

STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH  
Public Health Hearing Office

In re: Bojan Developments, LLC

Petition No. 2005-1118-053-017

MEMORANDUM OF DECISION

*Procedural History*

On May 3, 2007, the Department of Public Health (“the Department”) filed a Statement of Charges (“the Charges”) against Bojan Developments, LLC (“the respondent”) notifying it that the Department was seeking an order revoking or imposing other disciplinary action against its asbestos contractor license number 000408 (“the license”). Rec. Exh. 1.

On May 21, 2007, the Department issued a Notice of Hearing (“the Notice”) scheduling a hearing for June 26, 2007. by Notice dated June 4, 2007, the Commissioner of the Department appointed this Hearing Officer to rule on all motions, determine findings of fact and conclusions of law, and issue and order. Rec. Exhs. 2, 3, 4.

On June 26, 2007, an administrative hearing was held to adjudicate the Charges. The hearing was conducted in accordance with Chapter 54 of the Connecticut General Statutes (“the Statutes”), and §§19a-9-1, *et seq.*, of the Regulations of Connecticut State Agencies (“the Regulations”). Respondent neither appeared at the hearing nor requested a continuance. Attorney Linda Fazzina represented the Department.

During the hearing, the Department made an oral Motion to Deem the Allegations Admitted for respondent’s failure to file an answer. The Motion was granted.

This Memorandum of 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. 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 000408.
2. In paragraph 2 of the Charges, the Department alleges that respondent was the licensed asbestos contractor for an asbestos abatement project performed in connection with the renovation of the Kendall Elementary School in Norwalk, Connecticut (“the school”).
3. In paragraph 3 of the Charges, the Department alleges that on or about June 30, 2005, in connection with the asbestos abatement project at the school, respondent violated Connecticut’s standards applicable to the performance of asbestos abatement, which standards are found at §§19a-332a-1 to 19a-332a-16, inclusive of the Regulations, in one or more of the following ways, in that it:
  - a. failed to isolate the work area from the non-work area with airtight barriers, in violation of §19a-332-5(c) of the Regulations, in that a metal hatch in the floor of a classroom work area was not sealed with a polyethylene barrier;
  - b. failed to cover all floor and/or wall surfaces with two (2) layers of polyethylene sheeting or the equivalent, in violation of §19a-332a-5(e) of the Regulations, in that a waste dumpster incorporated into a work area had a single polyethylene liner, which was serving as a primary containment barrier and was collapsing;
  - c. failed to restrict work area access to authorized personnel afforded proper protective clothing, in violation of §19a-332-5(f) of the Regulations, in that workers wore street clothing and/or shoes into the work area(s);
  - d. failed to label approximately fifty (50) bags of asbestos containing waste with applicable generator information, in violation of §19a-332a-5(k) of the Regulations;
  - e. failed to properly construct a worker decontamination system, in violation of §19a-332a-6(a) of the Regulations, in that the shower room was constructed in a manner that allowed worker(s) to by-pass the shower upon entering or exiting the work area; and/or,
  - f. failed to ensure that all asbestos containing materials to be removed or disturbed by removal are adequately wetted, in violation of §19a-332a-7(a) of the Regulations, in that there was no source of water supplying a work area and/or no water being used by respondent’s workers.
4. The above described facts constitute grounds for disciplinary action pursuant to, without limitation, the Statutes, §§19a-332a-1, 19a-332a-2, 19a-332a-5(c), 19a-332a-5(e), 19a-332a-5(f), 19a-332a-5(k), 19a-332a-6(a), 19a-332a-7(a) and/or 20-440-6(b) of the Regulations.

***Findings of Fact***

1. The Department provided respondent reasonable and adequate written notice of the allegations contained in the Charges and the hearing scheduled for May 23, 2007. Rec. Exh. 3.
2. Respondent did not file Answer to the allegations contained in the Charges, nor did respondent appear for the hearing. Tr. 6/26/07, pp. 2, 5, 17.
3. Pursuant to the undersigned's Ruling on June 26, 2007, granting the Department's oral Motion to Deem the Allegations Admitted, all of the above allegations are deemed admitted and true. Tr., pp. 5, 17.

***Discussion and Conclusions of Law***

Pursuant to §§19a-14, 19a-17, and 19a-14a of the general Statutes, the Department has the authority to discipline an asbestos contractor license. Further, pursuant to §19a-17 of the General Statutes, in effect at the time, the Department may assess an asbestos contractor a civil penalty of up to \$10,000 per incident for violating any of the statutes and regulations governing asbestos abatement or licensure.

In establishing the underlying violations to support such discipline, the Department bears the burden of proof by a preponderance of the evidence. *Swiller v. Comm'r. of Public Health*, CV-950705601, Superior Court, J.D. Hartford/New Britain at Hartford, October 10, 1995; *Steadman v. SEC*, 450 U.S. 91, 101 S. Ct. 999, reh'g den., 451 U.S. 933 (1981); *Bender v. Clark*, 744 F. 2d 1424 (10<sup>th</sup> Cir. 1984); *Sea Island Broadcasting Corp. v. F.C.C.*, 627 F. 2d 240, 243 (D.C. Cir. 1980); all as cited in *Bridgeport Ambulance Service, Inc. v. Connecticut Dept. of Health Services*, No. CV 88-0349673-S (Sup. Court, J.D. Hartford/New Britain at Hartford, July 6, 1989).

In accordance with Section 19a-9-20 of the Regulations of Connecticut State Agencies, a hearing shall proceed, "at the time and place specified in the notice of hearing, notwithstanding any failure of the respondent to file an answer within the time provided. If no answer has been timely filed, the allegations shall be deemed admitted." In this case, respondent failed to file an answer to the complaint or appear for hearing. Thus, the allegations were deemed admitted.

The Department requested that respondent's license be assessed a civil penalty of \$13,000.00. Tr., pp. 11-17. Specifically, the Department requested:

- (1) An assessed penalty of \$2,500.00 (two thousand five hundred dollars) for respondent's failure to isolate the work area from the non-work area with airtight barriers, in violation of §19a-332a-5(c) of the Regulations;
- (2) An assessed penalty of \$1,000.00 (one thousand dollars) for respondent's failure to cover all floor and/or wall surfaces with two layers of polyethylene sheeting or the equivalent, in violation of §19a-332a-5(e) of the Regulations;
- (3) An assessed penalty of \$3,000.00 (three thousand dollars) for respondent's failure to restrict work area access to authorized personnel afforded proper protective clothing, in violation of §19a-332a-5(f) of the Regulations;
- (4) An assessed penalty of \$1,000.00 (one thousand dollars) for respondent's failure to label approximately fifty bags of asbestos containing waste with applicable generator information, in violation of §19a-332a-5(k);
- (5) An assessed penalty of \$500.00 (five hundred dollars) for respondent's failure to properly construct a worker decontamination system, in violation of §19a-332-6(a) of the Regulations; and,
- (6) An assessed penalty of \$5,000.00 (five thousand dollars) for respondent's failure to ensure that all asbestos containing materials to be removed or disturbed by removal were adequately wetted, in violation of §19a-332a-7(a) of the Regulations.

Respondent's actions constitute serious violations that posed a danger to the health and safety of the public, and may well warrant harsher discipline. However, in light of respondent's record of no prior disciplinary action, and the fact that the Department found no violations during a subsequent investigation on July 20, 2007, respondent's license is hereby assessed a civil penalty of \$13,000.00.

Respondent should be aware that if future violations occur, more severe disciplinary action, up to and including revocation, may be imposed.

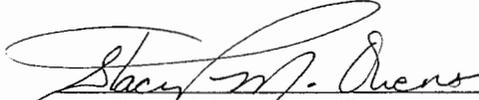
*Proposed Order*

Based on the record in this case, the above Findings of Fact and Conclusions of Law, this Hearing Officer orders that:

1. Respondent pay a civil penalty of \$13,000.00 (Thirteen Thousand Dollars).
2. Respondent shall make the check payable to the "Treasurer, State of Connecticut." The check shall reference the Petition Number on its face, and shall be payable within thirty days of the date of this decision, and shall be addressed and sent to:

Ronald Skomro, R.S., Supervising Environmental Sanitarian  
State of Connecticut Department of Public Health  
450 Capitol Avenue, MS #51AIR  
P.O. Box 34038  
Hartford, Connecticut 06134-0308

3. This Order is effective upon signing.

  
Stacy M. Owens, Esq.  
Hearing Officer

11/5/07  
Date