



The City of New York
Department of Investigation

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**INVESTIGATION RESULTS IN ARRESTS OF
17 CERTIFIED ASBESTOS INVESTIGATORS FOR FRAUDULENT INSPECTIONS**
**— Investigative Report Issued Today Recommends Reforms, Many Already Being Implemented,
to Strengthen Asbestos Investigations in NYC —**

Mark G. Peters, Commissioner of the New York City Department of Investigation (“DOI”); Cyrus R. Vance, Jr., Manhattan District Attorney; Richard A. Brown, Queens District Attorney; Michael E. McMahon, Richmond County District Attorney, and Vincent Sapienza, Commissioner of the New York City Department of Environmental Protection (“DEP”), jointly announced the arrest of 17 Certified Asbestos Investigators (“CAIs”) on charges of falsely filing documents certifying that planned construction at dozens of properties in Manhattan and Staten Island would not disturb asbestos. The arrests were announced at a press conference today and stem from concerns brought to DOI by DEP asbestos enforcement staff. A subsequent investigation found an array of charged illegal conduct that occurred from 2016 through 2017, including asbestos investigators misrepresenting the content of lab reports regarding the presence of asbestos on inspected premises and asbestos investigators falsely representing to DEP that a location was free of asbestos when the investigator had not personally inspected the premises as required by law. These false reports potentially exposed unassuming workers to life threatening asbestos. DOI also issued a Report documenting this investigation, the vulnerabilities found, and the reforms necessary to protect and strengthen the integrity of asbestos investigations. A copy of the Report follows this release and can also be found at the following link: <https://www1.nyc.gov/site/doi/newsroom/public-reports.page> A listing of the defendants and their charges is attached to the release. This investigation is ongoing.

DOI Commissioner Mark G. Peters said, “This criminal investigation and today’s arrests again show the widespread dangers of construction fraud. Working with our law enforcement partners and DEP, DOI exposed professional asbestos investigators who were certifying that sites were asbestos free without ever checking to see if the sites were actually safe, according to the charges. Instead, the defendants pocketed a fee, walked away, and potentially exposed multiple unsuspecting workers to serious health risks. DEP worked hand-in-hand with this team and has taken seriously the reforms DOI has recommended to strengthen and improve the integrity of asbestos inspections. We thank our partners in the Manhattan, Queens and Staten Island DA’s offices for their hard work and commitment to fighting fraud in all its forms and making New York City a safer place.”

Manhattan District Attorney Cyrus R. Vance, Jr., said, “When it comes to development, safety must come first—this rule applies to our construction sites, businesses, and homes. Whether a building is going up, being renovated, or coming down, it’s crucial to abide by the safeguards that exist to protect New Yorkers from harm. To do otherwise is a dangerous—and sometimes criminal—practice. In this case, the defendants are charged with falsifying paperwork about citywide asbestos inspections, potentially threatening the health of all those who live and work near these properties, and highlighting the need for more oversight in this area. I thank our partners for their commitment to this issue and encourage the implementation of additional measures to ensure the integrity of future inspections such as those recommendations noted in DOI’s report. I would also like to recommend that investigators be required to append lab results to their reports—something that is not currently mandated—in order to combat fraud and decrease the risk of exposing others to serious health hazards.”

Queens District Attorney Richard A. Brown said, "Asbestos exposure can lead to innumerable serious health problems. By falsely signing off that various properties, including many residential buildings, were free of asbestos without, in fact, making absolutely certain that asbestos was not present at the sites, the defendants stand accused of potentially putting the health of numerous people at risk for the sake of a few dollars from contractors looking to expedite work permits. We will continue to work with our law enforcement partners in rooting out municipal criminal corruption."

Richmond County District Attorney Michael E. McMahon said, "Falsely conducting asbestos investigations poses a serious risk to the community at large and cannot be tolerated. Today's arrests are a result of the strong partnership between DOI, the District Attorney's Offices, and DEP, all working together to hold these individuals accountable for both betraying the public trust and potentially endangering people's health. My office will vigorously prosecute the Staten Island case, which involves a defendant who is alleged to have falsely claimed that a site he inspected was free of asbestos when, in fact, no inspection had actually been conducted. I thank DOI Commissioner Mark Peters and his team for taking the necessary steps to ensure that asbestos investigations are done properly as we continue in our mission to investigate and prosecute these cases."

DEP Commissioner Vincent Sapienza said, "These individuals not only violated the public's trust, they broke the law, which is why we've suspended their licenses and worked with investigators towards these arrests. To bolster the clear message these arrests send, we have also nearly doubled the number of enforcement staff auditing CAI filings and we are in the process of enacting new rules to further strengthen the qualifications and professional integrity of all CAI applicants."

Before a construction permit is issued by the City Department of Buildings ("DOB"), the property owner must retain a Certified Asbestos Investigator, a professional licensed by DEP and the New York State Department of Labor, to inspect a property for the presence of asbestos. As part of an inspection, a CAI will conduct a visual examination of the location to determine if any asbestos-containing material may be present. If the CAI determines that there may be asbestos-containing material, the CAI will take samples of that material from the site and send the samples to a lab for testing. Once the CAI receives the lab results, they are submitted to DEP as an asbestos assessment report. If the lab results indicate there is no asbestos-containing material; there is asbestos-containing material that will not be disturbed during the work; or there are minor amounts of asbestos-containing material that will be abated prior to the work commencing, the CAI files a form known as an ACP-5. On this form, the CAI documents the location, date, and time of the inspection; signs and affixes his or her CAI seal; and then signs the document verifying that "the information provided herein is true and complete." Once filed with DEP, the ACP-5 is assigned a control number. The property owner then submits that ACP-5 as one part of a package submitted to DOB to obtain a construction permit.

DEP brought DOI concerns regarding the assessments of certain CAIs, worked with and trained investigators, provided asbestos inspection records, and is implementing the reforms DOI recommended. In addition, DEP has already suspended and begun the process of revoking the CAI licenses of each of the defendants.

In 2017, DEP nearly doubled the number of inspectors auditing asbestos assessments. DEP has also been more aggressively suspending and revoking the certifications of CAIs who have submitted reports that were found to contain factual errors.

Joint investigation with the Manhattan District Attorney's Office

Two years ago, DOI and the Manhattan District Attorney's Office's Financial Frauds Bureau began looking at fraud involving asbestos investigations, analyzing an array of records, including asbestos inspection records provided by DEP, and examining that list with other data, such as travel and cell phone records of the defendants, and audit results from labs where the CAIs brought building samples for asbestos testing. As a result of this investigation, nine defendants have been arrested and charged by indictment today. The charged crimes include:

- CAIs who falsely certified that construction at the property would not disturb asbestos even though the samples the CAI had submitted to the lab tested positive for asbestos;
- CAIs who claimed to have conducted inspections when travel or other records show that the investigator was out of the country or out of the state.

The nine defendants charged by indictments obtained by the Manhattan District Attorney's Office are being unsealed today in Manhattan Supreme Court as each defendant is arraigned.

Joint Investigation with the Queens District Attorney's Office

DOI and the Queens District Attorney's Office conducted sting operations that led to the arrests of seven CAIs today on charges of submitting an ACP-5 between June and July 2017, stating they conducted inspections when, in fact, they did not. The City requires that for an ACP-5 to be certified, a CAI must physically visit the location to survey for asbestos hazards. In each of these arrests, a certified ACP-5 form was purchased from a CAI stating there was no asbestos-containing material without that CAI physically conducting an on-site inspection, as required, and the CAI subsequently filed that ACP-5 with the DEP in Queens. Investigators conducted surveillance and monitored phone calls of the defendants in each case and found that the CAI never went to inspect the site. In one case, a CAI indicated he wrote about 50 ACP-5 forms for sites he never visited.

Joint Investigation with the Richmond County District Attorney's Office

DOI and the Richmond County District Attorney's Office found that in January 2017, FRANCIS OWOH filed an ACP-5 with DEP certifying that he performed an asbestos inspection at 102 Prall Ave. in Staten Island on December 28, 2016. Investigators reviewed records maintained by the United States Department of Homeland Security that showed the defendant exited the United States on December 12, 2016 and re-entered the United States on January 14, 2017. The investigation found that the defendant was in Nigeria when he said he had conducted an asbestos investigation at the site on Prall Ave. OWOH was arrested on Monday, January 29, 2018, released on his own recognizance, and is expected to return to Richmond County Criminal Court on April 13, 2018.

DOI's Recommendations:

DOI has made five recommendations to DEP to strengthen DEP's regulatory oversight over CAIs. DEP has agreed to all recommendations and several have already been implemented, including:

- DEP will conduct more thorough background checks of all new and renewing CAIs. DEP will also refer to DOI any new applicants where fraud and other misconduct is suspected.
- DEP has drafted new rules that will now require that all CAI applicants have experience in building surveys for asbestos. This investigation revealed a lack of competence in asbestos investigations by certain CAI applicants, specifically registered design professionals, certified safety professionals and industrial hygienists, who under current rules are exempt from experience requirements.
- DEP will prohibit CAIs from submitting bulk samples of suspect materials they collected in their investigations to laboratories that CAIs are affiliated with to avoid a potential conflict. Current state regulations do not prohibit CAIs from associations or ownership interests in a testing laboratory to which they send samples.
- DEP will institute a more frequent and robust audit regimen to include a thorough review of the accuracy and authenticity of records associated with CAIs' asbestos investigations and refer to DOI any suspect findings. This investigation revealed that even though CAIs are required to maintain business records associated with their investigations for a period of 30 years that these records were not properly maintained by many of the defendants.

DOI Commissioner Peters thanked Manhattan District Attorney Cyrus R. Vance, Jr., Queens County District Attorney Richard A. Brown, Richmond County District Attorney Michael E. McMahan, and DEP

Commissioner Vincent Sapienza, and their staffs, for their assistance and cooperation in this investigation. Commissioner Peters also thanked DEP Director of Asbestos Enforcement Carlstien Lutchmedial for his guidance and assistance in this investigation.

Assistant District Attorney Catherine McCaw of the Manhattan District Attorney's Office is prosecuting the cases in Manhattan, under the supervision of Assistant District Attorney Archana Rao, Chief of the Manhattan District Attorney's Financial Frauds Bureau, and Executive Assistant District Attorney Michael Sachs, Chief of the Investigation Division.

Assistant District Attorney Joseph Grasso is prosecuting the case in Queens, under the supervision of Assistant District Attorney Neil Gitin, Supervisor, of the Queens District Attorney's Special Proceedings Bureau.

Gregg Brown, Deputy Bureau Chief of the Economics Crimes Bureau of the Richmond County District Attorney's Office is prosecuting the case in Staten Island.

The investigation was conducted by DOI's Office of the Inspector General for DEP, specifically; Special Investigators Kristen Dufour and Adam Ondira, under the supervision of Inspector General Gregory Cho, Associate Commissioner James Flaherty, Deputy Commissioner/Chief of Investigations Susan Lambiase and First Deputy Commissioner Lesley Brovner.

Indictments and criminal complaints are accusations. Defendants are presumed innocent until proven guilty.

DOI is one of the oldest law-enforcement agencies in the country and New York City's corruption watchdog. Investigations may involve any agency, officer, elected official or employee of the City, as well as those who do business with or receive benefits from the City. DOI's strategy attacks corruption comprehensively through systemic investigations that lead to high-impact arrests, preventive internal controls and operational reforms that improve the way the City runs.

**DOI's press releases can also be found at twitter.com/doinews
Bribery and Corruption are a Trap. Don't Get Caught Up. Report It at 212-3-NYC-DOI.**

Certified Asbestos Investigator Arrests**

Defendants charged by indictments obtained by the Manhattan District Attorney's Office

Nine defendants have each been charged with Criminal Possession of a Forged Instrument in the Second Degree, a class D felony, and Falsifying Business Records in the First Degree and Offering a False Instrument for Filing in the First Degree, both class E felonies.

Upon conviction, a class D felony is punishable by to four years in prison and a class E felony is punishable by up to seven years in prison.

- JOHN ANUFORO, 69, of Elmsford, N.Y.
- PAOLA CANO, 41, of Passaic, N.J.
- DAVID CHANG, 59, of New York, N.Y.
- DOMINICK CICCARELLI, 37, of Staten Island, N.Y.
- JULIO CORPORAN, 50, of Bronx, N.Y.
- ANTONIO JARAMILLO, 37, of Howard Beach, N.Y.
- LON RIGG, 57, of Mount Vernon, N.Y.
- KENG LEE SO, 36, of Brooklyn, N.Y.
- ERIC TELEMAQUE, 56, of Setauket, N.Y.

Defendants charged by criminal complaints by the Queens District Attorney's Office

Eight defendants have each been charged with Falsifying Business Records in the First Degree, Offering a False Instrument for Filing in the First Degree, and Perjury in the Second Degree, all class E felonies.

Upon conviction, a class E felony is punishable by up to seven years in prison.

- CHARLY AYOUB, 58, of Brooklyn, N.Y.
- VYACHESLAV AZHAZHA, 64, of Brooklyn, N.Y.
- PAUL JENNINGS, 49, of Brooklyn, N.Y.
- DEMETRIUS MANOUSELIS, 62, of East Elmhurst, N.Y.
- OLATUNDE OGUNDIPE, 40, of Hillsdale, N.J.
- BARRINGTON SMITH, 52, of Valley Stream, N.Y.
- LAKSHMAN SURUJNARINE, 32, of Queens, N.Y.

Defendant charged by criminal complaint by the Richmond County District Attorney's Office

- Francis Owoh, 60, of Staten Island, N.Y. is charged with Offering a False Instrument for Filing in the First Degree, a class E felony, and Falsifying Business Records in the Second Degree, a class A misdemeanor.

Upon conviction, a class E felony is punishable by up to seven years in prison and a class A misdemeanor is punishable by up to a year's incarceration.

**Indictments and criminal complaints are accusations. Defendants are presumed innocent until proven guilty.



NEW YORK CITY DEPARTMENT OF INVESTIGATION
ARRESTS FROM FALSE INSPECTIONS
REPORTED BY CERTIFIED ASBESTOS INVESTIGATORS

MARK G. PETERS
COMMISSIONER

February 2018

EXECUTIVE SUMMARY

In February 2018, the New York City Department of Investigation (DOI) along with the District Attorneys of New York County (DANY), Queens County (QCDA) and Richmond County (RCDA) and the New York City Department of Environmental Protection (DEP), completed an investigation that uncovered systematic fraud by Certified Asbestos Investigators (CAIs) – private construction safety professionals licensed by DEP and responsible for identifying, detecting and protecting the public from asbestos hazards. The defendants in this investigation endangered public safety by:

- Falsely stating to DEP that there was no asbestos on properties slated for construction or demolition when, in fact, asbestos was present;
- Falsely representing to DEP that sites were free of asbestos when the CAIs never conducted inspections;
- Sending unlicensed asbestos investigators to conduct inspections and certifying the results as accurate;
- Claiming to conduct multiple inspections at different locations, at the same day and time; and
- Claiming to conduct consecutive inspections at different locations without accounting for any travel time between those locations.

As a result of this investigation, DOI has arrested 17 CAIs on felony charges including filing fraudulent inspection documents with DEP and the New York City Department of Buildings (DOB). Additionally, working together with DEP, DOI has issued numerous policy and procedure recommendations to ensure CAIs are accountable for their inspections, increase DEP's oversight over the CAIs, and increase safety in the construction industry. DOI will continue to investigate this industry to ensure the recommended reforms are implemented and to deter future criminal conduct.

BACKGROUND

Asbestos Inspections

Asbestos is a highly dangerous substance when airborne and inhaled; this risk is heightened during demolition and construction of buildings. In New York City, DEP, in conjunction with DOB, strictly regulates the inspection of properties for asbestos and its abatement during the construction process.¹ Before DOB issues a construction permit to a property owner, the owner must retain a

¹ NYC ADMIN. CODE. § 24-136.

CAI – a construction professional licensed by DEP to inspect the subject property for asbestos.² The burden is on the CAI to prove asbestos is *not* present.³

To inspect a property for the presence of asbestos, in most instances, a licensed CAI inspects the premises by collecting bulk samples, submits those samples to a laboratory for testing,⁴ and obtains the test results from that laboratory. While a non-certified asbestos investigator can “participate” in a CAI’s inspection, that non-certified investigator must work “in the presence of” the CAI and under the CAI’s “direct and continuing supervision.”⁵ As a result, the CAI must be physically present at the inspection site during all inspections.

Two results are possible from this laboratory analysis: (1) asbestos is not present, or (2) asbestos is present.

Reporting the Presence of Asbestos

In circumstances where a lab reveals that asbestos is *not* present in samples collected:

- The CAI fills out an asbestos assessment report, commonly referred to as the ACP-5, on which the CAI documents the date and time (in 15-minute increments) of the inspection and the location of that inspection;
- The CAI signs the document under a declaration that “the information provided herein is true and complete;”
- The CAI submits the ACP-5 to DEP; and,
- Once filed, DEP assigns the ACP-5 a unique control number, which the property owner then submits to DOB as part of a package of documents necessary for the owner to apply for a DOB construction permit.

A sample blank ACP-5 form is attached as Attachment A.

In circumstances where a lab reveals that asbestos *is* present in the samples collected and that the asbestos will be disturbed by the proposed construction:

- The identified asbestos must be removed, or abated, before DOB issues a construction permit;

² 15 R.C.N.Y. § 1-16. The CAI is required to report on the physical condition of the building at the time of the CAI’s investigation, including a description of the building and the identities of all persons involved in the investigation, including non-CAI’s, if any. 15 R.C.N.Y. § 1-28(b) & (c). Significantly, only a CAI can conduct this investigation. 15 R.C.N.Y. § 1-16(a)(1).

³ 15 R.C.N.Y. § 1-16(a)(3).

⁴ This lab must be certified by the New York State Department of Health. 15 R.C.N.Y. § 1-36(c).

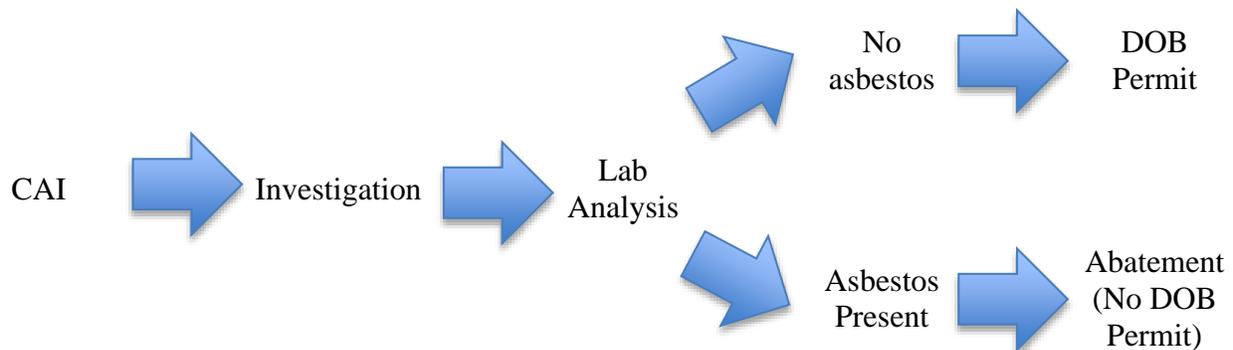
⁵ 15 R.C.N.Y. § 1-16(a)(2).

- The property owner obtains a DEP asbestos abatement permit and must comply with a series of rules and regulations issued by the DEP that govern the abatement process;⁶ and,
- Once completed, DEP issues the property owner an asbestos project completion form, which the property owner submits to DOB as part of a package of documents necessary to apply for a DOB construction permit.

In circumstances where asbestos is present but will not be disturbed by the proposed construction:

- The CAI submits to DEP an ACP-5 stating that, while asbestos is present, it will not be disturbed by the proposed construction; and,
- The CAI completes the ACP-5 and files it with DEP; it is then submitted to DOB as part of a package of documents necessary to apply for a DOB construction permit.

The following diagram illustrates the CAIs role in the DOB construction process and demonstrates that the CAIs investigation effectively determines whether the owner will undergo the lengthy, costly and DEP-regulated asbestos abatement process or bypass this requirement and immediately obtain a DOB construction permit (and potentially remove the asbestos through extra-regulatory means). Thus, the CAI investigation process presents a potential systemic corruption vulnerability in the construction industry:



INVESTIGATIVE FINDINGS

DOI investigators subpoenaed, obtained and analyzed thousands of ACP-5s, records of travel, cellular phone service records, cell site location data, and other forms of data. Additionally, DOI investigators conducted numerous physical surveillances, interviewed scores of CAIs, and performed numerous other confidential investigative steps.

After analyzing the data, DOI and DEP identified CAIs whose inspection pattern seemed suspicious. For instance, a CAI claimed to be conducting over 2,200 asbestos investigations in a one-year period, which would have meant that he/she averaged six investigations per day, every day for 365 days.

⁶ Among other things, asbestos abatement must be performed by workers with the requisite DEP and other government issued certifications and licenses, 15 R.C.N.Y. §§ 1-29(a)(1) & (2) & 1-51(a), and must be conducted under the review of an independent air monitor, 15 R.C.N.Y. §§ 1-31 & 1-36.

I. CAIs Falsely Reported No Asbestos Found When Their Inspections Revealed the Presence of Asbestos.

This investigation revealed instances when CAIs conducted inspections and found asbestos present, but falsely reported to DEP that there was no asbestos found. Reporting no asbestos present by the CAI allows the property owner to avoid the lengthy and costly asbestos abatement process.

II. CAIs Falsely Represented to DEP that Sites they Failed to Inspect were Free of Asbestos.

This investigation revealed that CAIs certified to DEP that sites were free of asbestos when the CAIs never physically went to the locations. Specifically, cell site and travel records revealed that these CAIs were nowhere near the inspection sites at the time they claimed to have conducted those inspections. In many instances, the CAIs were thousands of miles away from the sites or even out of the country.

For instance, a CAI claimed to have conducted three different asbestos inspections in Manhattan, as well as ten others in different boroughs in New York City. On that same date, the CAI personal cell phone was obtaining service from a cell tower located across the country. This same CAI claimed that he/she conducted two different inspections in Manhattan, as well as two others in other boroughs in New York City, when his personal cell phone was actually pinging on a cell tower located over 200 miles away.

Travel records also revealed that CAIs claimed to be conducting asbestos investigations in New York City when the CAIs were not even in the United States. For instance, a CAI claimed to have conducted three inspections in Manhattan in a three-day period, as well as ten other inspections at various locations throughout New York City. Corresponding travel records revealed that this CAI was out of the country during this entire period.

III. CAIs Sent Unlicensed Asbestos Investigators to Conduct Inspections and Certified the Results as Accurate.

The investigation found that some CAIs never conducted inspections, instead sent uncertified asbestos investigators to conduct them, but still certified that they had personally conducted the inspection. The CAIs reported conducting an unusually high volume of inspections. When confronted by DOI investigators, CAIs attempted to explain away this high volume by stating that they had retained other uncertified persons to act as their “agents” who were working on their behalf. In many instances, these “agents,” whose identities these CAIs often refused to disclose, were not licensed to conduct these inspections. These actions violated rules and regulations that require that inspections be conducted by an individual “certified as an asbestos investigator”⁷ and created a safety hazard.

⁷ As mentioned previously, while a non-certified asbestos investigator can “participate” in a CAI’s inspection, that non-certified investigator must work “in the presence of” the CAI and under the CAI’s “direct and continuing supervision.” 15 R.C.N.Y. § 1-16(a)(2).

IV. CAIs Falsely Claimed to Conduct Multiple Inspections Simultaneously at Different Locations.

This investigation uncovered a pattern where some CAIs were claiming to be conducting multiple, simultaneous inspections at different locations. For instance, for at least 90 different inspection reports in a one-year period, one CAI claimed to have simultaneously conducted at least two different inspections at two different locations, on the same date and time. Indeed, this CAI claimed to have conducted inspections in three different boroughs: Manhattan, Brooklyn and Queens, during the same day and time.

V. CAIs Claimed to Conduct Consecutive Inspections at Different Locations without Accounting for Any Travel Time as Would be Necessary between Locations.

This investigation also found CAIs claimed to conduct inspections at different locations in New York City without accounting for any travel time between these locations. For instance, on at least 70 occasions in a one-year period, a CAI claimed to have conducted an inspection in Brooklyn and immediately thereafter conducted an inspection in the Bronx without accounting for the time necessary to travel from Brooklyn to the Bronx.

Based upon this investigation, 17 CAIs have been arrested.

CONCLUSION

CAIs are intended to play a vital role in protecting the public from asbestos dangers. New Yorkers must be able to rely on CAIs, as trained and licensed construction professionals, to fulfill their duty to protect the public with honesty and integrity. DOI's investigation reveals a pattern of CAIs affirming inspections that they never completed and reporting false results, resulting in significant public safety concerns. DOI has issued a host of recommended reforms to ensure a robust oversight regime by DEP over CAIs, which DEP has agreed to implement. These reforms, coupled with DOI's continued vigilance, will help prevent the recurrence of a similar fraud.

POLICY AND PROCEDURE RECOMMENDATIONS

DOI identified the following necessary reforms to strengthen DEP's regulatory oversight over CAIs. DEP, as part of its own initiative, has already accepted DOI's recommendations and begun to implement reforms, in addition to those reforms recommended by DOI. In particular:

1. DEP should conduct a more thorough background check of all new and renewal CAI applicants and will refer to DOI any applicants where fraud and other misconduct may have been committed. As a result of this recommendation which DEP accepted, DEP is now conducting a more thorough vetting process through a review of all supporting documents submitted by prospective CAIs. DEP is verifying the authenticity of these documents by conducting thorough background checks on all new and renewal CAI applicants and will be referring to DOI any applicants where fraud and other misconduct may have been committed.

2. DEP should require all new CAI applicants have sufficient experience in the field of building survey/hazard assessment for asbestos. DEP was already in the process of implementing this recommendation as a result of their independent proactive review to enhance the oversight of CAIs. This investigation revealed a comparative lack of competence in asbestos investigations between CAI applicants who were exempt from these experience requirements,⁸ and those CAIs who were required to have such experience. DEP has accepted this PPR and will now require all CAI applicants to have experience in building survey/hazard assessment for asbestos. By mandating such experience requirements, prospective CAIs will have sufficient experience to conduct asbestos investigations properly.
3. DEP should review the rules governing CAIs to prohibit CAIs from submitting asbestos samples to self-affiliated accredited laboratories. Current state regulations governing these laboratories do not prohibit CAIs from having ownership interests or holding positions within a laboratory. To avoid a conflict of interest, DEP has agreed to prohibit CAIs from submitting bulk samples of suspect materials they collected in their own investigations to laboratories in which those CAIs are affiliated or otherwise have an ownership interest.⁹
4. DEP should amend the chain of custody forms for all samples submitted to a certified laboratory to now require handwritten documentation for those who handled or had access to the samples. As a result of its own proactive review, DEP was already in the process of implementing this recommendation. This investigation discovered numerous instances of computer-generated chain of custody forms which lacked any distinguishing feature for those individuals identified within that chain. DEP is now requiring all such persons in the chain of custody to print and sign their full names, as well as the date and time they came into possession of the samples.
5. DEP should implement an even more robust and thorough audit regime, to include a thorough review of the accuracy and authenticity of records associated with CAIs' asbestos investigations and refer to DOI any evidence of fraud. Under existing rules and regulations, CAIs are required to maintain business records associated with their asbestos investigations for a period of 30 years.¹⁰ Despite these rules, DOI's investigation revealed that such records are often not maintained or appear to have been prepared in anticipation of a DEP audit. As a result, DEP has agreed to implement an even more robust and thorough audit regime, which will include a thorough review of these documents to determine their authenticity and refer to DOI any evidence of fraud.

⁸ Under current rules, registered design professionals, certified industrial hygienists and certified safety professionals are exempt from these experience requirements. 15 R.C.N.Y. § 1-16(b)(1). All other CAI applicants are required to have such experience. 15 R.C.N.Y. §§ 1-16(b)(2) – (5).

⁹ Specifically, 15 R.C.N.Y. § 1-44 can be amended to include a subsection (e) stating the following: “(e) the asbestos investigator certifies to the Department that he does not have an ownership interest or is otherwise affiliated with the lab testing the samples collected by that asbestos investigator.” The principles promoting the separation between the CAI and the lab and the independence of the lab is consistent with current rules requiring the strict independence of air monitors from those parties involved in the asbestos project. 15 R.C.N.Y. § 1-36(a)(1).

¹⁰ 15 R.C.N.Y. § 1-28(d).

DOI will continue to monitor the implementation of these PPR's.

* * *

Attachment A



NYC DEPARTMENT OF ENVIRONMENTAL PROTECTION
 Asbestos Control Program
 59-17 Junction Boulevard, 8th Floor, Flushing, NY 11373
ASBESTOS ASSESSMENT REPORT



1. NYC DOB Job # (if applicable) _____ **Control Number:** _____
2. Premise No. _____ Street Name _____ Borough _____ Zip _____
3. AKA _____ Type of Facility _____ BIN _____ Block _____ Lot _____
4. Building Owner _____ Address _____
5. City _____ State _____ Zip _____ Contact Person _____
6. Tel. # _____ Fax # _____ Email _____
7. Description of the Entire Scope of Work _____

8. I, _____, have conducted an asbestos investigation on _____ in accordance
Name of Certified Asbestos Investigator *Date(s)*
- with Sections 1-16 and 1-28 of the NYC DEP Asbestos Control Program Rules and declare that at said facility address, the
- a. portion(s) of the premises affected by the work is free of asbestos containing material (ACM).
- b. premise (or portions thereof) affected by the work contains 10 square feet or less or 25 linear feet or less of ACM.
 Specify locations in section 9: Note: This material must be abated as a minor project in accordance with relevant provisions of the DEP Asbestos Rules.
- c. asbestos is present and will not be disturbed during construction activity. Specify the quantity and area where asbestos is present. Specify amount: _____ sq. ft _____ linear ft.
 Specify locations (attach additional documents as necessary): _____
- d. entire building is free of asbestos containing material (ACM).

9. RESULTS OF ASBESTOS BUILDING SURVEY:

LOCATION	FLOOR NUMBER	DESCRIBE SECTION OF FLOOR	ALL MATERIALS ASSUMED TO CONTAIN ACM AND/OR SAMPLED	NUMBER OF SAMPLES ANALYZED	ASBESTOS PRESENT	ASSUMED ACM

10. ANALYTICAL LABORATORY:

NAME	ELAP # (NYS DOH CERTIFICATION)	DATE(S) SAMPLES ANALYZED

11. NYS DOL Asbestos Handling license # _____ Company Name _____

I hereby declare the information provided herein is true and complete

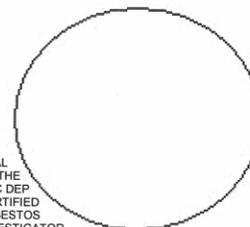
 DEP Certified Asbestos Investigator's Signature 1/1/0001 _____
 Date Certificate Number Expiration Date

Tel. # _____ Fax # _____

Email _____

The investigator shall assume that some or all of the areas investigated contain ACM, and for each area that is not assumed to contain ACM, collect and submit for analysis bulk samples in accordance with §§ 1-36, 1-37, and 1-44 of the DEP Asbestos Rules and EPA publications 560/5-85-024 and 560/5-85-030a and 40 CFR 763.86, 40 CFR 763.80, 40 CFR 763.85.

SEAL OF THE
 NYC DEP
 CERTIFIED
 ASBESTOS
 INVESTIGATOR



Is it a Build-It-Back project? Yes, App ID # _____ No