

## William Dickson Co.

---

### SAFETY AND HEALTH

#### "Serious" violation

In determining whether a serious violation has occurred, the focus need not be on only a condition in the workplace, rather, focus may be on whether there is a substantial probability that harm could result from a practice, method or process in use in the workplace. ....*In re William Dickson Co., BIIA Dec., 99 W0381 (2001)* [Editor's Note: The Board's decision was appealed to superior court under King County Cause No. 02-2-00501-2SEA (EMP), 02-2-03240-1SEA (DEPT). See also *Lee Cook Trucking & Logging v. Dep't of Labor & Indus.*, 109 Wn. App. 471 (2001).]

Scroll down for order.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS  
STATE OF WASHINGTON**

1 **IN RE: WILLIAM DICKSON COMPANY ) DOCKET NO. 99 W0381**  
2 )  
3 **CITATION & NOTICE NO. 302198627 ) CORRECTED<sup>1</sup> DECISION AND ORDER**  
4

5 **APPEARANCES:**

6  
7 Employer, William Dickson Company, by  
8 Goodstein Law Group, per  
9 Ralph U. Klose

10  
11 Employees of William Dickson Company, by  
12 Laborers Local #252, per  
13 None

14  
15 Department of Labor and Industries, by  
16 The Office of the Attorney General, per  
17 James M. Hawk, Assistant

18  
19 The employer, William Dickson Company, filed an appeal with the Safety Division of the  
20 Department of Labor and Industries on September 14, 1999, from Citation and Notice  
21 No. 302198627 dated August 20, 1999. The Department received the appeal on September 14,  
22 1999, and forwarded it to the Board of Industrial Insurance Appeals as a direct appeal on  
23 September 30, 1999. The Citation and Notice alleged, as Citation 1 Item 1, that the employer  
24 committed a willful violation of WAC 296-62-07712(2)(c), when it failed to ensure that  
25 asbestos-containing material (ACM) was handled or removed in a wet, saturated state; as Citation  
26 1 Item 2a, that the employer committed a willful violation of WAC 296-62-07712(5)(c), when it failed  
27 to ensure that clearance air monitoring was conducted at the completion of asbestos removal; as  
28 Citation 1 Item 2b, that the employer committed a willful violation of WAC 296-62-07709(3)(f), when  
29 it failed to ensure that pre-abatement air monitoring was conducted prior to the commencement of  
30 asbestos removal; as Citation 2 Item 1, that the employer committed a serious violation of  
31 WAC 296-62-07715(1)(g)(i), when it failed to ensure that respiratory protection was worn by  
32 employees when removing asbestos debris from the attic; as Citation 2 Item 2, that the employer  
33 committed a serious violation of WAC 296-62-07712(6)(b)(i), when it failed to ensure that critical  
34 barriers were placed over all openings to the regulated area, alleging that critical barriers were not  
35 established and maintained for attic and crawl space asbestos removal; as Citation 2 Item 3, that  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45

46 \_\_\_\_\_  
47 <sup>1</sup> Corrects order dated December 11, 2001. Pursuant to CR 60(a), we issue this corrected order to correct Conclusions of Law Nos. 4 through 13. The corrections in these conclusions appear bolded in this corrected order.

1 the employer committed a serious violation of WAC 296-62-07712(5)(a), when it failed to ensure  
2 that all surfaces in and around the removal work area were cleared of any asbestos debris; as  
3  
4 Citation 2 Item 4, that the employer committed a serious violation of WAC 296-62-  
5 07712(7)(b)(ii)(B), when it failed to ensure that all glove bags used for asbestos removal were  
6  
7 smoke tested prior to use; as Citation 2 Item 5, that the employer committed a serious violation of  
8  
9 WAC 296-62-07717(1)(a), when it failed to ensure that all employees performing Class I asbestos  
10 removal wear full body protective clothing; as Citation 2 Item 6, that the employer committed a  
11 serious violation of WAC 296-62-07719(3)(a)(i), when it failed to ensure that a decontamination  
12 area, consisting of an equipment room, shower, and clean room, was established adjacent and  
13 connected to the attic and crawl space removal areas; as Citation 2 Item 7, that the employer  
14 committed a serious violation of WAC 296-62-07723(7), when it failed to ensure that a two chamber  
15 waste load out was established adjacent to the boiler room negative pressure enclosure; as  
16 Citation 3 Item 1, that the employer committed a general violation of WAC 296-62-07712(7)(b)(ii)(I),  
17 when it failed to ensure that Class I glove bag work was conducted by at least two persons; and as  
18 Citation 3 Item 2, that the employer committed a general violation of WAC 296-62-07712(7)(a)(i)(D),  
19 when it failed to ensure that the boiler room enclosure was kept under negative pressure until all  
20 debris was removed and air clearance samples were obtained. **AFFIRMED.**

### DECISION

26  
27  
28 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
29 and decision on timely Petitions for Review filed by the employer and the Department of Labor and  
30 Industries to a Proposed Decision and Order issued on June 12, 2001, in which Citation and Notice  
31 No. 302198627 was affirmed as modified.

32  
33  
34 The Board has reviewed the evidentiary rulings as outlined in the Proposed Decision and  
35 Order, including those portions of the transcript that were removed from colloquy, and finds that no  
36 prejudicial error was committed. Similarly, the Renewed Request for Terms Based on Motion to  
37 Compel, as outlined in the Proposed Decision and Order, is affirmed.

38  
39  
40 The issue presented by this appeal is whether the Department of Labor and Industries  
41 correctly issued Citation and Notice No. 302198627 and assessed a penalty in the amount of  
42 \$40,500.

43  
44 We have granted review for the limited purpose of addressing the penalty portion of Citation  
45 and Notice No. 302198627. In doing so, we affirm the penalties of \$40,500 as originally assessed  
46 by the Department of Labor and Industries. We will not repeat the summary of evidence as  
47

1 presented by our industrial appeals judge in the Proposed Decision and Order dated June 12,  
2 2001, except as may be necessary to explain our decision here.  
3

4 We begin by making several observations. Years ago, our Legislature determined that  
5 industrial injuries and disease imposed a substantial burden on both employers and employees with  
6 respect to lost production, lost wages, payment of medical expenses, and payment of time loss  
7 compensation. The Legislature found that, as far as may reasonably be possible, it is in the  
8 public's interest to create, maintain, and continue safe and healthful working conditions for every  
9 man and woman working in the state of Washington. RCW 49.17.010. The Washington  
10 Administrative Code sections relating to safety standards for carcinogens were not written in the  
11 abstract. The fundamental reason for their promulgation was to protect workers from serious injury  
12 or death. *Walkenhauer & Associates, Inc.*, BIIA Dec., 91 W088 (1993). It follows that any language  
13 or safety standards enacted thereunder should be accorded an interpretation to further these  
14 purposes. *In re Jen Weld of Everett*, BIIA Dec., 88 W144 (1990).  
15  
16  
17  
18  
19

20 Our Legislature recognized that certain materials are inherently dangerous. Asbestos was  
21 deemed to be sufficiently dangerous that it was singled out and declared a public health hazard by  
22 statute. "Air-borne asbestos dust and particles, such as those from sprayed asbestos slurry,  
23 asbestos-coated ventilating ducts, and certain other applications of asbestos are known to produce  
24 irreversible lung damage and bronchogenic carcinoma. One American of every four dying in urban  
25 areas of the United States has asbestos particles or dust in his lungs. The nature of this problem is  
26 such as to constitute a hazard to the public health and safety, and should be brought under  
27 appropriate regulation." RCW 49.26.010.  
28  
29  
30  
31

32 The Washington Legislature addressed the problem of asbestos with vigor, focusing in part  
33 on those businesses and contractors who have first-hand responsibility for its handling and  
34 removal. It begs understatement to observe that asbestos removal is to be performed safely and in  
35 accordance with the regulations and protocols established by statute and Washington  
36 Administrative Code sections. Monetary penalties are assessed for violation of the regulations.  
37 Significant consequences flow from the failure to heed the requirements found in RCW 49.26. "The  
38 certificate of any asbestos contractor who knowingly violates any provision of this chapter or any  
39 rule adopted under this chapter shall be revoked for a period of not less than six months."  
40 RCW 49.26.016(3).  
41  
42  
43  
44  
45  
46  
47

1 In the matter before us, the record establishes that the William Dickson Company had  
2 removed air cell from the Best School in Kirkland as part of a demolition project. Air cell is an  
3 asbestos containing material that was used in past years to insulate pipes. The record further  
4 establishes that at the time of the inspection, air clearance monitoring had not been completed by  
5 the employer, making it impossible to know the concentration of airborne asbestos fibers to which  
6 workers were being exposed. Further, certain William Dickson Company employees were in the  
7 building without the benefit of respirators, protective clothing, or a decontamination shower area.  
8 By definition, as well as by admission of company employees, the work performed by the William  
9 Dickson Company was Class 1 asbestos work. Class 1 asbestos work means activities involving  
10 the removal of thermal system insulation or surfacing asbestos containing material  
11 (ACM)/presumed asbestos containing material(PACM). WAC 296-62-07703. Class 1 work is the  
12 most hazardous and requires the most care. In comparison, Class IV asbestos work means  
13 maintenance and custodial activities during which employees contact but do not disturb ACM or  
14 PACM, and activities to clean up dust, waste, and debris resulting from Class 1, II, and III activities.

15  
16 Our review of the Washington Industrial Safety and Health Act, (WISHA), reveals that the  
17 Washington Legislature has consistently weighed-in on the side of caution with respect to worker  
18 exposure to airborne asbestos particles. Underlying this caution is the recognition that it is difficult,  
19 if not impossible, to accurately determine the level of airborne asbestos particles to which a worker  
20 is exposed at any given moment. Give that, our state mandates work practices that may, in some  
21 situations, exceed what is required to prevent actual inhalation of airborne asbestos fibers.  
22 Because asbestos is a known carcinogen and because the safe level of exposure is unknown,  
23 varying from individual to individual, the Legislature has crafted a system in which the Department  
24 of Labor and Industries is directed to focus on the methodology of prevention. It has determined  
25 that it is more effective to require protective measures based on the kind of operation undertaken,  
26 herein asbestos abatement, than it is to rely on suspected safe exposure levels.

27  
28 We disagree with any suggestion that proof of a serious violation of WISHA regulations  
29 requires a showing of the actual extent of exposure to asbestos fibers together with medical  
30 testimony establishing a substantial probability that death or serious harm could result from such  
31 exposure. RCW 49.17.180(6) states, in pertinent part:

32  
33 For the purposes of this section, a serious violation shall be deemed to  
34 exist in a work place if there is a substantial probability that death or  
35 serious physical harm could result from a condition which exists, or **from**  
36 **one or more practices, means, methods, operations, or processes**  
37 which have been adopted or which are **in use in such workplace,**

1 unless the employer did not, and could not with the exercise of  
2 reasonable diligence, know of the presence of the violation.

3  
4 (Emphasis added.)

5  
6 Although the above statute is not a model of clarity, juxtaposing the words "substantial probability"  
7 with "could result," it is apparent that the section must be read in its entirety. Doing so, it is  
8 apparent that if there is a substantial probability that serious physical harm could result from a  
9 condition, practice, method, operation, or process in use in the workplace, a serious violation shall  
10 be deemed to exist. To focus exclusively on a condition in the workplace, as was suggested by our  
11 industrial appeals judge, is to render meaningless the other portions of the section relating to  
12 practices, means, methods, operations, and/or processes. Clearly, the Legislature did not intend  
13 that result. If there is a substantial probability that harm could result from a practice, method, or  
14 process in use in the workplace, then a serious violation exists. RCW 49.17.180(6) is not limited to  
15 a condition in the workplace.  
16  
17  
18  
19  
20

21 Airborne asbestos fibers present a sufficiently serious risk to worker health that it is  
22 imperative that employers follow known, preventive methodology with respect to asbestos  
23 abatement. That methodology is outlined in WAC 296-62-07712(2)(c), WAC 296-62-07712(5)(c),  
24 WAC 296-62-07709(3)(f), WAC 296-62-07715(1)(g)(i), WAC 296-62-07712(6)(b)(i), WAC 296-62-  
25 07712(5)(a), WAC 296-62-07712(7)(b)(ii)(B), WAC 296-62-07717(1)(a), WAC 296-62-  
26 07719(3)(a)(i), WAC 296-62-07723(7), WAC 296-62-07712(7)(b)(ii)(1), and WAC 296-62-  
27 07712(7)(a)(i)(D), among others. Considering the entirety of the record here, and in light of the  
28 above code sections, we are persuaded that the penalties assessed by the Department of Labor  
29 and Industries in the Citation and Notice are correct and should be affirmed.  
30  
31  
32  
33

34 After consideration of the Proposed Decision and Order and the Petitions for Review filed  
35 thereto, and a careful review of the entire record before us, we make the following:  
36

37 **FINDINGS OF FACT**

- 38  
39 1. On February 22, 1999, the Department of Labor and Industries issued  
40 Inspection Report No. 302198627 to William Dickson Company,  
41 regarding a job site located at 6500 112th Ave. N.E., Kirkland,  
42 Washington. On August 20, 1999, the Department issued Citation and  
43 Notice No. 302198627, alleging, as Citation 1 Item 1, that the employer  
44 committed a willful violation of WAC 296-62-07712(2)(c), with an  
45 abatement date of July 27, 1999, and a proposed penalty of \$15,000; as  
46 Citation 1 Item 2a, that the employer committed a willful violation of  
47 WAC 296-62-07712(5)(c), with an abatement date of July 27, 1999,  
which was grouped with Citation 1 Item 2b, alleged as a willful violation

1 of WAC 296-62-07709(3)(f), with an abatement date of July 27, 1999,  
2 and a proposed penalty for the grouped violations of \$15,000; as  
3 Citation 2 Item 1, that the employer committed a serious violation of  
4 WAC 296-62-07715(1)(g)(i), with an abatement date of July 27, 1999,  
5 and a proposed penalty of \$1,500; as Citation 2 Item 2, that the  
6 employer committed a serious violation of WAC 296-62-07712(6)(b)(i),  
7 with an abatement date of July 27, 1999, and a proposed penalty of  
8 \$1,500; as Citation 2 Item 3, that the employer committed a serious  
9 violation of WAC 296-62-07712(5)(a), with an abatement date of  
10 July 27, 1999, and a proposed penalty of \$1,500; as Citation 2  
11 Item 4, that the employer committed a serious violation of  
12 WAC 296-62-07712(7)(b)(ii)(B), with an abatement date of July 27,  
13 1999, and a proposed penalty of \$1,500; as Citation 2 Item 5, that the  
14 employer committed a serious violation of WAC 296-62-07717(1)(a),  
15 with an abatement date of July 27, 1999, and a proposed penalty of  
16 \$1,500; as Citation 2 Item 6, that the employer committed a serious  
17 violation of WAC 296-62-07719(3)(a)(i), with an abatement date of  
18 July 27, 1999, and a proposed penalty of \$1,500; as Citation 2 Item 7,  
19 that the employer committed a serious violation of  
20 WAC 296-62-07723(7), with an abatement date of July 27, 1999, and a  
21 proposed penalty of \$1,500; as Citation 3 Item 1, that the employer  
22 committed a general violation of WAC 296-62-07712(7)(b)(ii)(I), with an  
23 abatement date of July 27, 1999, and no proposed penalty; and as  
24 Citation 3 Item 2, that the employer committed a general violation of  
25 WAC 296-62-07712(7)(a)(i)(D), with an abatement date of July 27,  
26 1999, and no proposed penalty. On August 23, 1999, the employer  
27 received the Citation and Notice.

28  
29 On September 14, 1999, the employer filed a Notice of Appeal of the  
30 Citation and Notice with the Safety Division of the Department. On  
31 September 30, 1999, the Department forwarded the Notice of Appeal to  
32 the Board of Industrial Insurance Appeals as a direct appeal. On  
33 September 30, 1999, the Board issued a Notice of Filing of Appeal  
34 pursuant to the provisions of the Washington Industrial Safety and  
35 Health Act, assigned the employer's appeal Docket No. 99 W0381, and  
36 directed that proceedings be held on the issues raised therein.

- 37  
38 2. Beginning on February 15, 1999 and continuing through February 22,  
39 1999, William Dickson Company employees were performing asbestos  
40 abatement work at a vacant building that had previously been the  
41 Best School, located at 6500 112th Ave. N.E., Kirkland, Washington.  
42 Asbestos-containing material was removed from areas of the building  
43 identified as the attic, lower crawl space, classrooms, and boiler room.  
44 Following removal of asbestos-containing material from the building, the  
45 building was to be demolished by William Dickson Company.

- 1  
2 3. When friable (readily crumbled) asbestos is disturbed, fibers can  
3 become airborne, and one of the means to prevent asbestos from  
4 becoming airborne is to wet asbestos-containing material before  
5 disturbing it. The permissible exposure level to asbestos is .1 fibers per  
6 cubic centimeter of air, averaged over an 8-hour workday. Unprotected  
7 exposure to airborne asbestos over a substantial period of time can  
8 result in serious health consequences, which include lung cancer,  
9 mesothelioma, and asbestosis.
- 10  
11 4. Between February 15, 1999 and February 22, 1999, employees of  
12 William Dickson Company removed asbestos-containing material from  
13 the Best School site. While some water was applied to the  
14 asbestos-containing material prior to its removal, the material was not  
15 adequately wet prior to its removal.
- 16  
17 5. On February 17, 1999, asbestos abatement was completed in the lower  
18 crawl space. William Dickson Company did not conduct clearance air  
19 monitoring at the completion of asbestos abatement in the lower crawl  
20 space. On February 18, 1999, asbestos abatement was completed in  
21 the attic. William Dickson Company did not conduct air monitoring at  
22 the completion of asbestos abatement in the attic. Due to the fact that  
23 the building was to be demolished following completion of asbestos  
24 abatement, the job supervisor for William Dickson Company,  
25 Chris Sagnella, did not believe that clearance air monitoring was  
26 required.
- 27  
28 6. William Dickson Company failed to conduct air monitoring prior to  
29 removing asbestos-containing material from the Best School site. Due  
30 to the fact that the building was to be demolished following completion of  
31 asbestos abatement, the job supervisor for William Dickson Company  
32 did not believe that pre-abatement air monitoring was required.
- 33  
34 7. Certain William Dickson Company employees, specifically Mike Fay and  
35 Dennis Osterbuhr, failed to wear respiratory protection while performing  
36 asbestos removal at the Best School site.
- 37  
38 8. During the removal of asbestos-containing material from the  
39 Best School site, William Dickson Company failed to establish critical  
40 barriers over all openings to regulated areas, specifically the attic and  
41 lower crawl space.
- 42  
43 9. During the asbestos abatement work at the Best School site,  
44 William Dickson Company failed to ensure that all surfaces in and  
45 around the removal work area were cleared of any asbestos debris.
- 46  
47 10. William Dickson Company failed to smoke test all glove bags used for  
asbestos removal at the Best School site.



- 1  
2 11. During the asbestos abatement work at the Best School site, including,  
3 but not limited to, work performed on February 22, 1999,  
4 William Dickson Company did not require that all employees performing  
5 Class I asbestos removal wear full body protective clothing.  
6
- 7 12. During the asbestos abatement work at the Best School site,  
8 William Dickson Company failed to ensure that a decontamination area,  
9 consisting of an equipment room, shower and clean room, was  
10 established adjacent and connected to the attic and crawl space  
11 removal areas.  
12
- 13 13. During the asbestos abatement work at the Best School site,  
14 William Dickson Company failed to ensure that, at all necessary times, a  
15 two-chamber waste load out was established adjacent to the boiler room  
16 negative pressure enclosure.  
17
- 18 14. During the asbestos abatement work at the Best School site, William  
19 Dickson Company failed to ensure that Class I glove bag work was  
20 conducted by at least two persons.  
21
- 22 15. On February 22 and 24, 1999, William Dickson Company failed to  
23 ensure that the boiler room enclosure was kept under negative pressure  
24 until all debris was removed and air clearance samples were obtained.  
25
- 26 16. Prior to and on February 22, 1999, William Dickson Company did not  
27 have clearly established work rules designed to prevent safety violations  
28 during the asbestos abatement job at the Best School site.  
29
- 30 17. Prior to and on February 22, 1999, William Dickson Company did not  
31 adequately communicate safety rules and standards to Mr. Fay,  
32 Mr. Mensching, Mr. Osterbuhr, or Mr. Sagnella.  
33
- 34 18. Prior to and on February 22, 1999, William Dickson Company failed to  
35 take adequate steps to discover violations of safety rules and, at all  
36 relevant times, had not effectively enforced the rules when violations  
37 were discovered, during the asbestos abatement job at the Best School  
38 site.  
39
- 40 19. William Dickson Company did substitute its judgment for that of  
41 WAC 296-62-07712(2)(c) and WAC 296-62-07712(5)(c), which are  
42 Citation 1 Item 1 and Citation 1 Item 2a, and are found to have been  
43 violated. These violations are therefore willful, and a multiplier of 10 is  
44 therefore appropriate for Citation 1 Item 1 and Citation 1 item 2a.  
45
- 46 20. With respect to WAC 296-62-07712(2)(c), the employer failed to ensure  
47 that asbestos-containing material was handled or removed in a wet,  
saturated state. The probability of death or serious harm was rated as a

1 3 on a 1 to 6 scale, with 6 being high. The severity of the hazard was  
2 rated very high (rated as a 6 on a 1 to 6 scale, with 6 being high),  
3 yielding a gravity rating of 18. The employer had a good history with  
4 respect to workplace safety. The violation was found to be willful and  
5 serious with no adjustment in the penalty for good faith. The company  
6 employed 27 workers. With adjustments for size and history, the  
7 adjusted base penalty is \$1,500. Willful violations require the base  
8 adjusted base penalty to be multiplied by a factor of 10, making the  
9 appropriate penalty for this violation \$15,000.

10  
11 21. With respect to WAC 296-62-07712(5)(c), the employer failed to ensure  
12 that clearance air monitoring was conducted at the completion of  
13 asbestos removal. The probability of death or serious harm was rated at  
14 a 3 on a 1 to 6 scale, with 6 being high. The severity of the hazard was  
15 rated very high (rated as a 6 on a 1 to 6 scale with 6 being high),  
16 yielding a gravity rating of 18. The employer had a good history with  
17 respect to workplace safety. The violation was found to be willful and  
18 serious with no adjustments in the penalty for good faith. The company  
19 employed 27 workers. With adjustments for size and history, the  
20 adjusted base penalty is \$1,500. Willful violations require the base  
21 adjusted base penalty to be multiplied by a factor of 10, making the  
22 appropriate penalty for this violation \$15,000.

23  
24 22. With respect to WAC 296-52-07709(3)(f), the employer failed to ensure  
25 that pre-abatement air monitoring was conducted prior to the  
26 commencement of asbestos removal. The probability of harm was 3.  
27 The severity of the hazard was rated at 6, yielding a gravity rating of 18.  
28 The employer's history with respect to workplace safety was good.  
29 Because willful violations were found, good faith was rated at zero. The  
30 company employed 27 workers. The appropriate penalty for this  
31 violation was \$1,500.

32  
33 23. With respect to WAC 296-62-07715(1)(g)(i), the employer failed to  
34 ensure that respiratory protection was worn by employees when  
35 removing asbestos debris from the attic. The probability of harm was 3.  
36 The severity of the hazard was rated at 6, yielding a gravity rating of 18.  
37 The employer's history with respect to workplace safety was good.  
38 Because willful violations were found, good faith was rated at zero. The  
39 company employed 27 workers. The appropriate penalty for this  
40 violation was \$1,500.

41  
42 24. With respect to WAC 296-62-07712(6)(b)(i), the employer failed to  
43 ensure that critical barriers were placed over all openings to the  
44 regulated area. Critical barriers were not established and maintained for  
45 the attic and crawl space removal. The probability of harm was 3. The  
46 severity of the hazard was rated at 6, yielding a gravity rating of 18. The  
47 employer's history with respect to workplace safety was good. Because  
willful violations were found, good faith was rated at zero. The company

1 employed 27 workers. The appropriate penalty for this violation was  
2 \$1,500.

3  
4 25. With respect to WAC 296-62-07712(5)(a), the employer failed to ensure  
5 that all surfaces in and around the removal work area was cleared of  
6 any asbestos debris. The probability of harm was 3. The severity of the  
7 hazard was rated at 6, yielding a gravity rating of 18. The employer's  
8 history with respect to workplace safety was good. Because willful  
9 violations were found, good faith was rated at zero. The company  
10 employed 27 workers. The appropriate penalty for this violation was  
11 \$1,500.

12  
13 26. With respect to WAC 296-62-07712(7)(b)(ii)(B), the employer failed to  
14 ensure that all glove bags used for asbestos removal were smoke tested  
15 prior to use. The probability of harm was 3. The severity of the hazard  
16 was rated at 6, yielding a gravity rating of 18. The employer's history  
17 with respect to workplace safety was good. Because willful violations  
18 were found, good faith was rated at zero. The company employed  
19 27 workers. The appropriate penalty for this violation was \$1,500.

20  
21 27. With respect to WAC 296-62-07717(1)(a), the employer failed to ensure  
22 that all employees performing Class 1 asbestos removal wear full body  
23 protective clothing. The probability of harm was 3. The severity of the  
24 hazard was rated at 6, yielding a gravity rating of 18. The employer's  
25 history with respect to workplace safety was good. Because willful  
26 violations were found, good faith was rated at zero. The company  
27 employed 27 workers. The appropriate penalty for this violation was  
28 \$1,500.

29  
30 28. With respect to WAC 296-62-07719(3)(a)(i), the employer failed to  
31 ensure that a contamination area, consisting of an equipment room,  
32 shower, and clean room, was established adjacent and connected to the  
33 attic and crawl space removal areas. The probability of harm was 3.  
34 The severity of the hazard was rated at 6, yielding a gravity rating of 18.  
35 The employer's history with respect to workplace safety was good.  
36 Because willful violations were found, good faith was rated at zero. The  
37 company employed 27 workers. The appropriate penalty for this  
38 violation was \$1,500.

39  
40 29. With respect to WAC 296-62-07723(7), the employer failed to ensure  
41 that a two chamber waste load out was established adjacent to the  
42 boiler room negative pressure enclosure. The probability of harm was 3.  
43 The severity of the hazard was rated at 6, yielding a gravity rating of 18.  
44 The employer's history with respect to workplace safety was good.  
45 Because willful violations were found, good faith was rated at zero. The  
46 company employed 27 workers. The appropriate penalty for this  
47 violation was \$1,500.

1 30. With respect to WAC 296-62-07712(7)(b)(ii)(I), the employer failed to  
2 ensure that Class 1 glove bag work was conducted by at least two  
3 persons. This was found to be a general violation with no penalty  
4 assessed.

5  
6 31. With respect to WAC 296-62-07712(7)(a)(i)(D), the employer failed to  
7 ensure that the boiler room was kept under negative pressure until all  
8 debris was removed and air clearance samples were obtained. This  
9 was found to be a general violation with no penalty assessed.

### CONCLUSIONS OF LAW

- 12 1. The Board of Industrial Insurance Appeals has jurisdiction over the  
13 parties and the subject matter to this appeal.
- 14 2. On or about February 22, 1999, William Dickson Company committed a  
15 willful violation of WAC 296-62-07712(2)(c).
- 16 3. On or about February 22, 1999, William Dickson Company committed a  
17 willful violation of WAC 296-62-07712(5)(c).
- 18 4. On or about February 22, 1999, William Dickson Company committed a  
19 **serious** violation of WAC 296-62-07709(3)(f).
- 20 5. On or about February 22, 1999, William Dickson Company committed a  
21 **serious** violation of WAC 296-62-07715(1)(g)(i).
- 22 6. On or about February 22, 1999, William Dickson Company committed a  
23 **serious** violation of WAC 296-62-07712(6)(b)(i).
- 24 7. On or about February 22, 1999, William Dickson Company committed a  
25 **serious** violation of WAC 296-62-07712(5)(a).
- 26 8. On or about February 22, 1999, William Dickson Company committed a  
27 **serious** violation of WAC 296-62-07712(7)(b)(ii)(B).
- 28 9. On or about February 22, 1999, William Dickson Company committed a  
29 **serious** violation of WAC 296-62-07717(1)(a).
- 30 10. On or about February 22, 1999, William Dickson Company committed a  
31 **serious** violation of WAC 296-62-07719(3)(a)(i).
- 32 11. On or about February 22, 1999, William Dickson Company committed a  
33 **serious** violation of WAC 296-62-07723(7).
- 34 12. On or about February 22, 1999, William Dickson Company committed a  
35 **general** violation of WAC 296-62-07712(7)(b)(ii)(I).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

13. On or about February 22, 1999, William Dickson Company committed a **general** violation of WAC 296-62-07712(7)(a)(i)(D).

14. Citation and Notice No. 302198627, dated August 20, 1999, and assessing total penalties of \$40,500 is correct and is affirmed.

It is so ORDERED.

Dated this 18th day of December, 2001.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/ \_\_\_\_\_  
THOMAS E. EGAN Chairperson

/s/ \_\_\_\_\_  
FRANK E. FENNERTY, JR. Member