STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

PUBLIC HEALTH HEARING OFFICE

July 14, 2010

Miodrag Ristic
SR Tech Construction
500 Fairfield Road
Wayne NJ 07470

CMRRR#91710821333932060250 49
& First Class Mail

Matthew Antonetti, Principal Attorney
Legal Office - MS#12LEG
Department of Public Health
410 Capitol Avenue
P. O. Box 340308
Hartford CT 06134-0308

Interdepartmental Mail

RE: SR Tech Construction **Petition No. 2009-0109-053-001**

Dear Mr. Ristic and Attorney Antonetti:

Enclosed please find a copy of the Final Memorandum of Decision rendered by Hearing Officer Olinda Morales in the above-referenced case.

Sincerely,

Janice E. Wojick

Janice E. Wojick, Hearings Liaison
Public Health Hearing Office, MS #13PHO
Tel. 860-509-7648 FAX 860-509-7553

c: J. Robert Galvin, M.D., M.P.H., M.B.A., Commissioner
Michael J. Purcaro, Chief of Administration
Henry Salton, Assistant Attorney General
Ellen Blaschinski, Branch Chief, Regulatory Services Branch
Suzanne Blancaflor, Section Chief, Environmental Health
Linda Fazzina, Staff Attorney, Legal Office

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
PUBLIC HEALTH HEARING OFFICE

In re: SR Tech Construction
Asbestos Contractor License #000560

Petition No. 2009-0109-053-001
June 14, 2010

MEMORANDUM OF DECISION

Procedural History

On Dec 10, 2009, the Department of Public Health ("the Department") filed a Statement of Charges ("the Charges") against SR Tech Construction ("respondent") notifying it that the Department was seeking an order revoking or imposing other disciplinary action against its asbestos contractor license number 000560. Rec. Exh. 1.

On December 23, 2009, the Department issued a Notice of Hearing ("the Notice") scheduling a hearing for February 23, 2010. In the Notice, the Commissioner of the Department appointed the undersigned to rule on all motions, determine findings of fact and conclusions of law, and issue an order. Rec. Exh. 1.

On January 26, 2010, the Department filed a Motion to Deem Allegations Admitted for failure to file an Answer ("the Motion"). On February 22, 2010, respondent was ordered to file an Answer by February 26, 2010, or the Motion would be granted. Rec. Exh. 3.

On March 10, 2010, after one continuance, 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").[1] Respondent neither appeared at the hearing nor requested another continuance. Tr. p. 6. The Department appeared at the hearing represented by Attorney Linda Fazzina.

During the hearing, the Motion was granted. Tr. p. 12.

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

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[1] Hereinafter all citations are to the Regulations unless otherwise noted.

Allegations

1. In paragraphs 1 and 5 of the Charges, the Department alleges that SR Tech Construction of Wayne, New Jersey is, and has been at all times referenced in this Charges the holder of Connecticut asbestos contractor license number 000560. Said license was current during the time period from on or about November 1, 2008 to on or about October 31, 2009. As of the date of these Charges, asbestos contractor license number 000560 has not been renewed.

2. In paragraph 2 of the Charges, the Department alleges that in or about December 30, 2008, respondent performed an asbestos abatement project in connection with the demolition of a former industrial complex located at 260 East Street, New Haven, CT ("the project").

3. In paragraph 3 of the Charges, the Department alleges that on or about December 30, 2008, in connection with the project, respondent violated Connecticut's standards applicable to the performance of asbestos abatement, found at §§19a-332a-1 to 19a-332a-16, inclusive, in that respondent:

   a. failed to post warning signs at all approaches to the work area, in violation of §19a-332a-5(a);
   b. failed to install air-tight barriers in any of the work areas, in violation of §19a-332a-5(c) of the Connecticut Standards;
   c. failed to move all moveable objects, including, but not limited to, office furniture from one or more work area(s), in violation of §19a-332a-5(d);
   d. failed to cover all floor and/or wall surfaces with two layers of polyethylene sheeting, in violation of §19a-332a-5(e);
   e. failed to utilize wet cleaning techniques in one or more work area(s), in violation of §19-332a-5(g);
   f. failed to use a sufficient number of negative pressure ventilation units to allow at least one work place air change every fifteen minutes, as required by §19a-332a-6(h); and/or,
   g. failed to construct and/or maintain a sufficient number of worker decontamination systems for each work area, in violation of §19a-332a-6.

4. In paragraph 4 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to §§20-440, and 19a-332a(b) of the Statutes, taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-5(a), 19a-332a-5(c), 19a-332a-5(d), 19a-332a-5(e), 19a-332a-5(g), 19a-332a-5(h),19a-332a-6, and/or 20-440-6(b).

Findings of Fact

1. The Department provided respondent with reasonable and adequate written notice of the allegations contained in the Charges and the hearing date. Rec. Exhs. 2 and 3.

2. Respondent did not file an Answer to the Charges. Tr. p. 12.

3. Pursuant to the undersigned's Ruling of February 22, 2010, granting the Department's Motion to Deem the Allegations Admitted, all of the above allegations are deemed admitted and true. Rec. Exh. 3; Tr. pp. 10-12; *see also*, §19a-9-20.

Discussion and Conclusions of Law

Pursuant to §§19a-14, and 19a-17 of the Statutes, the Department has the authority to discipline an asbestos contractor license including, but not limited to, the authority to revoke said license. Further, pursuant §19a-17 of the General Statutes and §20-440-6 of the Regulations, the Department may assess an asbestos contractor a civil penalty of up to $25,000 per incident for violating any of the statutes and regulations governing licensed asbestos contractors.

The Department bears the burden of proof by a preponderance of the evidence. *Goldstar Medical Services, Inc., et al. v. Department of Social Services,* 288 Conn. 790 (2008); *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). In view of the ruling granting of the Department's Motion to Deem Allegations Admitted, the Department has sustained its burden of proof.

The Department has requested that respondent's license be revoked, and that a civil penalty of $40,000 be imposed. Tr. p. 15. Not only do the violations merit a revocation, but they also warrant imposition of a civil penalty. Respondent failed to post warning signs at all approaches to the working area; install air-tight barriers in any of the work areas; remove all moveable objects, including, but not limited to, office furniture from one or more work area(s); cover all floor and/or wall surfaces with two layers of polyethylene sheeting in one or more work area(s); utilize wet cleaning techniques in one or more work area(s); use a sufficient number of negative pressure ventilation units to allow at least one work place air change every fifteen minutes; and, construct and/or maintain a sufficient number of worker decontamination systems for each work area. These violations pose a substantial risk of harm to both respondent's employees as well as the public. Respondent's license should, therefore, be revoked and a civil penalty of $40,000 should be imposed.

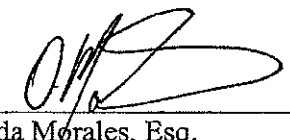
Order

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

1. Respondent's asbestos contractor license number 000560 in the State of Connecticut is hereby revoked.
2. Respondent shall pay a civil penalty of forty thousand dollars ($40,000) 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.
3. All communications and payment of the civil penalty shall be addressed to:

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

4. This document has no bearing on any criminal liability without the written consent of the Director of the Medicaid Fraud Control Unit or the Bureau Chief of the Division of Criminal Justice's Statewide Prosecution Bureau.
5. This Order is effective upon signing.



Olinda Morales, Esq.
Hearing Officer

06/14/2010
Date

CERTIFICATION

I hereby certify that, pursuant to Connecticut General Statutes Section 4-180(c), a copy of the foregoing Final Memorandum of Decision was sent this 14th day of June 2010 certified mail return receipt requested and first class mail to:

Miodrag Ristic
SR Tech Construction
500 Fairfield Road
Wayne NJ 07470

CMRRR#91710821333932060250 49
& First Class Mail

and Interdepartmental Mail to:

Matthew Antonetti, Principal Attorney
Legal Office, MS#12LEG
Department of Public Health
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Janice E. Wojick, Hearings Liaison