

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

NY CLEAN TEC. CONSTRUCTION CORP.

Respondent

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

**DEFAULT REPORT &  
RECOMMENDATION**

Asbestos Case Nos.  
25650601; 25650613;  
25650606; 25600608;  
25650602; 25650603;  
25650604; 25650609;  
25650610; 25650641;  
25650605

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

A hearing was held on April 15, 2009 at New York, 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 N.Y. Clean Tec Construction 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 asbestos projects located at 86 St. Transverse Rd., Manhattan, NY; 420 Baltic St., Brooklyn, NY; 105-06 Jamaica Ave., Queens, NY; 130-48 122 Place, Queens, NY; 127-14 140 St., Queens, NY; 112 Washington Pl., Manhattan, NY; 172-02 19 Ave., Queens, NY; 3082 Emmons Ave., Brooklyn, NY; 245 83 St., Brooklyn, NY; and 210 East 68 St. (two projects), Manhattan, NY.<sup>1</sup>

**APPEARANCES**

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

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

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<sup>1</sup> The Notice of Hearing includes projects located at 210 East 68 St., Manhattan, NY. Although there were two projects at this one location, both were assigned separate case numbers, to wit: 25650603 and 25650605. At the hearing, the Department withdrew case no. 25650603 as duplicative.

## **HEARING OFFICER DESIGNATION**

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

## **FINDINGS AND CONCLUSIONS**

On March 13, 2009, the Department duly served copies of the Notice of Hearing (Hearing Officer Exhibit 1) on Respondent by first class mail and by certified mail. The certified mail was returned as unclaimed (See, Hearing Officer Ex 2). However, there is evidence in the record that the Respondent received copies of the Notices of Violation as the letters were properly addressed and there is no indication that the first class mail was returned. Additionally, the record contains correspondence from Brenda Barranco (HO Ex. 3), an individual listed with the New York State Secretary of State as an officer of the Respondent (HO Ex. 2), indicating that she was aware of the hearing. The Notice of Hearing scheduled an April 15, 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 ten (10) asbestos projects located at 86 St. Transverse Rd., Manhattan, NY; 420 Baltic St., Brooklyn, NY; 105-06 Jamaica Ave., Queens, NY; 130-48 122 Place, Queens, NY; 127-14 140 St., Queens, NY; 112 Washington Pl., Manhattan, NY; 172-02 19 Ave., Queens, NY; 3082 Emmons Ave., Brooklyn, NY; 245 83 St., Brooklyn, NY; and 210 East 68 St. (two projects), Manhattan, NY.

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 ten (10) violations of the Labor Law and/or the Code Rule as follows:

### **Labor Law Section 904.2 Notice requirements.**

**Any contractor engaged in an asbestos project involving more than two hundred sixty linear feet or more than one hundred sixty square feet of asbestos or asbestos material shall notify ... the commissioner in writing ten days prior to the commencement of the work on the project ... . The notice to the commissioner ... shall be accompanied by a project notification fee.**

On all of the ten (10) enumerated projects, the Respondent failed to notify the commissioner of the commencement of the projects or to pay the project notification fee. (T. 18; Dol Ex. 3)

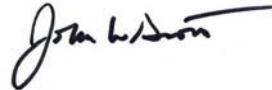
DETERMINE & ORDER, that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$1,000.00 for the first violation and \$2,000.00 for each of the nine (9) succeeding violations, for a civil penalty in the total amount of \$19,000.00; and

Determine & Order, that the Respondent shall pay the project notification fees for each of the ten (10) enumerated projects in the total amount of \$10,300.00; 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 in civil penalties and project notification fees (\$29,300.00) on the Projects, made payable to the Commissioner of Labor.

Dated: May 22, 2009  
Albany, New York

Respectfully submitted,

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

John W. Scott, Hearing Officer