

STATE OF NEW YORK DEPARTMENT OF LABOR

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In the Matter of

ADE COOL WATER, INC.,

**NOTICE OF HEARING
AND DESIGNATION OF
HEARING OFFICER**

for a determination pursuant to Section 909 of the New York Labor Law that violations of Labor Law, Article 30 and/or Code Rule 56 took place as hereinafter described.

File # AH-16-014

Asbestos Case No(s).
26091263

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TO: Ade Cool Water, Inc., (hereinafter referred to as "RESPONDENT"):

PLEASE TAKE NOTICE that a hearing pursuant to Section 909 of the Labor Law will be held at the office of the New York State Department of Labor (the "Department"), 75 Varick Street, 7th Floor, Room G, New York, New York on June 8, 2017 at 9:30 a.m., and on such later dates as may be necessary until the matter is fully heard, before the hearing officer below designated, to inquire and report to the Commissioner of Labor on the issues raised by the facts disclosed upon an investigation made as to the conduct of asbestos projects as follows:

<u>PROJECT LOCATION:</u>	<u>ASBESTOS CASE NO.</u>	<u>DATE(S) OF INSPECTION:</u>
14 Charles Street Middletown, NY 10941	26091263	09/22/2015

DESIGNATION OF HEARING OFFICER: Jerome A. Tracy, is hereby designated as the Hearing Officer, in place and stead of the Commissioner of Labor, to conduct this hearing, with all powers vested in the Commissioner of Labor for that purpose.

THE DEPARTMENT OF LABOR ALLEGES AS FOLLOWS:

1. RESPONDENT engaged in the asbestos project on the date and at the location set forth in unnumbered paragraph 1 above.
2. A Notice of Violation and Order to Comply was issued by the Division of Safety and Health to RESPONDENT. A copy of said Notice and Order is annexed hereto as "Exhibit A" and made a part hereof.

The Hearing Officer's Report shall contain findings of fact, conclusions of law and recommendations to the Commissioner of Labor for a determination of the issues raised by the facts, to wit:

- a. Whether RESPONDENT violated provisions of Labor Law Article 30 and/or Industrial Code Rule 56 in its conduct of the project set forth in unnumbered paragraph 1 above.
- b. Whether a civil penalty or penalties should be assessed against RESPONDENT pursuant to Section 909 of the Labor Law, and, if so, the amount of the penalty. For violations other than Section 902, such penalty shall not be more than the greater of twenty-five percent of the monetary value of the contract upon which any violation was found to have occurred or five thousand dollars per violation. In case a civil penalty has been previously assessed against a contractor, the civil penalty shall be not more than the greater of fifty percent of the monetary value of the contract upon which any violation was found to have occurred or twenty-five thousand dollars per violation. Each day a violation continues may be considered a separate violation.
- c. Any other issues raised by the testimony and evidence at the hearing.

ALL PARTIES ARE ENTITLED TO BE REPRESENTED BY COUNSEL and will be afforded full opportunity to offer testimony and evidence, examine and cross-examine witnesses and submit arguments and proposed findings of fact and conclusions of law.

RESPONDENT IS DIRECTED TO PRODUCE AT THE HEARING:

- a) the contract for work performed on the projects set forth in unnumbered paragraph 1 above;
- b) a copy of any asbestos handling license or certificate(s) issued to RESPONDENT or RESPONDENT'S workers on the project set forth in unnumbered paragraph 1 above;
- c) all records required by Labor Law Section 904;
- d) any other records of the asbestos project maintained by or available to RESPONDENT;

e) three (3) copies of all documents RESPONDENT intends to introduce as evidence.

TAKE FURTHER NOTICE that if you, as a party to this proceeding, or a witness you plan to produce, will need the services of a translator or an interpreter for a deaf person, you must notify the Hearing Officer designated herein, **NO LATER THAN**, fourteen (14) days prior to the hearing date set forth above to make accommodations for these services. Failure to do so may result in the exclusion of testimony through these means during the course of the hearing.

TAKE FURTHER NOTICE that the hearing shall be conducted in accordance with Article 3 of the New York State Administrative Procedure Act and the New York State Department of Labor Adjudication Plan as established by 12 NYCRR 701 et. seq. and that all parties are required to produce in advance at least three (3) copies of all documents they intend to introduce as evidence.

TAKE FURTHER NOTICE that it is intended that this hearing shall be conducted by audio-video conferencing. The Hearing Officer and the Department of Labor's assigned counsel will be present in Albany and will appear via audio-video conference, all other parties may appear in the aforementioned hearing room and location of the Department of Labor, or at their option, the parties may elect to appear in person before the Hearing Officer at the offices of the New York State Department of Labor, State Office Building Campus, Building 12, Room 266C, Albany, New York.

All parties are required to produce at the remote hearing location at least one (1) copy of all documents they intend to introduce as evidence. In addition, all parties must provide two (2) copies of all documents they intend to introduce as evidence, appropriately marked as exhibits, to New York State Department of Labor, State Office Building Campus, Building 12, Room 266C, Albany, New York, at least 72 hours prior to the commencement of the hearing.

TAKE FURTHER NOTICE that the RESPONDENT is required to file an ANSWER in writing at least fourteen (14) days prior to the date of this hearing. Said Answer shall contain a specific admission, denial or explanation of each of the material facts alleged in the Notice.

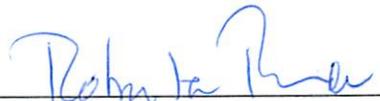
Such a denial may be upon information and belief or a denial of knowledge or information sufficient to form a belief as to the allegation. The Answer must also contain a statement of any facts upon which RESPONDENT relies for an affirmative defense. Said Answer shall be personally delivered or served by certified mail, return receipt requested, upon the Hearing Officer designated above and the Department of Labor attorney assigned to this case as set forth below.

At the Hearing Officer's discretion, upon receipt of RESPONDENT'S Answer, or written notice of appearance, the Hearing Officer may conduct a telephone conference with all parties who have appeared in the proceeding, at which time the hearing officer will review the evidentiary requirements.

TAKE FURTHER NOTICE that, pursuant to 12 NYCRR 701.10, any request for an adjournment must be made directly to the Hearing Officer designated above, with notification to the Department of Labor attorney assigned to this case, at least fourteen (14) days prior to the scheduled hearing date. The request shall be in writing and shall set forth the reasons therefore and the position of the other party or parties, and offer alternate hearing dates. Please note that no adjournment shall be granted absent a showing of good cause.

DATED:

Apr. 24, 2017
Albany, New York



Roberta Reardon
Commissioner of Labor

TO: Ade Cool Water, Inc.
3340 Wickman Ave., Apt. #2
Bronx, NY 10469

**CERTIFIED MAIL,
RETURN RECEIPT
AND FIRST CLASS MAIL**

C/O Olasanya Leshi
Suite 34A
1295 5th Ave
New York, NY 10029

**CERTIFIED MAIL,
RETURN RECEIPT
AND FIRST CLASS MAIL**

Jerome A. Tracy, Hearing Officer
New York State Department of Labor
State Office Building Campus, Building 12, Room 266C
Albany, New York 12240

Jerome A. Tracy, Associate Attorney
Administrative Adjudication Unit
New York State Department of Labor
State Office Building Campus, Building 12, Room 266C
Albany, New York 12240

James Rogers, Deputy Commissioner
for Worker Protection
New York State Department of Labor
75 Varick Street, 7th Floor
New York, New York 10013

Eileen M. Franko, Acting Director
Division of Safety and Health
New York State Department of Labor
State Office Building Campus, Building 12, Room 522
Albany, New York 12240

Kirk Fisher, Safety & Health Program Manager 1
Division of Safety and Health
New York State Department of Labor
State Office Building Campus, Building 12, Room 161
Albany, New York 12240

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Matthew Robinson-Loffler, Program Manager 1
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Christopher Tarbox, Associate Industrial Hygienist
Division of Safety and Health
New York State Department of Labor
State Office Building Campus, Building 12, Room 166
Albany, New York 12240

Jason Pensabene, Senior Industrial Hygienist
Division of Safety and Health
New York State Department of Labor
State Office Building Campus, Building 12, Room 166
Albany, New York 12240

Miriam DeJesus
Division of Safety and Health
New York State Department of Labor
State Office Building Campus, Building 12, Room 167
Albany, New York 12240

For the Department

Pico Ben-Amotz, Acting Counsel
Evan S. Zablou, Attorney 2, of Counsel
New York State Department of Labor
State Office Building Campus, Building 12, Room 509
Albany, New York 12240

Exhibit A



NOTICE ISSUED TO:

Ade Cool Water, Inc.
3340 Wickham Ave.
Bronx NY 10469

PROJECT SITE:

14 Charles St
Middletown, NY

NOTICE GIVEN-MAILED TO:

Contractor owner other

DATE OF INSPECTION:

9/22/2015

DATE OF ISSUANCE:

9/22/2015

PROJECT NO. 26091263

INSPECTION NO. 26091263

NOTICE OF VIOLATION AND ORDER TO COMPLY

You are hereby ordered to comply with the following requirements of the Labor Law or Industrial Code related laws and the rules and regulations promulgated there under at the premises described above. You also have the right to request a formal hearing before a Departmental officer in this matter if you so desire (except for violations under Article 30 Section 902 and ICR 56-3). The requirements cited herein must be complied with IMMEDIATELY unless otherwise specified:

ORDERS

12NYCRR
56-9.2.D.1.I Air Sampling
Requirements - Clearance Air
Sampling - Pre-Sampling Agitation

Before starting the air sampling pumps, the exhaust of forced air equipment shall be directed against all walls, ceilings, floors, ledges, and other surfaces in the rooms. This shall continue for at least five (5) minutes per 1,000 square feet of floor space.

Inspector's Observations:

The monitor cleared the work area without collecting clearance samples.

**Jason Pensabene
Senior Industrial Hygienist
For the Commissioner of Labor**



**12NYCRR
56-9.1.D.1 Final Cleaning Procedures
- Third or Final Cleaning and Visual
Inspection - Project Monitor Visual
Inspection**

An appropriately trained and certified project monitor, contracted by the building/structure owner, independent of the asbestos abatement contractor, shall complete the visual inspection. The project monitor visual inspection for completeness of abatement and completeness of cleanup shall be performed as per the provisions of the current ASTM Standard E1368 'Standard Practice for Visual Inspection of Asbestos Abatement Projects'. If the property owner is the asbestos abatement contractor for the asbestos project, the owner shall contract with an independent project monitoring firm asbestos contractor for the necessary visual inspection on the asbestos project. The asbestos abatement contractor and property owner, prior to the scheduling of the required visual inspection, shall provide a complete abatement scope of work for the asbestos project to the project monitor. An entry shall be made into the asbestos abatement contractor supervisor's daily log by both the supervisor and the individual performing the inspection, detailing the findings of the visual inspection. The full name and NYSDOL asbestos handling certificate number of the certified individual performing the inspection shall also be documented in the supervisor's daily log.

Inspector's Observations:

The project monitor passed his visual inspection and there was still ACM debris on site.

**Jason Pensabene
Senior Industrial Hygienist
For the Commissioner of Labor**