

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH**

In re: Wayne **Chabot** ,
d/b/a Northern Asbestos Abatement.
213 Fitchville Road
Bozrah, Connecticut 06334

Petition No. 990401-053-002
August 10, 1999

FINAL DECISION

Procedural Background

On June 8, 1999, the Department of Public Health ("the Department") issued a Statement of Charges ("the Charges") against Wayne Chabot, d/b/a Northern Asbestos Abatement ("respondent") due to his 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 June 22, 1999, 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.

On July 14, 1999, the United States Postal Service returned the unclaimed Domestic Return Receipt for the Notice of Hearing. H.O. Exh. 4. The Notice of Hearing sent by First Class Mail has not been returned. H.O. Exh. 3, Att. E.

The administrative hearing was held on July 1, 1999, in accordance with Connecticut General Statutes Chapter 54 and Regulations §§19a-9-1 *et seq.* Respondent did not appear and was not represented by counsel; Attorney Linda Fazzina, Esq., represented the Department.

On June 23, 1999, the Department filed a Motion to Deem Allegations Admitted. H.O. Exh. 3. On July 28, 1999, the Department's Motion was granted, and the allegations contained in the Statement of Charges were deemed to be true.

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 paragraphs 1 and 4 of the Charges, the Department alleges that respondent is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut asbestos contractor license number 000265.
2. In paragraphs 2 and 3 of the Charges, the Department alleges that in or about March 1998, respondent performed an asbestos abatement project on the exterior and interior of a residential building located at 11 Soule Street, Griswold, Connecticut ("the premises") and violated and/or is continuing to violate 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 of the Connecticut State Agencies ("the Regulations), in that respondent:
 - a. failed and/or is failing to maintain a complete record for the asbestos abatement project and provide a copy thereof to the owner of the premises and to the Department;
 - b. failed and/or is failing to adequately wet all asbestos containing waste and to place such waste in leak-tight containers for disposal;
 - c. failed and/or is failing to properly label containers holding asbestos containing waste;
 - d. failed and/or is failing to dispose of asbestos containing waste at an authorized asbestos disposal facility; and/or

- e. caused and/or is causing waste removed from the building on the premises and/or removed from other undetermined locations to be stored improperly in a trailer located on the premises.
3. In paragraph 4 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to the Connecticut General Statutes §§20-440 and 19a-332a(b), taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-4, 19a-332-5(j), 19a-332a-5(l), and 19a-332a-7(a) and/or 19a-332a-18(e) of the Regulations.

Findings of Fact

1. Respondent is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut asbestos contractor license number 000265.
2. Respondent was properly served with the Charges and Notice of Hearing. Tr. 6.
3. Respondent did not file an Answer to the allegations contained in the Charges.
4. All of the factual allegations contained in the Charges are deemed admitted. In particular with regard to an asbestos abatement project on the exterior and interior of the premises in or about March of 1998, , respondent:
 - a. failed and/or is failing to maintain a complete record for the asbestos abatement project and provide a copy thereof to the owner of the premises and to the Department;
 - b. failed and/or is failing to adequately wet all asbestos containing waste and to place such waste in leak-tight containers for disposal;
 - c. failed and/or is failing to properly label containers holding asbestos containing waste;
 - d. failed and/or is failing to dispose of asbestos containing waste at an authorized asbestos disposal facility; and/or
 - e. caused and/or is causing waste removed from the building on the premises and/or removed from other undetermined locations to be stored improperly in a trailer located on the premises.

5. On December 1997, respondent entered into a contract for removal of interior and exterior asbestos at the property. Respondent commenced but did not complete that removal and charged the property owner \$2,800.00. Dept. Exh. 4.
6. Respondent was unlicensed when he entered into the contract with the owner of the premises and was unlicensed when he commenced the project in January of 1998. After Kristen Day, environmental sanitation for the Department, received a complaint that an unlicensed contractor was performing work that required licensure, she notified respondent to cease work because he was unlicensed. Respondent, subsequently, sought and obtained a license. Tr. 10.
7. Respondent arranged to have a trailer delivered to the premises for the purpose of storing and transporting removed asbestos. The trailer and has not been removed from the premises. Dept. Exh. 4.
8. On October 6, 1998, Ms. Day went to a different property to investigate another complaint received by the Department regarding respondent. Ms. Day spoke with respondent and requested that he go to the premises, unlock the trailer, and permit her to inspect its contents. Respondent claimed not to have the keys and agreed to meet Ms. Day at the premises the following day. Respondent did not appear or notify Ms. Day that he would not appear. Tr. 17.
9. On October 22, 1998, respondent received a certified letter sent by Ms. Day regarding respondent's violations of the asbestos abatement regulations. In that letter, Ms. Day requested that respondent contact her immediately. Respondent ignored this letter. Tr. 18; Dept. Exh. 8.
10. On November 6, 1998, Ms. Day's supervisor sent respondent a letter, which he received by certified mail on November 9, 1998, demanding that he contact the Department within forty-eight (48) hours and notifying him that failure to do so would result in the immediate initiation of enforcement action. Respondent ignored this letter. Tr. 19; Dept. Exh. 9.
11. On December 23, 1998, Ms. Day cut the lock off of the trailer, donned protective gear, inspected the interior of the trailer and found mounds of plastic bags containing improperly stored asbestos materials. The trailer contained asbestos removed from several asbestos abatement projects performed by respondent. Tr. 25-26, 29; Dept. Exh. 11-16.

12. On April 23, 1999, Ms. Day went to the property located at 2830 Green Hollow Road regarding a complaint received by the Department the day before. Respondent had agreed to meet Ms. Day at 9:00 a.m. Respondent did not appear until 9:40 a.m. and agreed to meet with Ms. Day at the premises on April 29, 1999. Tr. 28-35.
13. On April 29, 1999, respondent did not appear, claiming that he had sustained an eye injury which precluded his attendance. Ms. Day went to respondent's home and found him there, uninjured. Respondent agreed to complete the work at the premises. Respondent also agreed to begin completion of the work on May 3, 1999. Respondent did not do so. Tr. 35-39.
14. On May 4, 1999, Ms. Day went to the premises and found respondent's vehicles parked down the street at a different property. Respondent was contacted and he agreed to appear the following day. Ms. Day went to the premises but respondent did not. Tr. 36-37.
15. On May 12, 1999, respondent did not appear for a duly noticed compliance conference. Tr. 37.
16. Respondent continues to (1) perform asbestos abatement projects, (2) violate the Regulations regarding asbestos abatement, (3) receive citations for the violations, and (4) ignore those citations. Tr. 30-33, 38.
17. Ms. Day attempted to contact respondent on at least seven occasions to obtain compliance after receiving multiple complaints about his conduct. On each occasion, respondent refused to cooperate with the Department, failed to appear for pre-arranged meetings, and ignored the Department's correspondence. Tr. 11, 17-18, 19, 35-39, 46-47; Dept. Exh. 8.
18. Respondent poses a substantial and continuing risk to the public. Tr. 43.
19. Respondent refuses and/or is unable to comply with the Connecticut General Statutes and the Regulations for safe asbestos abatement. Tr. 47.
20. Respondent continues to seek asbestos abatement projects to perform. Tr. 47.

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 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. The Department has met its burden of proof as to all factual allegations contained in the Charges.

As set forth above, respondent failed to file an Answer or even appear at the hearing. The Department moved to have the factual allegations be deemed admitted pursuant to §§19a-9-19 and 19a-9-20 of the Regulations, on the grounds that respondent had not filed an Answer. The Department's motion was granted, and the allegations contained in the Statement of Charges were deemed to be true. The factual findings constitute multiple violations of the Regulations and constitute grounds for disciplinary action against the asbestos contractor license of respondent. The only remaining issue is what, if any, disciplinary action should be imposed.

Respondent's conduct described herein constitutes either intentional or reckless violations of the provisions of the law requiring safe asbestos abatement. Respondent engages in unscrupulous and unprincipled business practices which pose a substantial danger to the public. It is particularly alarming that respondent continues to seek out and perform asbestos abatement projects. Tr. 16, 20.

The Department should be commended for its comprehensive efforts to obtain compliance from respondent. Respondent, however, mocked those efforts.

The record is replete with profound instances of respondent's ongoing blatant and knowing violations of the law, his refusal to even attempt compliance, his refusal to be accountable to the Department, and his unconscionably reckless actions that place the public at risk. The Department's evidence of respondent's callous disregard for safe asbestos abatement is compelling. Dept. Exh. 11-16. This evidence coupled with respondent's obstinate and willful refusal to respond to the Department's communications, the citations of violation, the compliance conference, and this hearing, can only lead to the conclusion that the imposition of any discipline, other than revocation, would be futile and fail to protect the public. Respondent's continued practice of asbestos abatement poses a substantial hazard to the public.

The Department asserts that respondent has had ample opportunity to comply with the law and that it now "wants to send him a clear message that the game is over." Tr. 56. Further, respondent "exhibited a callous disregard for the rules and regulations . . ." The Department seeks revocation of respondent's asbestos abatement license and the imposition of a significant penalty. The Department's assertions are well-founded and sound.

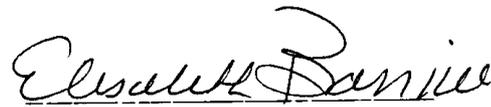
Based on the foregoing Findings of Fact, respondent violated §§19a-332a-1 to 19a-332a-16, inclusive, of the Regulations of the Connecticut State Agencies and, respondent's license is subject to disciplinary action as follows:

Order

Pursuant to Connecticut General Statutes §§19a-17 and 20-440, this Hearing Officer orders the following against the license of Wayne R. Chabot d/b/a Northern Asbestos Abatement:

1. Respondent shall pay a civil penalty of two thousand eight hundred dollars¹ (\$2,800.00) 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. Respondent's asbestos contractor license number 000265 to perform asbestos abatement in the State of Connecticut is hereby revoked.
3. This order is effective thirty days from the date of signature.

August 10, 1999
Date


Elisabeth Borrino, Hearing Officer
Department of Public Health

¹ Respondent charged a total of \$2,800.00 for performing asbestos removal at the premises. Dept. Exh. 6. Respondent did not properly perform the asbestos abatement and, therefore, is not entitled to retain such funds. The penalty is assessed utilizing this sum.