

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

ALLSTATE ENVIRONMENTAL CORP.  
Respondent

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

**DEFAULT  
REPORT  
&  
RECOMMENDATION**

Asbestos Case No.  
25693508

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

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on August 27, 2009, in White Plains, 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 Allstate Environmental 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 an asbestos abatement project at 18 Stratton Road, Scarsdale, New York.

**APPEARANCES**

The Bureau was represented by Department Counsel, Maria Colavito (Tsvi J. Gold, Senior Attorney, of Counsel). There was no appearance made by or on behalf of Respondent.

## **FINDINGS AND CONCLUSIONS**

On July 27, 2009, the Department duly served copies of the Notice of Hearing on Respondent by first class mail and by certified mail, addressed to the address the Respondent maintained with the New York State Department of State (Dept Ex 2). Both the first class mailing and the certified mailing were returned marked “Attempted Not Known” (Dept Ex 2). The Notice of Hearing scheduled an August 27, 2009 hearing and required that the Respondent serve an Answer at least 14 days in advance of the scheduled hearing. Respondent failed to timely 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 Code Rule that are hereinafter particularized.

For the foregoing reasons, the findings, conclusions and determinations of the Bureau 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 three violations of the Code Rule as follows:

- 12 NYCRR 56-3.4 (b) (1) - Project Notification: Any asbestos abatement contractor who proposes to engage in a large asbestos project is required to provide written notification to the Department’s Asbestos Control Bureau at least 10 days in advance of the commencement of work and to pay the required fee. Respondent performed the removal of 1,525 square feet of

- 12 NYCRR 56-8.4 (c) – Handling and Removal Procedures – Wetting Requirements: Asbestos material must be adequately wetted with amended water. Sufficient time must be allowed for penetration to occur prior to abatement activity. All friable asbestos material shall be thoroughly saturated. All non-hygroscopic (material that resists wetting) asbestos material shall be thoroughly wetted. The Department's inspector observed Respondent's asbestos handlers picking up asbestos material while no water was being used at or near the abatement work.
- 12 NYCRR 56-9.3 (d) – Dismantling of Regulated Abatement Work Area – Removal of Decontamination Enclosure. After all other isolation barriers, tools and equipment have been removed from the regulated work area, the decontamination enclosure system is to be dismantled and removed. The Department's inspector observed a remote decontamination enclosure system being dismantled by Respondent when the removal of asbestos roofing had not been completed and there had been no project monitor clearance for the project.

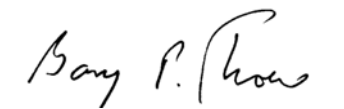
DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent be liable for and shall pay the unpaid fee of \$1,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested maximum civil penalty of \$25,000.00 for each of the Code Rule violations, for a total amount of \$75,000.00.

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 (\$76,000.00), made payable to the Commissioner of Labor.

Dated: September 21, 2009  
Albany, New York

Respectfully submitted,



Gary P. Troue, Hearing Officer