

**STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH  
PUBLIC HEALTH HEARING OFFICE**

In re: I.G.W.T. Corporation

Petition No. 2004-0217-053-003  
March 23, 2005

**MEMORANDUM OF DECISION**

*Procedural History*

On October 25, 2004, the Department of Public Health (“the Department”) filed a Statement of Charges (“the Charges”) against I.G.W.T. Corporation (“respondent”) notifying it that the Department was seeking an order revoking or imposing other disciplinary action against its asbestos contractor license 000447 (“the license”). H.O. Exh. 1.

On November 5, 2004, the Department issued a Notice of Hearing (“the Notice”). In the Notice the Commissioner of the Department appointed this Hearing Officer to rule on all motions, determine findings of fact and conclusions of law, and issue an order. H.O. Exh. 2.

On December 14, 2004, an administrative hearing was held to adjudicate the Charges. The hearing was conducted in accordance with Chapter 54 of the Connecticut General Statutes and §§19a-9-1, et seq. of the Regulations of Connecticut State Agencies (“the Regulations”). Respondent neither appeared at the hearing nor requested that it be continued. Tr. pp. 2-3, 53. The Department appeared at the hearing represented by Attorney Linda Fazzina.

During the hearing of December 14, 2004, the Department made a Motion to Deem the Allegation Admitted that was granted by the undersigned on that date. Tr. p. 5.

This Memorandum of Decision is based entirely on the record<sup>1</sup> 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

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<sup>1</sup> On December 23, 2004, the Department filed a Post Hearing Brief addressing the potential remedy in this matter, which is hereby entered into the record of this proceeding as Hearing Officer Exhibit 3.

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 has been the holder of asbestos contractor license number 000447, and that said license was current during the time period from on or about August 18, 2003, to on or about August 31, 2004. The Department further alleges that as of the date of the Charges, the Department had not renewed the license.
2. In paragraphs 2 and 4 of the Charges, the Department alleges that in or about July of 2003, respondent engaged in asbestos abatement at the New Fairfield Consolidated School, 4 Brush Hill Road, New Fairfield, Connecticut ("the property), without a valid license to do so.

#### **A. FIRST COUNT**

3. In paragraph 3 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to *Conn. Gen. Stat.* §20-435 and/or 20-440, taken in conjunction with §§20-440-1(4), 20-440-1(9), and/or 20-440-2(a) of the Regulations.

#### **B. SECOND COUNT**

4. In paragraph 5 of the Charges, the Department alleges that on or about July 8, 2003, respondent violated the Regulations in one or more of the following ways, in that it:
  - a. failed to seal air-tight, with polyethylene sheeting, all openings between the work area and the non-work area(s), in violation of §19a-332a-5(c) of the Regulations, in that one or more of the following barriers was breached and/or collapsing:
    - (i) a polyethylene barrier covering a storage room door, adjacent to the worker decontamination system;
    - (ii) a polyethylene barrier(s) covering exterior window(s) in one or more classrooms;
    - (iii) a polyethylene barrier covering a drinking water fountain;
    - (iv) a polyethylene barrier covering an entrance to a bathroom; and/or
  - b. failed to remove all moveable objects from the work area, in violation of §19a-332a-5(d) of the Regulations;

- c. failed to restrict work area access to authorized personnel afforded proper respiratory protection, in violation of §19a-332a-5(f) of the Regulations;
  - d. failed to comply with alternative work practice procedure(s) approved by the Department in accordance with §19a-332a-11 of the Regulations.
5. In paragraph 6 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to *Conn. Gen. Stat.* §20-440, taken in conjunction with, without limitation, §§19a-332a-1, 19a-332a-2, 19a-332a-5(c), 19a-332a-5(d), 19a-332a-5(f), 19a-332a-11, and/or 20-440-6(b) of the Regulations.

### *Findings of Fact*

1. The Department made all reasonable efforts to locate respondent, and to serve the Notice of Hearing.<sup>2</sup> H.O. Exhs. 1, 2; Dept. Exh. 1; Tr. p. 3.
2. The Department issued respondent its license on August 18, 2003, which license expired on August 31, 2004. Respondent renewed its license on November 18, 2004. Dept. Exh. 1.
3. Pursuant to the undersigned's Ruling of December 14, 2004, granting the Department's Motion to Deem the Allegations Admitted, all of the above allegations are deemed admitted and true. *See*, §19a-9-20 of the Regulations.
4. Respondent's violations posed a serious health threat to its own employees, other individuals working at the property, and to the general public. Tr. pp. 11-17.

### *Discussion and Conclusions of Law*

Pursuant to *Conn. Gen. Stat.* §§19a-14 and 19a-17, the Department has the authority to discipline an asbestos contractor's license. Further, pursuant to *Conn. Gen. Stat.* §19a-332e and §20-440-6 of the Regulations, the Department may assess an asbestos contractor a civil penalty of up to \$10,000 per incident.

Pursuant to *Conn. Gen. Stat.* §19a-17(a), the Department may assess such a civil penalty for "conduct which occurred prior or subsequent to the issuance of a permit or license . . . ." In addition, *Conn. Gen. Stat.* §19a-14a provides that the Department may take disciplinary action pursuant to *Conn. Gen. Stat.* §19a-17 if the subject of such

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<sup>2</sup> It is noted, for example, that the green card accompanying the certified mailing of the Notice of Hearing was returned to the Department on November 12, 2004, indicating that the Notice of Hearing had been delivered on November 8, 2004, to respondent's last known licensure address on file with the Department. H.O. Exh. 2; Dept. Exh. 1; *see*, §19a-9-18(c) of the Regulations.

discipline held a license within eighteen months of the commencement of such disciplinary action.

In the present case, the conduct that is the subject of the current proceeding occurred subsequent to one period of licensure of respondent by the Department and prior to another period of licensure. The institution of disciplinary action against respondent also occurred within eighteen months of respondent's initial period of licensure. Therefore, the Department has jurisdiction to impose discipline on respondent pursuant to both *Conn. Gen. Stat. §19a-14a* and *Conn. Gen. Stat. §19a-17*.

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 (10th 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); *Swiller v. Commissioner of Public Health*, No. CV 95-0705601 (Sup. Court, J.D. Hartford/New Britain at Hartford, October 10, 1995).

In view of the granting of the Department's Motion to Deem Allegations Admitted, the Department has established the violations noted above by a preponderance of the evidence.

The Department has requested that respondent's license be assessed a civil penalty of \$15,000. Tr. p. 5. A civil penalty of \$12,500 is more appropriate based on the nature of the violations that occurred and previous precedents of the Department. Therefore, a civil penalty of \$6,250 shall be assessed for each of the two counts set forth in the Charges.

***Order***

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

1. Respondent shall pay a civil penalty of \$12,500 by certified or cashier's check payable to "Treasurer, State of Connecticut." The check shall reference the Petition Number on its face, and shall be payable within thirty days of the effective date of this Order.
2. Respondent's license shall be placed on probation until respondent has completed three asbestos abatement projects in compliance with all applicable statutes and regulations as set forth below:
  - a. Respondent shall obtain at its own expense the services of a licensed asbestos abatement project monitor pre-approved by the Department ("the monitor"), to conduct on-site inspections of all asbestos abatement projects undertaken by respondent until the monitor reports to the Department that respondent has successfully completed three such projects in compliance with all applicable statutes and regulations.
    - (1) The monitor shall have the right to monitor any and all work on the projects by any means that he or she deems necessary to determine whether respondent is conducting the abatement in accordance with all applicable statutes and regulation;
    - (2) Respondent shall cooperate fully with the monitor;
    - (3) Respondent shall provide the monitor with the original records maintained on each asbestos abatement project monitored;
    - (4) The monitor shall prepare and submit directly to the Department a written report stating briefly: (a) that the asbestos abatement projects reviewed were completed with reasonable skill and safety and in compliance with applicable statutes and regulations; and, (b) the dates, locations, and duration of all site inspections and meetings with respondent's officers and employees;

- (5) If the monitor determines at any time that respondent is not in compliance with the statutes and/or regulations, he or she shall immediately notify the Department; and,
  - (6) During the period of probation, respondent is prohibited from engaging in any asbestos abatement project if the monitor is unavailable to monitor such project.
- b. Respondent's probation shall terminate when the monitor reports to the Department that respondent has successfully completed the three projects described above.
- 3. Respondent shall bear all costs associated with its compliance with this Order.
  - 4. This decision does not dispose of any criminal liability unless respondent receives or has received a written agreement from the Director of the Medicaid Fraud Control Unit or the Bureau Chief of the Division of Criminal Justice's Statewide Prosecution Bureau stating that this decision resolves any such liability.
  - 5. The civil penalty, and all notices and reports shall be sent to:  

Ronald Skomro  
State of Connecticut Department of Public Health  
450 Capitol Avenue, MS #51AIR  
P.O. Box 34038  
Hartford, Connecticut 06134-0308
  - 6. This Order shall be effective thirty days from the date of signature.



Donald H. Levenson, Esq.  
Hearing Officer

3-23-05

Date