying Times Requirements. Requires that an abatement contractor wait the required amount of time for final clearance of the project. Mr. Ramos determined that Nextek failed to wait the required four hours prior to final clearance of the project. Therefore, Nextek violated 12 NYCRR 56-9.1 (f)(1).

AIRTIGHT

12 NYCRR 56-4.3 – Independent Third Party Sampling and Analysis. Requires asbestos contractors to be completely independent from the air sampling firm on the asbestos project. Air monitoring firms should be separate third-party entities from the entity performing the asbestos abatement. The record establishes that Respondents, Enviroscope, Nextek, and Airtight, are substantially owned affiliated entities, not independent entities from one another, as such Airtight, violated 12 NYCRR 56-4.3.

12 NYCRR 56-4.5 (a) – Air Sample Log. Requires that air samples are correctly collected and documented on the chain of custody including the name of the certified air sampling technician who performed the sampling. Mr. Ramos determined that the air sampling technician named on the chain of custody did not perform the submitted air sampling. Therefore, Airtight violated 12 NYCRR 56- 4.5 (a).

12 NYCRR 56-4.5 (c) – Air Sample Log. Requires the air technician perform a sketch of the work area. It was determined that Respondent, Airtight, failed to have the air technician perform a proper sketch and identify where the air samples were taking place. Therefore, Airtight violated 12 NYCRR 56-4.5 (c).

12 NYCRR 56-7.1 (c) (3) – Number And Location Of Samples – Large Asbestos Projects. Requires the correct number of samples to be collected for large projects. A large

project consists of the removal of 160 square feet or more or 260 linear feet of material. Mr. Ramos determined that this was a large asbestos abatement project, and that Airtight did not collect the correct number of air samples. Therefore, Airtight violated 12 NYCRR 56-7.1 (c) (3).

12 NYCRR 56-9.1 (d) (1) – Final Cleaning Procedures - Third or Final Cleaning and Visual Inspection – Project Monitor Visual Inspection. Requires that the project monitor perform a visual inspection to confirm that all the material required to be removed is removed. Mr. Ramos determined that Airtight failed to have a project manager sign the abatement supervisors project log thereby confirming the material was removed correctly. Therefore, Airtight violated 12 NYCRR 56-9.1 (d) (1).

12 NYCRR 56-9.2 (d) (2) – Air Sampling Requirements – Clearance Air Sampling – Number and Location of Samples – Large Project. Requires that the correct number of air samples collected for clearance is actually collected and analyzed. Mr. Ramos observed that that Airtight failed to collect the correct number of samples prior to providing project clearance. Therefore, Airtight violated 12 NYCRR 56-9.2 (d) (2).

ENVIROSCOPE

12 NYCRR 56-4.3 – Independent Third Party Sampling and Analysis. Requires asbestos contractors to be completely independent from the air sampling firm on the asbestos project. Air monitoring firms should be separate third-party entities from the entity performing the asbestos abatement. The record establishes that Respondent, Enviroscope, contracted with the board president of the property managing firm of the residential property to perform the asbestos abatement work in the Project. The record also showed that Respondents, Enviroscope, Airtight, and Nextek are substantially owned affiliated entities. Therefore, Enviroscope violated 12 NYCRR 56-4.3.

WINDSOR

On March 2, 2021, an administrative proceeding was held to determine if Respondent, Windsor, complied with the requirements of Labor Law Article 30 (§§ 900 *et seq*.) or 12 NYCRR part 56 when it undertook three asbestos abatement projects it was involved in. On January 12, 2022, an Order and Determination was issued based on a Report and Recommendation of Hearing Officer John Scott after the conclusion of that proceeding. In his

Report and Recommendation, Hearing Officer Scott, affirmed all eighteen enumerated violations and assessed a civil penalty of $53,500.00 against the Respondent in that proceeding, Windsor Enviornmenal Corp.,[2] however that Report did not address any other of the individuals or entities named herein as they were not parties to that proceeding. To date, the outstanding balance assessed in civil penalties has not been remitted to the Department.

The Department is now asking for a duplicate finding of liability on an issue already addressed in a prior proceeding. This request is being made so the civil penalties assessed in that proceeding can now be assessed against all the Respondents named herein. However, only Windsor was named as an interested party in that prior proceeding and the Commissioner made no findings regarding the relationship between the various entities named herein. Since there was no such finding and a determination has already been rendered in the prior proceeding, there is no need to echo that finding or reaffirm the amount already deemed due and owing in Judge Scott's report.

ENV AIR PRO

In regards to the four violations of ICR 56 and civil penalty of $75,000.00 the Department requested to be assessed against Respondents, ENV Air Pro and Esther Kaminetzky, based on work performed on a prior project not before this administrative body and already litigated in the case mentioned above, this body makes no findings or conclusions against those named Respondents as there was no evidence produced at this hearing that those Respondents participated in the present Project subject to this proceeding.

The Department readily admitted that the violations issued for ENV Air Pro are not based on work performed on the project subject to this proceeding, but are from a 2019 inspection at 46 Andover Road, Rockville Centre New York 11570 in a matter already fully litigated[3].

The Department provided no evidence that Respondents, ENV Air Pro and Esther Kaminetzky, were put on notice of the prior proceeding or that they were provided an

[2] That particular proceeding named only the Windsor Environmental Corp. as a Respondent in that matter, no other individuals or entities were named in that proceeding. (DOL Ex. 9).

[3] A Notice of Violation and Order to Comply was issued to Env Air Pro on May 3, 2019 listing three of the violations now enumerated in a Notice of Violation again issued on Mary 19, 2023. The fourth violation listed in the new Notice now adds a violation of 12 NYCRR 56-4.3. There is nothing in the record which indicates why the violations were not addressed in the original proceeding before Judge Scott.

opportunity to be heard on the issues raised in that proceeding and/or had the opportunity to meaningfully participate in the prior proceeding before Judge Scott.

The failure of the Department to name the Respondents and/or serve the Respondents in the prior proceeding is a deprivation of the Respondents' due process rights thereby denying the Respondents the guarantee of their right to be heard, their right to present evidence, their right to receive a fair and impartial trial, and a decision based on the evidence as a whole in that proceeding.

Therefore, the requested civil penalty of $75,000.00 for four violations of ICR 56 assessed herein, but not brought up at or litigated in the prior proceeding is denied.

SUBSTANTIALLY OWNED-AFFILIATED ENTITY

Labor Law § 909 (1) (b) provides that an 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. In pertinent part, Labor Law § 901 (18) defines a substantially owned-affiliated entity to include any successor of the asbestos contractor or any 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 as "an entity engaged in work substantially similar to that of the predecessor, where there is substantial continuity of operation with that predecessor."

The Department presented evidence that the named Respondents shared the same physical address, that the individual named Respondents have common ownership or are related, that all the different entities are controlled by Respondent, Andrew Reichman, and that all the named Respondents have common employees. Given there is a continuity of operation of the five listed companies, and that all five companies engage or engaged in asbestos abatement work, I therefore, find that the record contains substantial evidence indicating that through identical ownership and engaging in the same type of business activity, that all named Respondents, Enviroscope, Nextek, Airtight, Windsor, and Env Air are substantially owned-affiliated entities as the term is defined in Labor Law § 901 (18).

Subsidiaries as defined in Labor Law § 901 (17) are entities, "that are controlled directly or indirectly through one or more intermediaries; by an asbestos contractor or by the asbestos

contractor's parent company". If a homeowner contracted with Windsor, Windsor would use Airtight as the air monitoring company. If the homeowner contracted with Enviroscope as the general contractor, Enviroscope would pay Airtight. Nextek was another company that was controlled by Andrew Reichman but listed under the name of his father Howard Reichman. If a homeowner contracted with Nextek, the work was controlled by Andrew Reichman. ENV Air Pro was also controlled by Andrew Reichman and was the air monitor used by Windsor. Therefore, I also find that Respondents are subsidiaries because they are controlled directly by Windsor's owner, Andrew Reichman.

CIVIL PENALTIES

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

NEXTEK

Respondent, Nextek was issued violations for six sections of ICR 56 and assessed a civil penalty of $91,250.00.

The six violations for Respondent, Nextek carry a total maximum civil penalty of $150,000.00. The Department proposed a civil penalty of $91,250.00 based on the four enumerated factors.

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

Substantial evidence supports the civil penalty assessment performed by the Bureau as against Respondent, Nextek. The Department presented evidence of the standardized policy by which the Bureau calculates civil penalties and that the standardized policy was followed in this

case. Therefore, the total civil penalty assessed against this asbestos abatement contractor on this Project in the total amount of $91,250.00 is sustained.

AIRTIGHT

Respondent, Airtight was issued violations for six sections of ICR 56 and assessed a civil penalty of $90,000.00[4].

The six violations for Respondent, Airtight, carry a total maximum civil penalty of $150,000.00. The Department proposed a penalty assessment of $90,000.00 based on four enumerated factors.

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

Substantial evidence supports the civil penalty assessment performed by the Bureau as against Respondent, Airtight. The Department presented evidence of the standardized policy by which the Bureau calculates civil penalties and that the standardized policy was followed in this case. Therefore, the total civil penalty assessed against this asbestos abatement contractor on this Project in the total amount of $90,000.00 is sustained.

ENVIROSCOPE

Respondent, Enviroscope was issued a violation for one section of ICR 56 and assessed a civil penalty of $15,000.

The violation for Respondent, Enviroscope carries a total maximum civil penalty of $25,000. The Department proposed civil penalty of $15,000 based on the four factors.

Substantial evidence supports the civil penalty assessment performed by the Bureau as against Respondent, Enviroscope. The Department presented evidence of the standardized policy by which the Bureau calculates civil penalties and that the standardized policy was followed in this case. Therefore, the total civil penalty assessed against this asbestos abatement contractor on this Project in the total amount of $15,000.00 is sustained.

[4]The *pro se* litigant did not contest the facts of the case, but asked for a reduction in the amount of the civil penalty assessed based on his background and present financial and personal situation.

NEXTEK'S LICENSE

Labor Law § 909 (2) states that if a contractor has "demonstrated a lack of responsibility in the conduct of any job involving asbestos or asbestos material of such seriousness as to warrant the revocation of the contractor's license... the Commissioner may, by an order which describes in detail the nature of the violation or violations, revoke the contractor's asbestos handling license... and... such asbestos contractor... shall [not] be eligible to apply for a new asbestos handling license for a period of up to two years." Because of the serious consequences that could result from the multiple violations outlined above, the Respondent's asbestos handling license should be revoked for a two-year period.

Labor Law §903 (1) grants the Commissioner "the authority to deny the issuance or renewal of a license or certificate for good cause shown, including the serious violation of state, federal or local laws by the applicant or by any substantially owned-affiliated entity of the applicant with regard to the conduct of any job involving asbestos or asbestos material, or for any serious violation or violations that resulted in a suspended or revoked license or certificate during the previous five years."

Here, the record demonstrates good cause to deny the renewal of Asbestos Handling License No. 171282 issued to Nextek. The facts elicited at the hearing disclosed that Enviroscope, Nextek, Airtight, and Windsor are substantially owned-affiliated entities; the Respondents have been finally determined to have committed violations of Article 30 of the Labor Law and/or Industrial Code Rule 56; Windsor has outstanding unpaid civil penalties for these violations as well as unpaid notification fees; and the multiple entities continue to commit repeat Labor Law Article 30 and Code Rule 56 violations. Therefore, I find pursuant to Labor Law §903 (1), that Nextek, and/or all of the substantially named affiliated entities named herein, are denied the ability to apply for renewal of Asbestos Handling License No. 17182 for a period of two years[5].

[5] Although the Department has indicated that Nextek's license expired and has not been renewed, given the gravity of the violations, the ability of the named Respondents to apply for the renewal of thier asbestos handling license for a period of up to two years is appropriate.

JOINT AND SEVERAL LIABILITY

Substantially owned-affiliated entities are jointly and severally liable for any civil penalty ordered pursuant to Labor Law 909 (1) (b), "Any substantially owned-affiliated entity of such asbestos contractor *shall* be held jointly and severally liable for the payment of such civil penalty. The commissioner may issue an order directing payment of such civil penalty by the asbestos contractor and any substantially owned-affiliated entity." [emphasis added]).

Therefore, all five Respondent companies and named individuals are jointly and severally liable for any penalty assessed herein in regard to this specific project, however are not jointly and severally liable for the actions of Windsor on a prior project in a hearing that they were not put on notice of or were able to participate in. That particular proceeding named only the Windsor Environmental Corp. for the violations that occurred in that case and did not name anyone individually or name any other of the Respondents named herein. The civil penalties of $53,500.00 attributed to Windsor will have to be secured by the terms of that Determination and Order or by other means.

For the foregoing reasons, the findings, conclusions and determinations of the Bureau as modified should be sustained.

RECOMMENDATIONS

Based upon the record created at the hearing, the default of the majority of the Respondents to timely answer and contest 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 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 Respondent, Nextek violated six sections of 12 NYCRR Part 56 on the project as follows:

1. 12 NYCRR 56-3.6. (a) (1) – Ten (10) Day Notice. Respondent failed to provide a ten-day notice to residential and business occupants;
2. 12 NYCRR 56-4.3 – Independent Third Party. Respondents who performed the asbestos contracting on the Project were not completely independent from the air

sampling firm on the same asbestos Project;

3. 12 NYCRR 56-7.5 (b) (8) – Personal Decontamination System Enclosure-Large Project. Respondent failed to provide sufficient amount of space in the cleanroom of the decontamination unit, so employees can properly don their personal protective equipment prior to entering the work area;
4. 12 NYCRR 56-8.2 (b) – Access to and Maintenance of Decon. Respondent failed to wait the required four-hour minimum waiting period after work area preparation to allow asbestos fibers to settle;
5. 12 NYCRR 56-9.1 (d) (1) – Final Cleaning Procedures - Third or Final Cleaning and Visual Inspection – Project Monitor Visual Inspection. Respondent failed to have a supervisor and project monitor sign the logbook ensuring that a visual inspection of the site was completed; and
6. 12 NYCRR 56-9.1 (f) (1) Waiting/Settling and Drying Times Requirements. Respondent abatement contractor failed to wait the required four hours prior to final clearance of the project.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent, Nextek be assessed the Department's requested civil penalty of $91,250.00 for the Code Rule violations named above.

AIRTIGHT

DETERMINE that Respondent, Airtight violated six sections of 12 NYCRR Part 56 as follows:

1. 12 NYCRR 56-4.3 – Independent Third Party Sampling and Analysis. Respondent contractors did not work independent from one another.
2. 12 NYCRR 56-4.5 (a) – Air Sample Log. The air sampling technician named on the chain of custody did not perform the submitted air sampling.
3. 12 NYCRR 56-4.5 (c) – Air Sample Log. The air sampling technician failed to perform a sketch and identify where the samples were located.
4. 12 NYCRR 56-7.1 (c) (3) – Number And Location Of Samples – Large Asbestos Projects. Respondent did not collect the correct number of air samples required to be

collected for large projects.

5. 12 NYCRR 56-9.1 (d) (1) – Final Cleaning Procedures - Third or Final Cleaning and Visual Inspection – Project Monitor Visual Inspection. Failed to have a project manager sign the abatement supervisors project log.
6. 12 NYCRR 56-9.2 (d) (2) – Air Sampling Requirements – Clearance Air Sampling – Number and Location of Samples – Large Project. Respondent failed to collect the correct number of samples prior to providing project clearance.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent, Airtight be assessed the Department's requested civil penalty of $90,000.00 for the Code Rule violations named above.

ENVIROSCOPE

DETERMINE that Respondent, Enviroscope violated one section of 12 NYCRR Part 56 as follows:

1. 12 NYCRR 56-4.3 – Independent Third Party Sampling and Analysis. Respondent contractors did not work independent from one another.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the Department's requested civil penalty of $15,000.00 for the Code Rule violation named above.

DETERMINE that all the named Respondents are substantially owned-affiliated entities and are jointly and severally liable for the payment of any civil penalty ordered herein pursuant to Labor Law 909 (1) (b) on this Project in the amount of $196,250.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1)(b), all named individuals[6] and entities listed as Respondents herein shall be assessed a total civil penalty of $196,250.00 for the violations of Code Rules outlined above against the individually named Respondents.

[6] Please note: the civil penalty is applied/assessed equally against the named entities, as well as Andrew Reichman a/k/a Zev Reichman, Molly Reichman a/k/a Molly Ribner, David Ribner a/k/a Dovid Ribner and/or David Friedman, Richard Reichman and Esther Kaminetzky, and their names attach to the two year period that they are debarred from applying for a new asbestos handling license or certificate.

ORDER that, pursuant to Labor Law § 909 (1)(b), all named individuals and entities listed as Respondents herein are liable for payment of all civil penalties assessed by the Commissioner for the violations at issue herein.

ORDER that all named individuals and entities listed as Respondents herein shall be barred from renewal of Asbestos Handling License No. 17182, 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, State Office Building Campus, Building 12, Room 157, Albany, NY 12226 of the total amount due ($196,250.00), made payable to the Commissioner of Labor, for the violations of 12 NYCRR Part 56 that are subject of the within proceeding.

Dated: August 9, 2024
Albany, New York

Respectfully submitted,

Marshall H. Day
Chief Administrative Law Judge