STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
BUREAU OF REGULATORY SERVICES

In re: Bestech Inc. of Connecticut

Petition Nos. 990816-053-014 and 990810-053-013

CONSENT ORDER

WHEREAS, James Newbury, President of Bestech Inc. of Connecticut (hereinafter "respondent") has been issued license number 000016 to practice as an asbestos abatement contractor by the Department of Public Health (hereinafter "the Department") pursuant to Chapter 400a of the General Statutes of Connecticut, as amended; and,

WHEREAS, respondent admits that:

1. In or about June 1999, respondent was the licensed asbestos abatement contractor for an asbestos abatement project at the Court Towers Housing Complex, 21 Court Street, Vernon, Connecticut (hereinafter "the Vernon property"). The asbestos abatement project was performed in connection with the renovation of the Vernon property.
2. On said date, respondent failed to ensure that no person leave the work area at the Vernon property unless first being decontaminated by showering, wet washing, or high efficiency particulate air (hereinafter "HEPA") vacuuming to remove all asbestos debris in that several of respondent's workers were observed by a Department investigator exiting the work area without decontaminating and without changing the street clothing worn under their tyvek suits.
3. In or about March 1999, respondent was the licensed asbestos abatement contractor for an asbestos abatement project at 718 North Colony Road, Wallingford, Connecticut

(hereinafter "the Wallingford property"). The asbestos abatement project was performed in connection with the renovation of a former manufacturing facility. Respondent conducted the asbestos abatement project in three stages in an approximately 225,000 square foot area of the facility. A portion of the asbestos abatement project included the packaging and disposal of loose asbestos containing vinyl floor tile and floor tile debris that had been disturbed prior to the time that respondent was hired by the owner of the Wallingford property.

4. On or about March 25, 1999, respondent, in connection with the asbestos abatement project at the Wallingford property:

   a. failed to properly isolate the work areas from the non-work areas with air-tight barriers attached securely in place in that Department investigators observed a breach in a critical barrier in one of the work areas;

   b. failed to isolate the facility heating, ventilating and air conditioning systems within one of the work areas;

   c. failed to properly cover all wall surfaces in the work areas with two layers of polyethylene sheeting or the equivalent in that asbestos abatement commenced in at least one of the work areas before the work area was contained. Respondent's workers packaged approximately ten (10) 30-gallon barrels of loose asbestos containing vinyl floor tile in said work area before the area was contained. Respondent's workers also removed, through the use of a mechanical scraper, approximately fifteen (15) square feet of asbestos containing vinyl floor tile from the sub-floor. Subsequently, respondent applied for and was granted an alternative work practice that allowed for critical barriers to be established in conjunction with a glove bag procedure outlined in

federal Department of Labor regulations at 29 CFR 1926.1101, instead of covering all wall surfaces with two layers of polyethylene sheeting;

d. failed to provide negative pressure ventilation units with HEPA filtration (hereinafter "Air Filtration Units") in sufficient number to allow at least one work place air exchange every fifteen (15) minutes in each work area. Respondent's workers packaged approximately ten (10) 30-gallon barrels of loose asbestos containing vinyl floor tile in one work area prior to installing any Air Filtration Units. Respondent's workers also removed, through the use of a mechanical scraper, approximately fifteen (15) square feet of asbestos containing vinyl floor tile from the sub-floor in said work area. In a second work area that had been abated and cleaned for reoccupancy air sampling, respondent had less than thirty percent of the total number of required Air Filtration Units installed and operating during a Department compliance inspection; and

e. failed to repeat, prior to dismantling the containment in one of the work areas, the sequence of wet cleaning and HEPA filtered vacuuming until no visible residue is observed in that debris from asbestos containing thermal pipe insulation was observed and sampled during a Department compliance inspection.

5. The above described facts constitute grounds for disciplinary action pursuant to Chapter 400a and §§19a-332 and 19a-332a(b) of the General Statutes of Connecticut, taken in conjunction with the Regulations, Connecticut State Agencies (hereinafter "the Regulations") §§19a-332a-1, 19a-332a-2, 19a-332a-5(b), 19a-332a-5(c), 19a-332a-5(e), 19a-332a-5(g), 19a-332a-5(h), 19a-332a-6(b), and 19a-332a-18(e). The Regulations were amended subsequent to respondent's violations. Unless otherwise noted, all references are to those Regulations in effect prior to June 4, 1999.

WHEREAS, respondent, in consideration of this Consent Order, has chosen not to contest this matter and 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 19a-332a of the General Statutes of Connecticut.

NOW THEREFORE, pursuant to §§19a-14, 19a-17 and 19a-332a 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 shall pay a civil penalty of eleven thousand five hundred dollars ($11,500.00) 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.
3. Respondent's license shall be placed on probation until it completes three (3) interior asbestos abatement projects. The three such projects that are subject to the probationary terms shall be the first three projects performed by respondent after the effective date of this Consent Order and that involve interior abatement of more than three (3) linear feet or more than three (3) square feet of asbestos-containing material; provided that such abatement projects do not require an emergency asbestos abatement notification where respondent does not have at least ten (10) days before the start of the asbestos abatement to engage the services of an asbestos abatement project monitor as required by paragraph 3b below. The terms and conditions of the probation shall be as follows:
    a. Respondent shall comply with all statutes and regulations applicable to its licensure including, but not limited to:

(1) causing all affiliated asbestos abatement personnel to properly contain the work area in the manner set forth in §§19a-332a-5(c) and 19a-332a-5(e) of the Regulations;

(2) causing all affiliated asbestos abatement personnel to establish and operate a sufficient number of negative pressure ventilation units in the work area during asbestos abatement, in the manner set forth in §19a-332a-5(h) of the Regulations;

(3) causing no person or equipment to leave the asbestos abatement project work area unless first being decontaminated by showering, wet washing, or HEPA vacuuming to remove asbestos debris in a manner set forth in §19a-332a-6(b) of the Regulations; and

(4) causing all affiliated asbestos abatement personnel to repeat, prior to dismantling the containment for the work area, the sequence of wet cleaning and HEPA-filtered vacuuming until no visible residue is observed.

b. During the probationary period described in paragraph 3a above, respondent shall obtain, at its own expense, the services of an asbestos abatement project monitor, certified and practicing in the State of Connecticut and pre-approved by the Department (hereinafter "monitor"), to review respondent's records and inspect respondents' work sites as follows:

(1) The monitor shall meet with respondent's president and inspect its work sites at a frequency to be determined by the monitor, to ensure satisfactory performance of the three (3) interior asbestos abatement projects;

(2) Respondent shall provide the monitor with reasonable notice prior to commencement of each interior asbestos abatement project and shall fully

cooperate with the monitor in providing access to the sites and records for such monitoring; and

(3) Respondent shall be responsible for the monitor preparing and submitting directly to the Department, a written report addressing his/her findings regarding each asbestos abatement project monitored. Such monitor's reports shall include documentation of dates and duration of meetings with respondent's president, a general description of the work reviewed, monitoring techniques utilized, a statement that the monitor personally observed respondent's work and that such work was completed with reasonable skill and safety and in compliance with all applicable federal, local and state laws and regulations, and a statement that respondent's personnel cleaned the work area in compliance with applicable reoccupancy criteria. If the monitor, at any time, determines that respondent is not in compliance with the statutes or regulations governing its practice or the terms of this Consent Order, he or she shall immediately so notify the Department.

4. All correspondence and reports are to be addressed to:

Ron Skomro, Supervising Environmental Sanitarian
Department of Public Health
Indoor Air Program
410 Capitol Avenue, MS #51AIR
P.O. Box 340308
Hartford, CT 06134-0308

5. All reports required by the terms of this Consent Order shall be due within thirty (30) days of the completion of each project identified in paragraph 3a above.

6. Respondent shall comply with all state and federal statutes and regulations applicable to its licensure.

7. Respondent shall pay all costs necessary to comply with this Consent Order.

8. 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 8a 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.

9. In the event the Department and/or the monitor determines that respondent is not in compliance with the statutes or regulations governing its practice or any term of this Consent Order in connection with any of the asbestos abatement projects subject to the

requirements of paragraph 3 above, respondent agrees immediately to cease and desist all of its activities on the project in question, 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 its 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).

10. 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.

11. Legal notice shall be sufficient if sent to respondent's last known address of record reported to the Licensure and Registration Section of the Division of Health Systems Regulation of the Department.

12. This Consent Order is effective on the day it is accepted and ordered by the Department.

13. Respondent understands this Consent Order may be considered as a public document and evidence of the above admitted violations in any proceeding before the Department in which its compliance with this Consent Order or with Chapter 400a or §19a-332a of the General Statutes of Connecticut, as amended, is at issue.

14. 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.

15. 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.

16. 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.

17. Respondent permits a representative of the Legal Office of the Bureau of Regulatory Services 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.

18. Respondent has the right to consult with an attorney prior to signing this document.

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I, James Newbury, President of Bestech Inc. of Connecticut, have read the above Consent Order, and I affirm that I am fully authorized and empowered to bind said company. I hereby stipulate and agree to bind Bestech Inc. of Connecticut to the terms as set forth therein. I further declare the execution of this Consent Order to be my free act and deed.

James Newbury, President
Bestech Inc. of Connecticut

Subscribed and sworn to before me this 23 day of DECEMBER 1999.

Notary Public or person authorized
by law to administer an oath or affirmation
My Commision Expires: 10/31/2001

The above Consent Order having been presented to the duly appointed agent of the Commissioner of the Department of Public Health on the 28th day of December 1999, it is hereby accepted.

Thomas Furgalack, Director
Division of Environmental Health

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