

ALLEGHENY COUNTY HEALTH DEPARTMENT  
ADMINISTRATIVE HEARING

CSI CONSTRUCTION CO., INC., : In re: 1104 Barbara Street  
: Duquesne, PA 15110  
Appellant, :  
: v. :  
ALLEGHENY COUNTY HEALTH :  
DEPARTMENT, :  
Appellee. :

**DECISION AND ORDER OF THE ALLEGHENY COUNTY HEALTH  
DEPARTMENT HEARING OFFICER**

**I. INTRODUCTION**

This case concerns whether an asbestos abatement contractor ran afoul of air quality regulations. Appellant CSI Construction Co., Inc. (“CSI”) is an asbestos abatement contractor licensed by the Allegheny County Health Department (“ACHD”). On October 2, 2017, the ACHD cited CSI for violating numerous sections of Article XXI of the ACHD’s Rules and Regulations relating to the removal of asbestos-containing waste material (“ACWM”) at 1104 Barbara Street in Duquesne, Pennsylvania (the “Barbara Street Property”). Specifically, the ACHD cited CSI for:

- 1) Failure to use a fire hose to control the spread of ACWM at the Barbara Street Property;
- 2) Failure to post warning signs at the Barbara Street Property to warn passers-by of the presence of asbestos;
- 3) Failure to adequately wet the ACWM until it could be containerized for disposal;
- 4) Failure to ensure the demolition debris was containerized, and not left on the ground; and
- 5) Failure to place all ACWM in properly labeled and sealed leaktight containers.

The ACHD contends that because CSI committed the violations listed above, it validly assessed a civil penalty of \$7,500 against CSI and suspending CSI's Asbestos Abatement Contractor License.

CSI argues that the civil penalty and license suspension should not be imposed because KCA Demolition, Inc. ("KCA"), the prime contractor on the project at the Barbara Street Property, was responsible for the numerous violations relating to the removal of asbestos. Additionally, CSI argues that the civil penalty and license suspension would destroy its business.

Based on the evidence and testimony presented at the hearing, I find that CSI has failed to show that it did not run afoul of ACHD asbestos regulations or demonstrate that KCA was responsible for the violations for which CSI was cited. Therefore, I will allow the ACHD to impose the \$7,500 civil penalty against CSI and suspend CSI's Asbestos Abatement Contractor License for four months.

## **II. ABBREVIATION GUIDE**

As illustrated in Section I, above, this case is rife with abbreviations. Here are the most frequently-used abbreviations in this Decision:

- ACHD—Allegheny County Health Department
- ACWM—Asbestos-Containing Waste Material
- CSI—CSI Construction Co., Inc., the Appellant in this case
- KCA—KCA Demolition, Inc., the prime contractor for the demolition at the Barbara Street Property.

### **III. EVIDENCE**

The following exhibits were offered by Appellant CSI and admitted into evidence:

- A1: Photograph of construction vehicle demolishing house
- A2: Photograph of KCA truck

The following exhibits were offered by Appellee ACHD and admitted into evidence:

- D1: Google Maps listing for the Property
- D2: Asbestos Abatement Permit Application
- D3: Photographs of debris at the Property
- D4: Record of Climatological Observations
- D5: Photographs of wetted debris
- D6: November 4, 2016 Order
- D7: December 19, 2016 Order
- D8: May 25, 2017 Order
- D9: Article XXI Penalty Calculation Form

### **IV. FINDINGS OF FACT**

Based on my review of the evidence and having resolved all issues of credibility, I find the following facts:

1. The ACHD has the authority to regulate all asbestos abatement activity in Allegheny County, under Article XXI.
2. CSI is an asbestos abatement contractor licensed by the ACHD. (Ex. D8). Heddy Richard (“Mr. Richard”) is the President and CEO of CSI. (Testimony of Heddy Richard).
3. Adam Jones (“Mr. Jones”) is a CSI employee and is certified by the Pennsylvania Department of Labor & Industry as an asbestos “supervisor.” (Testimony of Adam Jones).
4. On November 4, 2016, the ACHD suspended CSI’s Asbestos Abatement Contractor License due to a failure to pay permit fees. (Ex. D6).

5. Between January 15, 2016 and September 15, 2016, CSI submitted six checks to the ACHD totaling \$3,400 to pay for asbestos abatement permit fees. The ACHD was notified by the bank that the checks were being returned due to either insufficient funds or because CSI had stopped payment on the checks. (Ex. D6).
  6. On December 19, 2016, the ACHD issued an Enforcement Order against CSI for violating ACHD asbestos abatement regulations concerning a property at 800 2<sup>nd</sup> Street, Verona, PA, 15147. The Order charges that CSI allowed an unlicensed demolition contractor to illegally remove asbestos-containing material. The violations against CSI included the failure to comply with permit conditions and the failure to place all asbestos-containing material in a sealed leaktight container. (Article XXI §§ 2101.11.a, 21.05.63.1). (Ex. D7).
  7. CSI did not appeal the November 4, 2016 and December 16, 2016 Orders.
  8. On May 15, 2017, CSI submitted an application to renew its Asbestos Abatement Contractor License.
  9. On May 25, 2017, the ACHD issued an Order granting CSI an Asbestos Abatement Contractor License, subject to the following requirements:
    - (1) CSI Construction Co., Inc., shall comply with all applicable provisions of Article XXI §§ 2105.60, 2105.61, 2105.62, and 2105.63 of ACHD Regulations;
    - (2) CSI Construction Co., Inc., shall have all pre-abatement set-ups inspected by the ACHD prior to conducting any asbestos abatement; and
    - (3) Payments for all permit fees and other costs shall only be made by cashier's check.
- The May 25, 2017 Order further declares that the “failure to comply with any of the above requirements shall result in either a suspension or revocation of CSI Construction Co., Inc.’s Asbestos Abatement Contractor License.” (Ex. D8).
10. On August 30, 2017, CSI submitted an Asbestos Abatement Permit Application to the ACHD for the abatement of 5,000 square feet of asbestos-containing plaster for a property located at 1104 Barbara Street, Duquesne, PA 15110. (Ex. D2). The Permit Application was completed and signed by Mr. Richard. (Ex. D2).

11. The asbestos-containing plaster is considered friable, meaning that the plaster material, when dry, can easily be reduced to powder by hand. (Testimony of Shannon Sandberg).
12. The Barbara Street Property is in a residential neighborhood and is close to several homes. (Ex. D1; Testimony of Shannon Sandberg).
13. The ACHD issued an Asbestos Abatement Permit (the "Permit") for the Barbara Street Property on September 12, 2017. (Ex. D2).
14. The Permit identifies KCA Demolition, Inc. ("KCA") as the demolition contractor. (Ex. D2). KCA is not a licensed asbestos abatement contractor, and was not required to sign the Permit application for the Barbara Street Property. (Ex. D2; Testimony of Heddy Richard).
15. The Permit allowed the Barbara Street Property to be demolished with the ACWM left in place during the demolition. (Testimony of Shannon Sandberg). Because the asbestos material was to be left in place, CSI was required to do the following to prevent emissions of asbestos:

"An asbestos licensed supervisor to be at the site with a fire hose to maintain dust control and surveillance for any suspect asbestos that can be safely removed during all demolition activities. Personal pump with asbestos cartridge to be deliver [sic] to any approved lab. All materials to be disposed of [sic] as ACWM." (Ex. D2 at p. 3).
16. Before the demolition, CSI did not request that the ACHD conduct a pre-abatement set-up inspection. (Testimony of Shannon Sandberg).
17. After the demolition activity on September 22, 2017, ACWM was left on the Barbara Street Property, and was not placed in a lined dumpster or container. (Testimony of Adam Jones). From September 22 to September 26, 2017, no water was applied to the ACWM to maintain dust control. (*Id.*).
18. From September 21, 2017 to September 26, 2017, the weather at the Barbara Street Property was, in the words of Mr. Jones, "hot as hell," and there was no precipitation. (Testimony of Adam Jones; Ex. D4).
19. On September 26, 2017, ACHD engineers visited the Barbara Street Property, and observed that KCA was using an excavator to move building material around the site and was driving the excavator over the demolition debris, further crushing it and rendering it friable. (Ex. D3;

Testimony of Shannon Sandberg). ACHD engineers instructed KCA to stop work and to have the fire department apply water to the ACWM. (Testimony of Shannon Sandberg).

20. On September 26, 2017, the Duquesne Fire Department was contacted by KCA and applied water to the ACWM. (Ex. D5).
21. On October 2, 2017, the ACHD suspended CSI's Asbestos Abatement Contractor License due to CSI's repeated violations and failure to comply with the May 25, 2017 Order. (October 2, 2017 Order; Testimony of Shannon Sandberg and Don Horgan).
22. On October 20, 2017, the ACHD assessed a civil penalty of \$7,500 for the violations relating to the demolition of the Barbara Street Property. (October 20, 2017 Order). The civil penalty amount was determined using the ACHD's Penalty Calculation Form and after considering all the factors set forth in Article XXI § 2109.06.b.1. (Ex. D9; Testimony of Shannon Sandberg).
23. An Administrative Hearing was held on October 23, 2017.

## **V. DISCUSSION**

In an administrative appeal of a final agency action of the ACHD, the appellant "shall bear the burden of proof and the burden going forward with respect to all issues." Article XI § 1105.D.7. Therefore, CSI bears the burden of proving by a preponderance of the evidence that it did not violate the ACHD asbestos abatement regulations when it performed demolition work at the Barbara Street Property.

### **A. Asbestos Abatement Regulations**

#### **1. Article XXI § 2101.11.a: Prohibition of Air Pollution**

Article XXI § 2101.11.a makes it a violation of Article XXI for any person to "fail to comply with, or to cause or assist in the violation of, any requirement of this Article, or any order or permit issued pursuant to authority granted by this Article." CSI's Asbestos Abatement Permit Application for the Barbara Street Property

required CSI to have an “asbestos licensed supervisor to be at the site with a fire hose,” and also required “all materials to be disposed [of] as ACWM.” (Ex. D2, § 16).

Here, CSI failed to provide a fire hose at the Barbara Street Property during the demolition. CSA claims that it was KCA’s responsibility to provide a fire hose. (*See Notice of Appeal* at ¶ 2). But the Asbestos Abatement Permit Application clearly states that an “asbestos licensed supervisor” must be present at the site with a fire hose. CSI was licensed to remove asbestos; KCA was not. CSI did not notify the ACHD about the lack of a fire hose at the site or take any action to ensure compliance with ACHD regulations and permit requirements. Therefore, CSI’s argument falls flat.

Also, CSI’s supervisor, Adam Jones, admitted during the hearing that aluminum siding material at the site was segregated, and was not properly disposed of as ACWM. Thus, CSI ran afoul of Article XXI § 2101.11.a.

## **2. Article XXI § 2105.63.b.1: Facility Protection**

Article XXI § 2105.63.b.1 requires that CSI post at the Barbara Street Property asbestos warning signs that are “clearly identifiable,...at eye level in a conspicuous location easily read by passers-by, at all potential approaches to the work area, a sufficient distance from the work area to permit a person to read the sign and take the necessary protective measures to avoid potential exposure.”

At the hearing, Mr. Jones said that he posted asbestos warning signs on the building before demolishing it. (Testimony of Adam Jones). Placing a warning sign on the actual building that is being demolished is not an effective way to warn

passers-by of the presence of asbestos. The problem is that after the demolition occurred, significant amounts of ACWM remained on the Barbara Street Property. The purpose of Section 2105.63.b.1 is to warn nearby individuals of potential exposure to asbestos.

Moreover, there is no evidence that warning signs were ever placed on the property. Mr. Jones presented photographs of the demolition. (Exs. A1, A2). There are no visible signs in either of these photographs. The testimony of the ACHD personnel who visited the Barbara Street Property also confirmed that there were no warning signs when they inspected the demolition. (Testimony of Shannon Sandberg and Don Horgan).

The evidence and testimony at the hearing indicate that CSI violated Article XXI § 2105.63.b.1 by failing to provide adequate asbestos warning signs at the Barbara Street Property.

### **3. Article XXI § 2105.63.f.1: Removal Procedures**

Article XXI § 2105.63.f.1 requires that CSI sufficiently wet the ACWM and keep the material wet until it can be properly contained for disposal. At the hearing, Mr. Jones and Mr. Richard admitted that they did not use a fire hose to wet the asbestos. All they used for dust suppression was a garden hose attached to a spigot from a neighboring property. (Testimony of Heddy Richard and Adam Jones).

Additionally, Mr. Jones admitted that ACWM remained on the property and was not placed in a lined dumpster after CSI left the work site on September 22, 2017. When ACHD personnel inspected the site four days later, on September 26,

they observed that the ACWM was dry, making it friable. (Testimony of Shannon Sandberg). All of this indicates that CSI failed to sufficiently wet the ACWM.

#### **4. Article XXI § 2105.63.f.2: Removal Procedures**

Article XXI § 2105.63.f.2 requires that the 5,000 square feet of asbestos-containing plaster be removed and handled in such a way as to prevent the release of any fibers.

At the hearing, Shannon Sandberg and Don Horgan testified that when they inspected the Barbara Street Property, they saw the demolition contractor driving an excavator over demolition debris, causing the ACWM to be further crushed and become friable. (Testimony of Shannon Sandberg and Don Horgan). The photographs taken by Ms. Sandberg confirm that the excavator was driving over the demolition debris. (Ex. D3). Therefore, CSI violated § 2106.63.f.2 by failing to containerize the ACWM.

#### **5. Article XXI § 2105.64.1.1: Disposal Procedures**

Article XXI § 2105.63.1.1 requires that “[a]ll asbestos-containing materials, asbestos-containing waste materials, asbestos contaminated materials...shall, at least once per eight (8) hour works shift and prior to removal from the work area, be placed in leaktight containers and properly sealed and labeled, for transportation to and disposal at approved landfills.”

At the inspection on September 26, 2017, ACHD inspectors observed that ACWM was left on the worksite and in the basement of the Barbara Street Property. (Ex. D3). CSI did not refute this at the hearing. (Testimony of Heddy

Richard and Adam Jones). CSI's failure to properly dispose of the ACWM constitutes a violation of Article XXI § 2106.64.1.1.

### **B. The Civil Penalty**

On October 20, 2017, the ACHD assessed a \$7,500 civil penalty against CSI for the above-listed violations of Article XXI. Article XXI § 2109.06.b.1 requires that in assessing civil penalties, the ACHD must consider:

“[T]he willfulness of the violation; the actual and potential harm to the public health, safety, and welfare; the damage to the air, soil, water, and other natural resources of the County and their uses; the economic benefit gained by such person by failing to comply with this Article; [and] the deterrence of future violations...[.]”

Shannon Sandberg, who assessed the penalty, testified that the factors supporting the amount of the civil penalty include the significant health effects of asbestos, potential exposure to asbestos by nearby residents, multiple prior violations by CSI, and the importance of deterring the violations. (Ex. D9). She also considered the fact that CSI is a small business and was cooperative after the issuance of the violations. She concluded that \$7,500 was an appropriate fine.

Based on the evidence, and the testimony of Ms. Sandberg, I see no compelling reason to dispute that \$7,500 was an appropriate civil penalty here.

### **C. The Suspension of CSI's Asbestos Abatement Contract**

The ACHD may suspend or revoke an Asbestos Abatement Contractor License if it determines that the “License holder has failed to comply with any requirements of this Article, any requirements of any order issued under this Article, or the terms and conditions of any permit under this Article.” Art. XXI §

2105.60.g.1.B. The ACHD suspended CSI's license one year ago, on November 4, 2017. (Ex. D6). A little over a month later, on December 19, 2016, the ACHD issued an Enforcement Order against CSI for improperly removing asbestos and failing to comply with permit requirements. (Ex. D7).

CSI repeated these same violations during the demolition at the Barbara Street Property in September of 2017. Additionally, when the ACHD renewed CSI's license in May of 2017, the ACHD issued an order stating that CSI's license would be suspended or revoked if it failed to comply with ACHD asbestos abatement regulations. (Ex. D8). The Order also required that CSI "have all pre-abatement set-ups inspected by the ACHD prior to conducting any asbestos abatement."

At the hearing, ACHD Asbestos Supervisor Don Horgan testified that although ACHD staff have attempted to help CSI comply with applicable regulations, CSI did not request a pre-abatement inspection for the Barbara Street Property. (Testimony of Don Horgan). Therefore, due to CSI's repeated violations, and the fact that it was on notice that its license would be revoked or suspended for future violations, I find that it was appropriate for the ACHD to suspend CSI's Asbestos Abatement Contractor License for four months.

As an additional matter, CSI contends in its post-hearing submission that the civil penalty and suspension "would indubitably destroy [its] small Minority/Veteran own business." However, CSI never offered any evidence or testimony at the Hearing to support this claim. Moreover, the ACHD is not required to consider a business's finances when determining whether to suspend a license. Art. XXI §

