

STATE OF NEW YORK DEPARTMENT OF
LABOR

IN THE MATTER OF

IES USA, Inc.

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.
25724257, 25794299

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 July 14, 2011, between Albany, New York and New York, 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 IES USA, Inc. (“Respondent”) complied with the requirements of Article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR 56 (“Code Rule”) when Respondent undertook 2 asbestos abatement projects located at: 408 South 1st Avenue, Mount Vernon, NY, Asbestos Case No. 25724257 (hereinafter referred to as “Project 1”); and 10 Drew Street, Port Chester, NY, Asbestos Case No. 25794299 (hereinafter referred to as “Project 2”).

APPEARANCES

The Bureau was represented by Department Counsel, Maria Colavito, 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 June 10, 2011, the Department duly served copies of the Notice of Hearing on Respondent by personal service on the New York State, Secretary of State. The Department produced an Affidavit of Service and a Receipt for Service from the Secretary of State. (Hearing Officer Ex 1). The Notice of Hearing scheduled a July 14, 2011 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:

Project 1

DETERMINE that Respondent committed four violations of the Code Rule as follows:

12 NYCRR 56-8.2.G.3.I: Access to and Maintenance of Decon. Systems and Regulated Abatement Work Area Enclosure - Loss of Enclosure Integrity: The Inspector observed asbestos-

containing shingle siding and other asbestos-contaminated building components left unremoved from the site by the Respondent asbestos abatement contractor. (DOL Ex. 4; T. 17)

12 NYCRR 56-3.5.A: Emergency Asbestos Project – Initial Notification: The Respondent asbestos abatement contractor failed to contact the Asbestos Control Bureau via telephone or in person to request permission to proceed with the clean-up of this emergency asbestos project. (DOL Ex. 4; T. 18)

12 NYCRR 56-3.5.B: Emergency Asbestos Project - Emergency Approval: The Respondent asbestos abatement contractor proceeded with the emergency asbestos project without approval of the Program Manager, Asbestos Control Bureau or in accordance with all applicable provisions of Code Rule 56. (DOL Ex. 4; T. 18, 19)

12 NYCRR 56-3.5.C: Emergency Asbestos Project – Follow-up Notification: The Respondent asbestos abatement contractor failed to file the written notification required by 12 NYCRR 56-3.4.b with the Asbestos Control Bureau within three days after the commencement of the emergency asbestos project. (DOL Ex. 4; T. 18-19)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$3,000.00 for each of the four Code Rule violations, for a total civil penalty on Project 1 of \$12,000.00. (T. 30)

Project 2

DETERMINE that Respondent committed one violation of the Code Rule as follows:

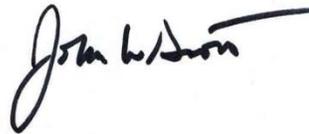
12 NYCRR 56-3.4.b.1: The Respondent notified the Department fewer than 10 days prior to the commencement of the project and failed to pay the related notification fee. (DOL Exs. 5, 6; T. 27) Prior to the hearing, the related notification fee was paid. (T.31)

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

ORDER that Respondent immediately remit payment to the Division Of Safety & Health, Asbestos Control Bureau, State Office Campus, Building 12, Room 157, Albany, NY 12240 of civil penalties in total the amount of \$13,000.00 on both Projects, made payable to the Commissioner of Labor.

Dated: October 17, 2011
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