

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
BUREAU OF REGULATORY SERVICES**

In re: Abcon Environmental, Inc.

Petition No. 2003-0226-052-001

CONSENT ORDER

WHEREAS, Abcon Environmental, Inc. of New Haven, CT (hereinafter "respondent") has been issued license number 001633 to practice as a lead abatement contractor by the Department of Public Health (hereinafter "the Department") pursuant to Chapter 400c of the General Statutes of Connecticut, as amended; and,

WHEREAS, the Department alleges that:

1. In or about December 2002, respondent was the lead contractor for a lead abatement project at a residence at 150 Dessa Drive, Hamden, CT (hereinafter "the property"). Said project involved the removal of lead paint from various exterior and interior windows and doors and from an exterior pipe.
2. In or about December 2002, in connection with the lead abatement project at the property, respondent:
 - a. failed to properly prepare exterior, non-friction surfaces, before application of an encapsulant, with resultant failure of the encapsulant, in violation of §19a-111-4(c)(3)(B) of the Regulations of Connecticut State Agencies (hereinafter "RCSA");
 - b. failed to properly use an encapsulant product in the manner authorized by the Department pursuant to §19a-111c of the General Statutes of Connecticut, in that respondent intended to apply encapsulant to friction surfaces, such as door jambs,

and the Department does not allow any encapsulant product to be used on friction surfaces; and/or

c. failed to completely remove all paint from doors, thresholds and door jambs that were assumed by respondent to contain toxic levels of lead, in violation of §§19a-111-1(1), 19a-111-1(28), 19a-111-1(51) and 19a-111-4(c)(3).

3. The above described facts constitute grounds for disciplinary action pursuant to Chapter 400c and §19a-111c of the General Statutes of Connecticut, taken in conjunction with §§19a-111-1 and 19a-111-4(c) of the RCSA.

WHEREAS, respondent, in consideration of this Consent Order, has chosen not to contest the above allegations of wrongdoing but, while admitting no guilt or wrongdoing, agrees that for purposes of this or any future proceedings before the Department, this Consent Order shall have the same effect as if proven and ordered after a full hearing held pursuant to §§19a-10, 19a-14 and 20-481 of the General Statutes of Connecticut.

NOW THEREFORE, pursuant to §§19a-14, 19a-17 and 20-481 of the General Statutes of Connecticut, respondent hereby stipulates and agrees to the following:

1. Respondent waives its right to a hearing on the merits of this matter.
2. Respondent's license number 001633 to practice as a lead abatement contractor in the State of Connecticut is hereby reprimanded.
3. Respondent shall pay a civil penalty of one-thousand dollars (\$1,000.00) by certified or cashier's check payable to "Treasurer, State of Connecticut." The check shall reference the Petition Number on the face of the check, and shall be payable at the time respondent submits the executed Consent Order to the Department.

4. Respondent's license shall be placed on probation for a period of one year under the following terms and conditions:
 - a. Respondent shall notify the Department before engaging in any lead abatement project. For the purposes of this paragraph 4(a), the term "abatement" shall have the meaning set forth in Section 20-474(1) of the General Statutes of Connecticut. Notification shall be in a format prescribed by the Department and shall include, without limitation the following: the address of the property where lead abatement will be performed by respondent, the name and address of the party for who a lead abatement project is being performed, a description of the lead abatement activities that respondent will perform, the anticipated starting and completion dates, and an indication as to whether or not respondent has received a lead inspection report for the property where respondent will perform lead abatement.
 - b. The notification required in paragraph 4(a) above shall be postmarked or hand delivered at least ten (10) days before the start of a lead abatement project, or in the case of an emergency, within one (1) working day after the start of lead abatement. For the purposes of this paragraph 4(b), the term "emergency" shall mean a lead abatement project for which respondent is hired to provide services the same day. In cases of an emergency lead abatement project, respondent shall give the Department immediate notice by confirmed facsimile (860-509-7295), to the attention of Alan Buzzetti, Supervising Environmental Sanitarian, Lead Environmental Management Unit, in addition to mailing the emergency notification to the address specified in paragraph 5 below.
5. All correspondence and reports (including any notifications required under paragraph 4 above) are to be addressed to:

Alan Buzzetti, Supervising Environmental Sanitarian
Department of Public Health
410 Capitol Avenue, MS #51LED
P.O. Box 340308
Hartford, CT 06134-0308

6. All reports required by the terms of this Consent Order shall be due according to a schedule to be established by the Department of Public Health.
7. Respondent shall comply with all state and federal statutes and regulations applicable to its licensure.
8. Respondent shall pay all costs necessary to comply with this Consent Order.
9. Any alleged violation of any provision of this Consent Order may result in the following procedures at the discretion of the Department:
 - a. The Department shall notify respondent in writing by first-class mail that the term(s) of this Consent Order have been violated, provided that no prior written consent for deviation from said term(s) has been granted.
 - b. Said notification shall include the acts or omission(s) which violate the term(s) of this Consent Order.
 - c. Respondent shall be allowed fifteen (15) days from the date of the mailing of notification required in paragraph 9a above to demonstrate to the satisfaction of the Department that it has complied with the terms of this Consent Order or, in the alternative, that it has cured the violation in question.
 - d. If respondent does not demonstrate compliance or cure the violation by the limited fifteen (15) day date certain contained in the notification of violation to the satisfaction of the Department, it shall be entitled to a hearing before the Department which shall make a final determination of the disciplinary action to be taken.

- e. Evidence presented to the Department by either the Department or respondent in any such hearing shall be limited to the alleged violation(s) of the term(s) of this Consent Order.
10. In the event respondent violates any term of this Consent Order, respondent agrees immediately to refrain from practicing as a lead abatement contractor, upon request by the Department, for a period not to exceed 45 days. During that time period, respondent further agrees to cooperate with the Department in its investigation of the violation. Respondent further agrees that failure to cooperate with the Department in its investigation during said 45 day period shall constitute grounds for the Department to seek a summary suspension of respondent's license. In any such summary action, respondent stipulates that failure to cooperate with the Department's investigation shall constitute an admission that its conduct constitutes a clear and immediate danger as required pursuant to the General Statutes of Connecticut, sections 4-182(c) and 19a-17(c).
11. In the event respondent violates any term of this Consent Order, said violation may also constitute grounds for the Department to seek a summary suspension of its license before the Department.
12. Legal notice shall be sufficient if sent to respondent's last known address of record reported to the Environmental Practitioner Licensure Unit of the Bureau of Regulatory Services of the Department.
13. This Consent Order is effective on the first day of the month immediately following the date this Consent Order is accepted by the Department.
14. Respondent agrees that this Consent Order shall be deemed a public document, and the Department's allegations as contained in this Consent Order shall be deemed true in any subsequent proceeding before the Department in which its compliance with this Consent

Order or with Chapters 400c or 368a of the General Statutes of Connecticut, as amended, is at issue.

15. Any extension of time or grace period for reporting granted by the Department shall not be a waiver or preclude the Department from taking action at a later time. The Department shall not be required to grant future extensions of time or grace periods.
16. This Consent Order and terms set forth herein are not subject to reconsideration, collateral attack or judicial review under any form or in any forum. Further, this Order is not subject to appeal or review under the provisions of Chapters 54 or 368a of the General Statutes of Connecticut, provided that this stipulation shall not deprive respondent of any rights that it may have under the laws of the State of Connecticut or of the United States.
17. This Consent Order is a revocable offer of settlement which may be modified by mutual agreement or withdrawn by the Department at any time prior to its being executed by the last signatory.
18. Respondent permits a representative of the Legal Office of the Bureau of Healthcare Systems to present this Consent Order and the factual basis for this Consent Order to the Department. Respondent understands that the Department has complete and final discretion as to whether this executed Consent Order is approved or accepted.
19. Respondent has the right to consult with an attorney prior to signing this document.

I, Richard Shultz, President of Abcon Environmental, Inc., have read the above Consent Order, and I represent and warrant that I am fully authorized and empowered to bind said company. I hereby stipulate and agree to the terms as set forth therein. I further declare the execution of this Consent Order to be my free act and deed.

Richard Shultz

Richard Shultz, ~~President~~ Director of Operations

Subscribed and sworn to before me this 29 day of September 2003.

Gail Brown

Notary Public or person authorized by law to administer an oath or affirmation

GAIL P. BROWN
Notary Public, State of Connecticut
My Commission Expires July 31, 2006

The above Consent Order having been presented to the duly appointed agent of the Commissioner of the Department of Public Health on the 14th day of October 2003, it is hereby accepted.

Ellen Blaschinski

Ellen Blaschinski, Director
Division of Environmental Health
Bureau of Regulatory Services

s:lhf/Abcon.pb/CO