

**REPORT
&
RECOMMENDATION**

Asbestos Case Nos.
24401, 24645, 22708
25607282, 25624792
25627382, 25633041
25644353, 25649094
25661382, 25648447
25652312, 25679118
25721142, 25720908
25689801, 25734028
25728079, 25740984
25752659, 25753721
25753742, 25823411
25823378, 25823433
25823484, 25823466
25759049, 25750922
25764210,
Licensing Case No.
LIC 11-0003

IN THE MATTER OF

JMD Environmental, Inc

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.

To: Honorable Peter M. Rivera
Commissioner of Labor
State of New York

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on May 24, 2012, in Albany, New York. The purpose of the hearing was to provide all parties an opportunity to be heard on the issues raised in the Notice of Hearing and to establish a record from which the Hearing Officer could prepare this Report and Recommendation for the Commissioner of Labor.

The hearing concerned the denial, by the Division of Safety and Health (“Division”) of the New York State Department of Labor (“Department”), of a renewal application for an Asbestos Handling License submitted by JMD Environmental, Inc (“Applicant”).

APPEARANCES

The Division was represented by Department Acting Counsel, Pico Ben-Amotz (Jeffrey G. Shapiro, Senior Attorney, of Counsel).

There were no appearances made by or on behalf of Applicant, although Applicant was duly served with a copy of the Notice of Hearing (HO Ex 1). Accordingly, Applicant is in default in this proceeding.

FINDINGS OF FACT

On April 26, 2011, the Department denied Applicant's Asbestos Handling License renewal application for good cause; specifically, in its denial letter the Department cited multiple violations of 12 NYCRR part 56. The Department notified Applicant of its right to request a hearing to review the denial (DOL K).

On April 29, 2011, Applicant requested a hearing (DOL L).

Pending a hearing on the Department's renewal denial, the Department issued to Applicant Asbestos Handling License number 29571, which license expired on April 30, 2012 (DOL A).

The Department conducted investigations of several asbestos projects performed by Applicant. On January 7, 2010, a Department investigator found multiple violations of 12 NYCRR part 56 at a project at Kensington Heights Towers in Buffalo, New York. The violations included asbestos debris improperly left throughout the buildings, on the ground outside, and in a nearby dumpster (DOL B, D; T. pp 8-10).

Laboratory analysis confirmed that the debris in question was asbestos containing material that had been improperly removed (DOL E).

Applicant signed Final Inspections for work performed at Kensington Heights, improperly finding that the locations in question passed a visual inspection when in fact they contained asbestos containing debris throughout (DOL G, H, I, J; T. pp 16, 17, 18).

CONCLUSIONS OF LAW

Pursuant to 12 NYCRR part 56-3.1 (e) (5), "The Commissioner shall notify the

license applicant in writing, no later than thirty (30) days from receipt of the license application, of the issuance or denial of the license.. Notification of denial of a license on any grounds other than failure to complete the license application shall set forth the grounds for such denial.” In this case, the Department advised Applicant, by letter dated April 26, 2011, that its license renewal application was denied because it had been issued multiple violations of 12 NYCRR part 56.

The violations identified at the hearing in this matter amply demonstrate that Applicant violated the work practices established in 12 NYCRR part 56 and that the Department properly denied Applicant’s license application.

RECOMMENDATIONS

I RECOMMEND that the Commissioner of Labor adopt the Findings of Fact and Conclusions of Law as the Commissioner’s determination of the issues raised in this case, and based on those Findings and Conclusions, the Commissioner should:

DETERMINE that the Department had sufficient grounds to deny the renewal application for Asbestos Handling License number 29571;

ORDER that Applicant be denied an Asbestos Handling License; and

ORDER that Applicant, within fifteen (15) days of receipt of the Commissioner of Labor’s Determination & Order, return every expired License to the License & Certificate Unit, SOB Campus Building 12, Room 161, Albany, New York 12240.



Dated: July 19, 2012
Albany, New York

Jerome Tracy, Hearing Officer
Office of Administrative Adjudication