

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH**

In re: Briteside, Inc.

Petition No. 990927-053-019

FINAL DECISION

Procedural Background

On June 14, 2000, the Department of Public Health ("the Department") issued a Statement of Charges against Briteside, Inc. ("respondent"), due to its alleged violations of the Connecticut General Statutes and the Regulations of Connecticut State Agencies ("the Regulations") as described more particularly below. H.O. Exh. 1. On July 14, 2000, the Department issued a First Amended Statement of Charges ("the Charges"). H.O. Exh. 3.

On June 27, 2000, notice of the hearing was provided to respondent by both First Class and certified mail, return receipt requested. In the Notice of Hearing, Elisabeth Borrino, the undersigned, was appointed by the Commissioner of the Department to be the Hearing Officer and to rule on all motions, and to determine findings of fact and conclusions of law and issue an Order. H.O. Exh. 2.

No Answer was received from respondent.

The administrative hearing was held on July 14 and August 8, 2000, in accordance with Connecticut General Statutes Chapter 54 and Regulations §§19a-9-1 *et seq.* Respondent appeared through its president, Blake Johnson; Attorney Linda Fazzina, Esq., represented the Department.

This Final Decision is based entirely on the record and sets forth this Hearing Officer's findings of fact, conclusions of law, and Order. To the extent that the findings of fact actually represent conclusions of law, they should be so considered,

and vice versa. *SAS Inst., Inc. v. S & H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn 1985).

Allegations

1. In paragraph 1 of the Charges, the Department alleges that respondent is, and has been at all times referenced in the Charges, the holder of Connecticut asbestos contractor license number 000042.
2. In paragraph 2 of the Charges, the Department alleges that in or about Spring of 1999, respondent performed an asbestos abatement project in the interior of the building formerly located at 29-31 Annawan Street, Hartford, CT ("the property").
3. In paragraph 3 of the Charges, the Department alleges that on or about May 27, 1999, in connection with the asbestos abatement project at the property, respondent violated Connecticut's standards for the proper performance of asbestos abatement, which standards are found at 19a-332a-1 to 19a-332a-16, inclusive, of the Regulations, in that it:
 - a. failed to post warning signs at all approaches to the work area(s);
 - b. failed to seal airtight all openings between the work area(s) and the non-work area(s);
 - c. failed to equip each work area with a worker decontamination facility that abuts the work area where feasible;
 - d. failed to cover all floor and/or wall surfaces in the work area with a minimum of two layers of four mil polyethylene sheeting or the equivalent;
 - e. failed to seek and/or obtain an alternative work practice procedure from the Department;
 - f. failed to comply with the re-occupancy criteria of 19a-332a-12 of the Regulations prior to dismantling the air-tight barriers and/or the polyethylene sheeting covering the floor and/or wall surfaces in each work area;
 - g. failed to provide negative pressure ventilation units with high efficiency particulate air (HEPA) filtration in sufficient numbers to allow at least one air change every fifteen minutes in each work area;

- h. failed to utilize clean-up procedures in the work area(s) until no visible residue is observed;
 - i. failed to provide and maintain complete and/or accurate records of the asbestos abatement project at the property; and/or
 - j. failed to place all asbestos containing waste in leak-tight containers for disposal.
4. In paragraph 4 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to Connecticut General Statutes §§ 20-440 and/or 19a-332a(b), taken in conjunction with Regulations §§ 19a-332a-5(a), 19a-332a-5(c), 19a-332a-6, 19a-332a-5(e), 19a-332a-11, 19a-332a-12, 19a-332a-5(h), 19a-332a-12(b), 19a-332a-4, and/or 19a-332a-5(j).

Findings of Fact

1. Respondent is, and has been at all times referenced in the Charges, the holder of Connecticut asbestos contractor license number 000042.
2. Between March of 1999 and October of 1999, respondent was investigated by the Department for allegations concerning an August 1998 abatement project, which resulted in a Consent Order, Petition No. 990323-053-001, dated October 7, 1999, in which respondent admitted violating numerous provisions of the Regulations, most of which respondent is alleged to have again violated with regard to the property. Tr. 7/14/00, 142; H.O. Exh. 5.
3. On May 14, 1999, respondent filed an Asbestos Abatement Notification Form ("Notification form") with the Department for the property at 29-31 Annawan street ("the property"). Dept. Exh. 1.
4. After May 27, 1999, respondent filed a revised Notification form identifying the project as a "demolition project" instead of a "renovation project as it was previous described (item 9A on the notification form).¹ Respondent erred when the original Notification form identified the project as a renovation instead of a demolition project. Tr. 7/14/00, 109-110; Tr. 8/8/00, 20.; Rt. Exh. A.
5. The property consisted of a three-story building. There were eleven abatement areas, of which four were stairwells and seven were apartments.

¹ The record failed to identify the exact date this form was filed and nothing contained on the face of the form reveals this information.

Respondent conducted asbestos abatement ("the abatement") in each of those areas. Tr. 7/14/00, 28, 31.

6. The property contained both friable and non-friable asbestos. Friable asbestos can be broken into a powder by hand pressure. The window glazing was friable. Non-friable asbestos, which includes floor tile, by itself, would not crumble to a powder by hand pressure. The tools that are used to remove non-friable asbestos, such as floor tile, may cause the non-friable asbestos to become friable. The floor tile at the property was non-friable. Tr. 7/14/00, 56; Dept. Exh. 2.
7. On May 27, 1999, Stephen Dahlem, sanitarian for the Department, inspected the property. Upon arriving, Mr. Dahlem was informed by the general contractor and foreman that the abatement was complete and the building was ready for demolition. Tr. 7/14/00, 24-25, 29.
8. The project was not complete on May 27, 1999 abatement continued until approximately late June of 1999.
9. The owner of the property requested that respondent delay removal of the first floor windows until a date closer to the demolition in order to secure the building from potential vandals and trespassers. Tr. 7/14/00, 47; Tr. 8/8/00, 6.
10. There was no water or electricity available on site at the property during the abatement. Tr. 8/8/00, 6.
11. Respondent failed to post warning signs on the property. Tr. 7/14/00, 38-40; Dept. Exh. 4.
12. Respondent failed to seal properly and maintain until demolition, all areas of asbestos abatement ("the work areas") from the non-work areas with airtight barriers attached securely in place. Tr. 7/14/00, 38, 52; Tr. 8/8/00, 13; Dept. Exh. 4.
13. Respondent failed to install critical barriers on the windows on the second and third floors. Tr. 7/14/00, 52, 137, 210, 212; Tr. 8/8/00, 70.
14. Respondent used one remote shower for worker decontamination rather than a decontamination facility that abutted each work area. Tr. 7/14/00, 32, 48-50, 218.

15. Respondent notified the Department of its intent to use the remote shower for worker decontamination but did not apply for, nor did the Department approve, an alternative work practice procedure using a remote shower. Tr. 7/14/00, 52; Dept. Exh. 1.
16. Respondent failed to cover floor and wall surfaces in the work area with two layers of four-mil polyethylene sheeting or the equivalent. Tr. 7/14/00, 47; Dept. Exh. 4.
17. Well after the abatement was completed, on November 22, 1999, respondent filed an application for alternative work practice requesting Departmental approval for "the use of a single layer of six mil polyethylene sheeting as critical barriers only where the ACM [asbestos containing material] to be removed is floor tile and mastic." The Department did not approve respondent's application, although the Department has allowed this alternative work practice in certain cases where the building will be demolished and only as regards those particular areas. Tr. 7/14/00, 68, 72; Dept. Exh. 5.
18. Re-occupancy air sampling is required when any person, including workers, may occupy the building post-abatement. There is no minimum period of time for the intended re-occupancy before such sampling is required. Tr. 8/8/00, 71.
19. The property was re-occupied by (1) maintenance workers who altered the hot water system located in the basement,² and (2) respondent's crew who removed the first floor windows after May 27, 1999 and before the end of June 1999. Respondent also knew that trespassers and vandals could potentially access the property. The property could only be accessed through the stairwells, which were located in the front and back of the building. Tr. 7/14/00, 44-45; Tr. 8/8/00, 13, 70-71.
20. When the abatement was completed, respondent was required to (1) either perform air sampling for re-occupancy or seal the abated areas until demolition; and (2) post warning signs. Tr. 7/14/00, 42-43, 176, 186-187, 200.
21. Respondent failed to perform re-occupancy air sampling prior to dismantling the airtight barriers and/or the polyethylene sheeting concerning the floor and/or wall surfaces in each work area. Respondent also failed to seal the abated areas until demolition. Tr. 7/14/00, 46, 200-202.

² The hot water system located in the basement, supplied hot water to both the property and the adjacent building.

22. The use of a negative pressure ventilation unit with high efficiency particulate air (HEPA) to filter the air with at least four air changes every hour, in fifteen-minute intervals, is an essential component of abatement. The fibers that are of most concern are the ones that cannot be seen, are airborne, and could be inhaled. Tr. 7/14/00, 58-60.
23. Respondent failed to use a negative pressure ventilation unit with high efficiency particulate air (HEPA) filtration in sufficient numbers to allow at least one air exchange every fifteen minutes in each work area. Tr. 7/14/00, 58-59.
24. The dirt and dust ("residue") that is left in an abatement area may contain asbestos since, as the abatement is conducted, asbestos fibers can mix in with dirt and dust inside the area. Therefore, all residue must be removed as part of the final cleaning process. Respondent failed to do so. Tr. 7/14/00, 60-61.
25. Respondent failed to document the abatement of the property in conformity with the Regulations. The site logs that respondent submitted are not credible, and are fabricated and unreliable. Tr. 7/14/00, 74; Dept. Exh. 6.
26. All interior windows that were to be abated had glazing which contained asbestos. This glazing had been located around the perimeter of the glass panes where they join the framing of each window. Tr. 7/14/00, 54, 228; Dept. Exh. 2.
27. On May 27, 1999, the second and third floor interior and exterior storm windows had been removed. The first floor windows remained. There were approximately twenty windows on each of the three floors that required abatement. Tr. 7/14/00, 33-35; Dept. Exh. 3.
28. Window units that were removed from the second and third floors were brought into the apartments, and left unwrapped on the floors with the glass broken. Respondent had the option to (1) build containment areas around each window opening if it planned to remove the windows by pulling them to the interior, or (2) place critical barriers on the windows, pull the entire unit to the outside, wrap it, and discard it appropriately. Pulling the window unit to the exterior is not only cost and time effective but the typical method used by abatement contractors. Tr. 7/14/00, 33.
29. Insufficient evidence was presented that the windows observed on the second and third floors were interior rather than exterior storm windows, which contained no asbestos. The Department collected no samples from the

windows that were on the floor to determine whether they contained asbestos. Tr. 8/8/00, 61.

30. Marco Tacuri has been employed by respondent for approximately six years and was a supervisor at the property. Mr. Tacuri was not a credible witness. Tr. 7/14/00, 148, 150.

Discussion and Conclusions of Law

Section 19a-332a-18(e) of the Regulations empowers the Department to: take any action, permitted by Section §19a-17 of the Connecticut General Statutes, against an individual or entity issued a license under these regulations for conduct including, but not limited to, violation of the provisions of the regulations and statutes governing asbestos abatement or licensure.

The Department seeks discipline of respondent's asbestos abatement contractor's license alleging that respondent (1) failed to post warning signs at all approaches to the work area(s); (2) failed to seal airtight all openings between the work area(s) and the non-work area(s); (3) failed to equip each work area with a worker decontamination facility that abuts the work area where feasible; (4) failed to cover all floor and/or wall surfaces in the work area with a minimum of two layers of four mil polyethylene sheeting or the equivalent; (5) failed to seek and/or obtain an alternative work practice procedure from the Department; (6) failed to comply with the re-occupancy criteria of 19a-332a-12 of the Regulations prior to dismantling the air-tight barriers and/or the polyethylene sheeting covering the floor and/or wall surfaces in each work area; (7) failed to provide negative pressure ventilation units with high efficiency particulate air (HEPA) filtration in a sufficient number to allow at least one air change every fifteen minutes in each work area; (8) failed to utilize clean-up procedures in the work area(s) until no visible residue is observed; (9) failed to provide and maintain complete and/or accurate records of the asbestos abatement project at the property; and/or (10) failed to place all asbestos containing waste in leak-tight containers for disposal. Regulations §§19a-332a-5(a), 19a-332a-

5(c), 19a-332a-6, 19a-332a-5(e), 19a-332a-11, 19a-332a-12, 19a-332a-5(h), 19a-332a-12(b) 19a-332a-4, and/or 19a-332a-5(j).

The Department bears the burden of proof by a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. 91, 101 S. Ct. 999, *reh'g den.*, 451 U.S. 933 (1981); *Swiller v. Comm'r of Public Health*, CV-950705601, Superior Court, J.D. Hartford/New Britain at Hartford, October 10, 1995.

1. *Allegations that respondent failed to post warning signs at all approaches to the work area(s).*

Section 19a-332a-5 (a) of the Regulations provides as follows:

Signs shall be posted which meet the specifications set forth in 29 CFR 1926.58 (k) (1) (ii) at all approaches to the work area. Signs shall be posted a sufficient distance from the work area to permit a person to read the sign and take precautionary measures to avoid exposure to asbestos.

Blake Johnson, respondent's president, argues that the requisite warning signs were properly posted. Mr. Johnson, however, has no personal knowledge of the manner by which the abatement was conducted. Mr. Tacuri, who generally presented as not credible, candidly admitted that signs were not posted. Mr. Dahlem who visited the property on both May 27 and June 1, 1999, corroborates Mr. Tacuri's testimony. Respondent was also required to post and maintain warning signs until demolition. Respondent failed to do so. FF. 10.

Accordingly, the Department met its burden of proof that respondent failed to post the requisite warning signs as required by the Regulations.

2. *Allegations that respondent failed to seal airtight all openings between the work area(s) and the non-work area(s).*

Section 19a-332a-5 of the Regulations provides as follows.

(c) The work area shall be isolated from non-work areas by airtight barriers attached securely in place. All openings between the work area and non-work areas including but not limited to windows, doorways, elevator openings, corridor entrances, ventilation openings, drains, ducts, grills, grates, diffusers and skylights, shall be sealed airtight with 6 mil polyethylene sheeting.

In making this allegation, the Department relies upon the testimony of Mr. Dahlem who saw no evidence that airtight and critical barriers were properly installed during the abatement of the second and third floors. On May 27, 1999, Mr. Dahlem also determined that airtight barriers were not maintained in conformity with the Regulations at that time. Respondent was required not only to install the barriers and attach them in place but also to maintain these through demolition.

In its defense, respondent relies upon the testimony of Mr. Tacuri and his work log that was submitted at the hearing. The work log is wholly unreliable, was "re-written" ostensibly because Mr. Tacuri was concerned the pages may have been soiled, and he threw away the original pages from which he allegedly copied the log. Mr. Tacuri was not credible and the work log that was submitted is so unreliable that the Hearing Officer affords the exhibit no weight. FF. 24.

The Department submitted compelling evidence in support of its claim, including photographs depicting four identical cylindrical portions missing from one area of polyethylene sheeting, which establish that respondent failed to properly seal the work areas from the non-work areas as well as to ensure that such seals were maintained through demolition. Dept. Exh. 4.

Respondent contends that either (1) vandals compromised these sealed areas, or (2) the adhesive failed to perform. Neither contention is persuasive. First, objects hurled into the property are unlikely to cause the excision of four identical cylindrical portions. Secondly, no evidence was submitted that polyethylene sheeting has a sufficiently inflated re-sale value to warrant vandals to endeavor to excise these four portions of sheeting.

Respondent's second contention that the passage of time caused the adhesive to fail is similarly without merit. Adhesive failure does not cause polyethylene sheeting to spontaneously disappear. Rather, it would be either partially attached or have fallen to the ground. No evidence was submitted that either of these scenarios occurred.

The Department opines that this sheeting was utilized on a prior project and the missing four cylindrical portions were the areas cut for exhaust hoses from four negative pressure ventilation units. The Department's opinion is well founded.

Accordingly, the Department met its burden of proof that respondent failed to seal air tight all openings between the work areas and non-work areas.

3. *Allegations that respondent failed to equip each work area with a worker decontamination facility that abuts the work area where feasible.*

Section 19a-332a-6 of the Regulations provides:

(a) At all asbestos abatement projects, work areas shall be equipped with decontamination facilities consisting of: a clean room, a shower room, and an equipment room. Each room shall be separated from the other and from the work area by airlocks such as will prevent the free passage of air or asbestos fibers and shall be accessible through doorways protected with two (2) overlapping 4 mil polyethylene sheets. The clean room (or change room) shall be equipped with suitable hooks, lockers, shelves, etc. for workers to store personal articles and clothing. The shower room shall be contiguous to the clean room and equipment room. All personnel entering or leaving the work area shall pass through the shower room. The number of showers provided shall satisfy the requirements of OSHA 29 CFR 1910.141 (d) (3) (ii). Warm water shall be supplied to the showers. The equipment room (dirty room) shall be situated between the shower room and the work area, and separated from both by means of suitable barriers or overlapping flaps such as will prevent the free passage of air or asbestos fibers. (b) No person or equipment shall leave the asbestos abatement project work area unless first decontaminated by showering, wet washing or HEPA vacuuming to remove all asbestos debris. No asbestos contaminated materials or persons shall enter the clean room. (c) *Where feasible, decontamination systems shall abut the work area. In situations where it is not possible, due to unusual conditions, to establish decontamination systems contiguous to the work area, personnel shall be directed to remove visible asbestos debris from their persons by HEPA-filtered vacuuming prior to donning clean disposable coveralls while still in the work area, and proceeding directly to a remote decontamination system to shower and change clothes.* (d) *In specific situations where the asbestos contractor determines that it is not feasible to establish a contiguous decontamination system at a work site, the asbestos contractor shall provide written notification and provide a copy to the facility owner of intent to utilize a remote decontamination system. Such systems must be operated in conformance with 29 CFR 1926.58, Appendix F. Such notice shall be made with the notification required under Section 19a-332a-3. (Emphasis added.)*

It is uncontroverted that each work area was not equipped with a contiguous worker decontamination unit. It is also uncontroverted that respondent provided a remote unit and filed notification with the Department of its intent to do so. No evidence was submitted that respondent failed to notify the property owner.

The Department contends that either it was feasible to equip each area with the decontamination unit or, if not, respondent was required to and did not apply for an alternative work practice.

A preponderance of the evidence was presented that it was not feasible to equip each work area with a decontamination unit. Indeed, the Department concedes that there was no water or electricity supplied to the property. The Department also concedes that the conditions at the property "represented a practical situation where a remote worker decontamination facility could be used." Dept. Brf. p.3.

Moreover, nothing in the aforementioned Regulation requires filing a request for and obtaining authorization to use an alternative work procedure before utilizing the remote unit and the Department submitted no authority requiring this.

Thus, the Department failed to meet its burden of proof that utilizing a remote decontamination unit in this instance was violative of the Regulations.

4. *Allegations that respondent failed to cover all floor and/or wall surfaces in the work area with a minimum of two layers of four mil polyethylene sheeting or the equivalent.*

Section 19a-332a-5(e) of the Regulations provides:

Floor and wall surfaces in the work area shall be covered with polyethylene sheeting or equivalent. All seams and joints shall be sealed with tape or equivalent. Floor covering shall consist of at least two layers of 6 mil polyethylene and must cover at least the bottom 12 inches of adjoining wall. Wall covering shall consist of a minimum of two layers of 4 mil polyethylene sheet, which shall overlap the floor covering to prevent leaks. There shall be no seams in the polyethylene sheet at the wall-to-floor joints.

Photographs taken on May 27, 1999, establish that respondent failed to install the requisite polyethylene on the walls and floors of the property. The Department

correctly asserts that respondent both impliedly and expressly admitted this failure which is also established by photographs. Specifically, (1) respondent impliedly admitted its failure to install the requisite sheeting when it sought the Department's retroactive approval of an alternative work practice in November of 1999, and (2) Mel Houle, an owner of respondent, expressly admitted that the requisite polyethylene was not installed.

Therefore, the Department met its burden of proof that respondent failed to cover all floor and/or wall surfaces in the work area with a minimum of two (2) layers of four (4) mil polyethylene sheeting or the equivalent.

5. *Allegations that respondent failed to seek and/or obtain approval to use an alternative work practice procedure from the Department.*

Section 19a-332a-11 of the Regulations provides:

The Department may approve an alternative procedure for an asbestos abatement project or spot repair. The alternative procedures shall be submitted in writing and in advance for review by the Department and shall provide equivalent or a greater measure of asbestos emission control than the work practices prescribed by these regulations. Such approval may be granted for a period of time, not to exceed one year, for specified similar asbestos abatement projects or spot repairs performed within a facility. Such approval may be given for specified kinds of facilities or for asbestos abatement projects or spot repairs which utilize similar work procedures.

It is uncontroverted that no alternative work practice procedure application was submitted or granted in advance of the asbestos abatement. The Department contends that respondent violated the Regulation regarding such practices by its failure to seek an alternative work practice approval for (1) having a remote decontamination unit, and (2) using critical barriers in lieu of wall polyethylene sheeting.

First, as set forth hereinabove, the Regulations do not require an alternative work practice application for using a remote decontamination unit. The Regulation simply required that respondent notify the Department and the property owner. The record establishes that respondent notified the Department, and nothing in the record

establishes that respondent did not notify the property owner of its intent to use the remote unit.

Secondly, with regard to the Department's allegation that respondent failed to seek an alternative work practice approval for using critical barriers in lieu of wall polyethylene sheeting, the Department failed to establish this claim. Although the record establishes that respondent failed to install the requisite floor and wall polyethylene, the failure to do so does not constitute a violation of section 19a-332a-11 of the Regulations, but rather, constitutes a specific regulatory violation of section 19a-332a-5(e) of the Regulations.

6. *Allegations that respondent failed to comply with the re-occupancy criteria of 19a-332a-12 of the Regulations prior to dismantling the airtight barriers and/or the polyethylene sheeting covering the floor and/or wall surfaces in each work area.*

Post abatement re-occupancy criteria for asbestos abatement projects which involve friable asbestos-containing material is regulated by section 19a-332a-12 of the Regulations which states in relevant part:

(a) No individual shall reoccupy the work area of an asbestos abatement project within a facility until compliance with the re-occupancy requirements of this section is achieved. . . . The project shall be considered complete when the results of samples collected in the work area and analyzed by phase contrast microscopy using the most current National Institute for Occupational Safety and Health (NIOSH) method 7400, to show that the concentration of fibers for each of the five samples is less than or equal to a limit of quantitation for PCM (0.010 fibers per cubic centimeter (0.010 f/cm³) of air).

Respondent concedes that it failed to conduct such re-occupancy testing. Respondent, however, contends that this Regulation is inapplicable where the property is being demolished rather than renovated. Respondent erred in initially specifying the property as a renovation rather than a demolition project on its Notification form.

As the record establishes, respondent was not required to perform re-occupancy testing *if* respondent maintained a sealed work area containment, with asbestos warning signs, until demolition occurred. Respondent failed to do either.

Respondent contends that the building owner failed to adequately advise it that workers may be entering the building prior to demolition. Respondent, however, acknowledges that the owner not only communicated to it that the property was at risk of vandalism and trespass, but directed it to delay removal of the first floor windows to prevent such vandalism and trespass. Respondent was thereby on notice that persons may enter the property, with or without the owner's consent.

Accordingly, the Department met its burden of proof that respondent failed to perform the requisite re-occupancy air testing.

7. *Allegations that respondent failed to provide negative pressure ventilation units with high efficiency particulate air (HEPA) filtration in a sufficient number to allow at least one air change every fifteen minutes in each work area.*

Section 19a-332a-5(h) of the Regulations provides

Negative pressure ventilation units with HEPA filtration shall be provided in sufficient number to allow at least one (1) work place air change every 15 minutes. Filtered air should be exhausted to areas outside the building which are not near any intake for the building ventilation system.

The Department asserts that respondent violated the aforementioned Regulation because there was no evidence that a HEPA unit was installed by the two available methods. Tr. 7/14/00, 57-58. Respondent contends that the HEPA unit was installed, and relies upon Mr. Tacuri's testimony and the project logs to support this contention.

Significantly, respondent did not refute Mr. Dahlem's testimony that there were only two methods of installing a HEPA unit and that evidence of such installation would be apparent after the abatement was completed.

As set forth herenabove, the Hearing Officer found Mr. Tacuri generally not credible and the project logs wholly unreliable. Respondent's reliance thereon is misplaced.

Therefore, the Department met its burden of proof that respondent failed to provide negative pressure ventilation units with high efficiency particulate air (HEPA) filtration.

8. *Allegations that respondent failed to utilize clean-up procedures in the work area(s) until no visible residue was observed.*

Section 19a-332a-12(b) of the Regulations provides:

Except as required by EPA Regulation 40 CFR Part 763 which applies to public and private schools, an asbestos abatement project shall be considered complete when there is no visible residue in the work area and when air samples demonstrate that the ambient interior airborne concentration of asbestos after the abatement project, does not exceed the levels specified in Subsection 19a-332a-12 (e).

Since asbestos becomes airborne during abatement and it may combine with other substances, no residue may remain after abatement. Mr. Dahlem observed the property after the abatement and determined that an unacceptable amount of residue remained. Mr. Dahlem was a credible percipient witness. Mr. Tacuri has no personal knowledge of whether residue remained at that time since he failed to check the work areas after the abatement was completed.

Therefore, the Department met its burden of proof that respondent failed to utilize clean-up procedures in the work areas until no visible residue was observed.

9. *Allegations that respondent failed to provide and maintain complete and/or accurate records of the asbestos abatement project at the property.*

Section 19a-332a-4 of the Regulations provides:

(a) The asbestos contractor shall maintain records of all asbestos abatement projects, which it performs and shall provide a complete copy of these records to the facility owner upon completion of the project. The asbestos contractor and facility owner shall retain the records for thirty (30) years following completion of the project. These records shall be available to the Department upon request. (b) The asbestos contractor shall record the following information for each project (1) The location and description of the project and the estimated amount and type of asbestos involved in each project; (2) The starting and completion dates of the project; (3) A summary of the procedures used to comply with Sections 19a-332a-5 to 19a-332a-12;

(4) The name and address of the authorized asbestos disposal facility and verification from the authorized asbestos disposal facility indicating the amount of asbestos received for disposal; (5) The methodology and results of all air sampling conducted during the abatement process; (6) A complete list of the names and social security numbers of asbestos abatement workers, asbestos abatement site supervisors and other agents involved in the asbestos abatement activity and working for the asbestos contractor on that project and individuals entering the enclosed work area; (7) A log of control of access to the work area; (8) All records for compliance with the requirements of OSHA, Conn OSHA, DEP and EPA regulations; (9) Documentation to demonstrate compliance with the post abatement re-occupancy criteria established by Section 19a-332a-12.

The Department accurately and comprehensively identified many of the glaring discrepancies regarding the reliability of respondent's records of the abatement in its Reply Brief. Dept.Brf. pp. 8-9. As set forth herein, the Hearing Officer finds these records to be not credible, fabricated, and wholly unreliable.

Accordingly, the Department met its burden of proof that respondent failed to provide and maintain complete and/or accurate records of abatement at the property.

10. *Allegations that respondent failed to place all asbestos containing waste in leaktight containers for disposal.*

Section 19a-332a-5(j) of the Regulations provides:

All asbestos containing waste shall be adequately wetted with an amended water solution and be placed in leak-tight containers.

The Department contends that the interior windows that were removed from the second and third floors of the property were found broken and lying on the floor of the property.³ The Department further contends that respondent was required to place them in an appropriate leaktight container for disposal. The Department bases these contentions on the assumption that the windows observed on the floors were interior windows rather than the exterior storm windows, which contained no

³ Mr. Dahlem opined that respondent abated the interior windows by pulling them inside, breaking the glass, removing the friable asbestos glazing, and leaving them on the floor of the second and third floor apartments. While Mr. Dahlem's opinion is entirely plausible, insufficient evidence was submitted to support it.

asbestos. No sampling or testing of the windows was performed even though the Department obtained samples from other locations on the property which were submitted to the laboratory for determination of asbestos content. Instead, the Department relies upon (1) inferences that it believes should be drawn from the feasibility and likelihood that the windows were removed to the interior, rather than exterior of the property, and (2) its opinion that the windows depicted in the photographic evidence were interior windows. No evidence other than inference and conjecture was submitted as to the origin of those windows.

Respondent contends that the windows were removed to the outside, appropriately discarded, and that the windows left broken on the second and third floors were exterior storm windows that contained no asbestos. Mr. Tacuri admitted that no critical barriers were placed on the window frames but that he believed such barriers were not necessary since the glazing would not be disturbed. Mr. Tacuri erred in this belief.

Both the Department and respondent submitted plausible explanations as to the origin of the windows observed broken on the apartment floors. Neither Mr. Johnson nor Mr. Dahlem had personal knowledge of the actual removal of the windows, and Mr. Tacuri was not credible. Nevertheless, the Department bears the burden of proof and, despite the concerns of the Hearing Officer in the context of the remaining violations, the Department failed to meet that burden of proof with regard to this allegation.

The record establishes a disturbing pattern whereby respondent fails to comply with the Regulations in a manner which is potentially injurious to the public health. Respondent has a prior Consent Order arising out of a series of regulatory violations committed in August of 1998 that include (1) failure to post warning signs, (2) failure to ensure that the work area was isolated from the non-work area by air-tight barriers attached securely in place, (3) failure to cover floor and wall surfaces in the work area with polyethylene sheeting or the equivalent, (4) failure to ensure that a sufficient number of negative pressure ventilation units with HEPA

filtration were installed to allow at least one work place air exchange every fifteen minutes, (5) failure to equip the work area with a worker decontamination system to ensure that no person or equipment left the work area without being decontaminated by showering, wet washing or HEPA vacuuming to remove all asbestos debris; and (6) failure to remove all movable objects from the work area and to cover all nonmovable objects with six mil polyethylene sheeting. H.O. Exh. 5. Pursuant to the Consent Order “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 . . .” H.O. Exh. 5. Discipline imposed by the Consent Order included probation. Significantly, the August 1998 regulatory violations were repeated the following year, while the Department was investigating the allegations that resulted in the Consent Order.

Based on the foregoing Findings of Fact, respondent violated Regulations §§19a-332a-5(a), 19a-332a-5(c), 19a-332a-6, 19a-332a-5(e), 19a-332a-12, 19a-332a-5(h), 19a-332a-12(b), and 19a-332a-4, inclusive, of the Regulations of the Connecticut State Agencies and, respondent’s license is subject to further disciplinary action as follows:

Order

Pursuant to Connecticut General Statutes §§19a-17 and 20-440, this Hearing Officer orders the following against the asbestos abatement contractor license of Britdeside, Inc., license number: 000042:

1. Respondent shall pay a civil penalty of fifteen thousand dollars (\$15,000.00) 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 within thirty days of the effective date of this Decision.
2. Following successful completion of the probationary terms contained in the Consent Order in Petition No. 990323-053-001, respondent’s license shall be placed on probation until it completes five additional interior asbestos

abatement projects. The five such projects that are subject of the probationary terms shall be the first five projects performed by respondent after completion of the October 7, 1999 Consent Order and that involve interior abatement of more than three linear feet or more than three 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 days before the start of the asbestos abatement to engage the services of an asbestos abatement project monitor as required hereinbelow. If respondent has already completed the terms of the October 7, 1999 Consent Order as of the effective date of this Order, then the five such projects subject to the probationary terms of this Order shall be the first five such projects performed by respondent after the effective date of this Order.

3. The terms and conditions of the probation shall be as follows:
 - a. For each of the five asbestos abatement projects respondent contracts to perform, respondent, shall provide a copy of this Final Decision and Order to the Local Director of Health in any town in which the project is located;
 - b. No less than thirty (30) days before commencement of or engaging in each such asbestos abatement project, respondent shall provide the Department with the name of each client and the location of the project, and shall certify that it has complied with Paragraph 2a of this Order;
 - c. Respondent shall obtain at its own expense the services of a licensed asbestos abatement project monitor (“monitor”), pre-approved by the Department, to conduct direct on-site inspections of each of the five asbestos abatement projects.
 - (i) The monitor shall have the right to monitor any and all work on the projects by any means which he or she deems necessary to determine whether the abatement is being conducted in

accordance with the controlling statutes and regulations.

Respondent shall fully cooperate with the monitor;

- (ii) Respondent shall provide the monitor with the original records maintained on each asbestos abatement project;
- (iii) The monitor shall prepare and submit directly to the Department, a written report setting forth his/her findings regarding each such project, including respondent's site records. The 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 site records, and that such work and site records were 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 and/or regulations regarding its licensure, he/she shall immediately notify the Department.

d. The civil penalty and all notices and reports shall be sent to:

Ronald Skomro, at the following address:

Ronald Skomro
State of Connecticut Department of Public Health
410 Capitol Avenue, MS #15AIR
P.O. Box 340308
Hartford, CT 06134-0308

- 3. Respondent shall comply with all laws, including the Connecticut General Statutes and the Regulations regarding asbestos abatement.

4. The term "asbestos abatement" as used herein shall have the same meaning as set forth in Connecticut General Statutes Section 19a-332(2).
5. Violation of any term(s) of this Order may result in additional discipline being imposed against respondent's asbestos abatement license of including but not limited to, licensure suspension and/or revocation, and/or imposition of additional civil penalties of up to \$10,000.00 for each separate violation.
6. This order is effective thirty days from the date of signature.

October 23, 2000
Date

Elisabeth Borrino
Elisabeth Borrino, Hearing Officer
Department of Public Health