

**ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM**

In the Matter of:

SOTA Construction Services, Inc.
80 Union Ave.
Pittsburgh, PA 15202

The Salvation Army
700 North Bell Ave.
P.O. Box 742
Carnegie, PA 15106

The Salvation Army
440 West Nyack Rd.
West Nyack, NY 10094

Violation No. ASB-22-0602

Violations of Article XXI (“Air
Pollution Control”) at property:

The Salvation Army
44 S 9th St.
Pittsburgh, PA 15203

ENFORCEMENT ORDER

NOW, this 6th day of June, 2022, the Allegheny County Health Department (hereinafter “ACHD” or “Department”) issues this Enforcement Order after it has found and determined the following:

1. The Director of the ACHD has been delegated authority pursuant to the federal Clean Air Act, 42 U.S.C. Sections 7401-7671q (hereinafter “CAA”), and the Pennsylvania Air Pollution Control Act, 35 P.S. Sections 4001-4014 (hereinafter “APCA”), and the ACHD is a local health agency organized under the Local Health Administration Law, 19 P.S. §§ 12001-12028, whose powers and duties include the enforcement of laws relating to public health within Allegheny County including, but not limited to, the ACHD’s Rules and Regulations, Article XXI, Air Pollution Control (Allegheny County Code of Ordinances Chapter 505, 507, and 535) (hereinafter “Article XXI”).

2. The ACHD, through its powers under Article XXI, maintains the authority to regulate all asbestos abatement activity within the boundaries of Allegheny County. Article XXI also incorporates the federal asbestos abatement regulations regarding asbestos abatement activity in Allegheny County, Article XXI § 2105.62.b.

3. The Incorporated Trustees of the Salvation Army in Pennsylvania (hereinafter “The Salvation Army”) is the owner of the commercial property located at 44 S 9th St. Pittsburgh, PA 15203 (Parcel ID: 0003-G-00070-0000-00).

4. SOTA Construction Services, Inc. (hereinafter “SOTA Construction”) is a corporation with a registered business address of 80 Union Ave. Pittsburgh, PA 15202. SOTA Construction is a general contractor and is not an ACHD Licensed Asbestos Abatement Contractor.

5. American Contracting Enterprises, Inc. (hereinafter “American Contracting Enterprises”) is a corporation with a registered business address of 1101 Chartiers Ave. McKees Rocks, PA 15136. American Contracting is an ACHD Licensed Asbestos Abatement Contractor (ACAL21902).

6. On October 1, 2021, the ACHD received a permit application from American Contracting Enterprises for the abatement of 600 square feet of pipe fitting insulation in the basement of The Salvation Army building at 44 S 9th St. The asbestos abatement was listed in the permit to occur between October 14, 2021 and December 31, 2021.

7. On October 20, 2021 around 10:20 AM, the ACHD received a complaint about a possible asbestos release at 44 S 9th St. An ACHD Representative went to the site at approximately 1:30 PM to investigate the complaint. American Contracting Enterprises asbestos workers were on site and beginning to set-up containment for the asbestos abatement work in the ACHD-issued

permit. The American Contracting Enterprises workers confirmed that pipe insulation had been disturbed in their work area by SOTA Construction contractors.

8. SOTA Construction had knowledge that the asbestos pipe insulation was assumed to be asbestos containing material and hired American Contracting as a sub-contractor to perform asbestos abatement of the pipe insulation in the basement.

9. On October 20, 2021, the ACHD issued an Administrative Field Order to SOTA Construction and the Salvation Army to immediately stop all work on all floors of the Salvation Army building. The order further required SOTA Construction and the Salvation Army to have performed TEM air sampling conducted on all floors and basement and have performed microvac dust sampling and bulk sampling of disturbed material on all levels of the building. American Contracting Enterprises employees were also asked to stop work until the work area could be deemed safe.

10. On October 21, 2021, bulk sampling, TEM air sampling, and microvac dust sampling were performed in accordance with the ACHD order.

11. On October 28, 2021, the ACHD received the sample results from the before mentioned testing. The sample results indicated that the pipe insulation contained asbestos, and asbestos fibers were found in a dust sample taken in the basement area where the pipe was disturbed.

12. On October 28, 2021, the ACHD verbally lifted the stop work order on all floors except the basement where American Contracting Enterprises would be required to decontaminate the work area before continuing their scheduled abatement work.

13. On November 9, 2021, the ACHD received a secondary permit application (PAA21-0604) from American Contracting Enterprises. The abatement permit listed 2,395 square feet of contaminated debris to be cleaned in the basement work area.

14. Article XXI, § 2105.60, requires that any person performing removal, encasement, or encapsulation of ACM in a facility holds a valid Annual Asbestos Abatement Contractor License issued by the Department:

In addition to the accreditation and permit requirements under §§2105.61 and 2106.62, respectively, no person shall remove, encase, or encapsulate, or allow the removal, encasement, or encapsulation of, ACM in a facility subject to §2105.62 of this Article unless the person engaged in the removal, encasement, or encapsulation has been issued and currently holds a valid Annual Asbestos Abatement Contractor License issued by the Department.

15. Article XXI, § 2105.61.a, requires any person who performs asbestos abatement to be in full compliance with the federal Toxic Substance Control Act (TSCA) and the Pennsylvania Occupations Accreditation and Certification Act:

No person shall conduct or supervise the removal, encasement, or encapsulation of asbestos unless such person is in full compliance with all applicable accreditation requirements set forth in: §206 of the federal Toxic Substances Control Act (TSCA) and §§2104 and 2105 of the Pennsylvania Asbestos Occupations Accreditation and Certification Act.

16. SOTA Construction does not possess the certifications required to engage in asbestos abatement activities.

17. Nonetheless, SOTA Construction, by disturbing asbestos containing material had engaged in abatement activity without the proper certification to do so.

18. Article XXI, § 2102.03, states it shall be a violation to fail to comply with permit conditions:

It shall be a violation of this Article giving rise to the remedies provided by Part I of this Article for any person to fail to comply with any terms or conditions set forth in any permit issued pursuant to this Part.

19. The Salvation Army failed to comply with their permitting conditions associated with PAA21-0528. The Salvation Army representative Christopher A. Michaels signed the permit application and notification.

20. Article XXI, § 2105.63.c, requires any area outside of the work area which becomes contaminated, as a result of asbestos abatement activity, shall be immediately decontaminated and immediately notify the Department no later than 60 minutes after the event. Section 2105.63.c specifically provides in relevant part, as follows:

Any area outside of the work area which becomes contaminated as a result of the asbestos abatement activity shall be immediately decontaminated in accordance with all requirements of this Part...In addition to the requirements under Paragraph 1 of this Subsection, the contamination of any area outside of a work area as a result of asbestos abatement activity constitutes a breakdown at an air pollution source under this Article requiring compliance with §2108.01.c of this Article.

ORDER

NOW THEREFORE, pursuant to the authority granted to the ACHD by Article XXI § 2109.03.a.1 and the Local Health Administration Law, 19 P.S. § 12010, it is hereby ORDERED that:

21. For the violations set forth in the preceding paragraphs, SOTA Construction and the Salvation Army are held jointly and severally liable and is hereby assessed a civil penalty of **SIX THOUSAND FIVE HUNDRED DOLLARS (\$6,500.00)**. The civil penalty is as follows:

A. Gravity Based Component

Location	Violation	Gravity Based Penalty	Violation Days	Total Gravity Penalty
44 S 9 th St.	Removal of asbestos without a valid ACHD License (§2105.60)	\$2,500	1	\$2,500
	Failure to meet accreditation requirements under the federal TSCA and PA Asbestos Occupations Accreditation and Certification Act (§2105.61.a)	\$2,500	1	\$2,500
Gravity Component Subtotal				\$5,000
TOTAL GRAVITY COMPONENT				\$5,000

B. Adjustment Factors

Degree of Willfulness: Reckless Disregard	0.3	\$1,500
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TOTAL CIVIL PENALTY	\$6,500
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22. SOTA Construction and the Salvation Army shall pay the civil penalty amount within thirty (30) days of receipt of this Order. Payment shall be made by corporate or certified check, or the like, made payable to the “Allegheny County Clean Air Fund”, and sent to Air Quality Program manager, Allegheny County Health Department, 301 39th Street, Bldg. #7, Pittsburgh, PA 15201.

23. The ACHD has determined the above civil penalty to be in accordance with Article XXI § 2109.06.b reflecting relevant factors including, but not limited to: the nature, severity and frequency of the alleged violations; the maximum amount of civil and criminal penalties authorized by law; the willfulness of such violations; the impact of such violations on the public and the environment; the actions taken by SOTA Construction and the Salvation Army to minimize

such violations and to prevent future violations; and SOTA Construction and the Salvation Army's compliance history.

24. The gravity-based component of the civil penalty reflects the severity of the violation and the potential harm to the public or environment from the violation. The gravity-based component may be adjusted for factors and circumstances unique to the violator.

25. The above civil penalty is adjusted to reflect the reckless disregard from SOTA Construction in their knowledge that asbestos was assumed to be present, abatement was set to occur, and SOTA Construction removed the asbestos positive pipe insulation to continue with renovation of the space.

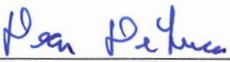
26. Please be advised that failure to comply with this Order within the times specified herein is a violation of Article XXI giving rise to the remedies provided by Article XXI § 2109.02 including civil penalties of up to \$25,000 per violation per day.

27. Pursuant to Article XI ("Hearings and Appeals") of the Allegheny County Health Department Rules and Regulations, you are notified that if you are aggrieved by this Order you have thirty (30) days after receipt of written notice or issuance of this Order. Such a Notice of Appeal shall be filed in the Office of the Director at 542 Fourth Avenue, Pittsburgh, PA 15219. This Order is enforceable upon issuance and any appeal of this Order shall not act as a stay unless the Director of ACHD so orders. In the absence of a timely appeal, the terms of this Order shall become final.

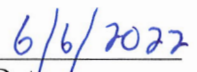
28. Please be aware that if you wish to appeal this Order, you are required within 30 days of receipt of this Order to either forward the penalty amount of the ACHD for placement in an escrow account or post an appeal bond to the ACHD in the amount of the penalty. Please review the specific requirements for prepaying the penalty or posting the appeal bond found in Article XXI §§ 2109.06.a.2-3. A copy of Article XXI and Article XI may be found at <https://www.alleghenycounty.us/Health-Department/Health-Department-Regulations.aspx>.

DONE and **ENTERED** this 6th day of June, 2022, in Allegheny County, Pennsylvania.

For:



Dean DeLuca
Air Quality Program Manager



Date