

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

**MONTGOMERY COUNTY
DEPARTMENT OF PUBLIC WORKS**

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

**DEFAULT
REPORT
&
RECOMMENDATION**

Asbestos Case Nos.
25884446

To: Honorable Colleen Gardner
Commissioner of Labor
State of New York

Pursuant to a Notice of Hearing issued in this matter, a video hearing was held on May 13, 2013, between Albany, New York and Utica, New York. The purpose of the hearing was to provide all parties 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 the Montgomery County Department of Public Works ("Respondent") complied with the requirements of Article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR part 56 when Respondent undertook seven asbestos abatement projects located at the Montgomery County Highway Garage/Annex Building, Park Street, Fonda, New York ("Project").

APPEARANCES

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

There were no appearances 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 March 11, 2013, the Department duly served copies of the Notice of Hearing (Hearing Officer Ex. 1) on Respondent by certified mail. The Department produced an Affidavit of Service and a Certified Mail Receipt from the Respondent. (Hearing Officer Ex 2). The Notice of Hearing scheduled an May 13, 2013 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 Respondent violated the particular provisions of the Code Rule that are hereinafter particularized.

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 the 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 one violation of 12 NYCRR part 56 as follows:

12 NYCRR 56-1.5: Responsibility for Cleanup of Uncontrolled Disturbance: If there is an incidental or other disturbance (not as part of a controlled asbestos project) of ACM, PACM, asbestos material, or suspect miscellaneous ACM assumed to be ACM at a building or structure,

upon discovery of the disturbance, the property owner shall be responsible for contracting with a licensed asbestos contractor for immediate isolation of the disturbance and cleanup in accordance with the provisions of this Part. The Department's inspector observed suspect asbestos containing thermal system insulation in damaged or disturbed condition at both the Montgomery County Annex and Highway Garage Buildings. The Respondent failed to cleanup this suspect asbestos containing thermal system insulation as required by 12 NYCRR 56-9. (DOL Exs. 2, 3, 4, 5; T.10-11, 13-14)

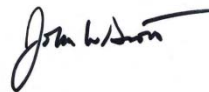
DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$5,000.00 for this violation. (T.28)

FINALLY

ORDER that Respondent immediately remit payment to the Division Of Safety & Health, Asbestos Control Bureau, New York State Department of Labor, 450 S. Salina Street, Syracuse, NY 13202 of the civil penalties in the total amount of \$5,000.00 for the violation of 12 NYCRR part 56 in the Project that is the subject of the within proceeding, made payable to the Commissioner of Labor.

Dated: August 22, 2013
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John W. Scott", with a stylized flourish at the end.

John W. Scott, Hearing Officer