

IN THE MATTER OF

TRADE-WINDS ENVIRONMENTAL RESTORATION INC.
Respondent

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

**DEFAULT REPORT
&
RECOMMENDATION**

Asbestos Case No. 20732

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

A hearing was held on July 14, 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 investigated whether Trade-Winds Environmental Restoration, Inc. ("Respondent") complied with the requirements of Article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR 56 ("Code Rule") when the Respondent undertook an asbestos project located at 54 Fairview Avenue, Port Washington, NY in or about January through September 2006.

APPEARANCES

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

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

HEARING OFFICER DESIGNATION

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

FINDINGS AND CONCLUSIONS

On June 10, 2009, the Department duly served copies of the Notice of Hearing (HO Ex. A) on the Respondent by first class mail and by certified mail at the following addresses: 100 Sweeneydale

Avenue, New York, NY 11706; and 895 Waverly Avenue, Holtsville, NY 11742. The certified mailings to both addresses were refused and returned, as was the first class mailing to the Sweeneydale Avenue address. However, the first class mailing to the Waverly Avenue address was not returned (T. 5). Counsel for the Department represented at the hearing that the Respondent is still listed as an active corporation (T. 38), and that service on the Respondent was effectuated by mailing the Notice of Hearing to the Respondent at the Waverly Avenue address (T. 5; HO Ex. B).

The Notice of Hearing scheduled a July 14, 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, the 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, the Respondent violated the following particularized provisions of the Labor Law or the Code Rule in connection with the asbestos project located at 54 Fairview Avenue, Port Washington, NY in or about January through September 2006.

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 two (2) violations of the Labor Law and/or the Code Rule as follows (T. 7):

- **12 NYCRR 56-1.6 (b) (1) – Notification required: 10 days in advance of project commencement.**

Respondent failed to submit an Asbestos Project Notification or pay the \$2,000.00 requisite fee. (Dept. Ex. 1; T. 15-16)

- **12 NYCRR 56-17.1 – Schedules and methods. Air sampling and analysis shall be conducted in accordance with the following table:**

Requisite air monitoring was not performed. (Dept. Ex. 1; T. 16)

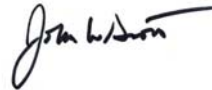
DETERMINE and ORDER, that, pursuant to Labor Law § 909 (1) (b), the Respondent be assessed the requested civil penalty of \$5,000.00 for each of the two (2) violations, for a civil penalty in the total amount of \$10,000.00; and

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

ORDER that the 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 fees (\$12,000.00) on the Project, made payable to the Commissioner of Labor.

Dated: December 16, 2009
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John W. Scott", written in a cursive style.

John W. Scott, Hearing Officer