



**Barry L. Kluger**  
**Inspector General**

**Office of the Inspector General**  
Metropolitan Transportation Authority  
Two Penn Plaza, 5<sup>th</sup> Floor  
New York, New York 10121  
212-878-0000

August 22, 2011

Thomas Prendergast  
President, MTA New York City Transit  
2 Broadway, 30<sup>th</sup> Floor  
New York, NY 10004

Re: **Criminal Conduct by MTA NYC Transit  
Employee MD. Shamim A. Akond  
MTA/OIG #2011-13**

Dear Mr. Prendergast:

Following a joint investigation with the New York County District Attorney's Office and others into American Standard Testing and Consulting Laboratories, Inc. (ASTC), MTA NYC Transit Department of Buses (NYC Transit) employee MD. Shamim A. Akond (Akond),<sup>1</sup> Civil Engineer II, was charged by a Manhattan Grand Jury (the Manhattan Indictment) with one count of Enterprise Corruption (Penal Law Section 460.20(1)(a)); four counts of Offering a False Instrument for Filing in the First Degree (Penal Law 175.35), two counts of Scheme to Defraud First Degree (Penal Law Section 190.65(1)(b) and four counts of Falsifying Business Records in the First Degree (Penal law Section 175.10). Specifically, Akond, who worked for both NYC Transit and ASTC, is charged with affixing his Professional Engineer's stamp and signature stamp (or permitting them to be affixed) to fraudulent concrete testing results that were submitted to numerous public and private entities including MTA. Akond was arraigned on these charges on August 4, 2011.

In addition, the MTA Office of the Inspector General (OIG) determined that Akond failed to disclose his employment as ASTC's Laboratory Director in his Pre-Employment Application Background Verification Questionnaire, failed to obtain dual employment authorization in a timely manner, and provided false answers to questions in sworn interviews with OIG. This conduct is in violation of NYC Transit policies and procedures and would constitute crimes if proved in a court of appropriate jurisdiction.

## **INVESTIGATION**

### ***Background***

OIG determined that Akond was hired by ASTC in September 2007 as a Professional Engineer (PE), where he was the lab director through the end of 2009. Akond's purported duties at ASTC

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<sup>1</sup> Pass # 006031

included, but were not limited to, the review of concrete, asphalt, soil and concrete design mix reports that require a PE stamp.

On February 4, 2008, Akond began his employment with NYC Transit Department of Buses as a Civil Engineer II assigned to work at the NYC Transit facility located at 25 Jamaica Avenue, Brooklyn, NY. Akond's position requires that he have a Civil Engineering Degree and a PE license.

In the course of this investigation, Akond was interviewed on May 15, 2009, August 12, 2009 and September 15, 2009. In each interview he was placed under oath and the interview was recorded. At the interviews of August 12 and September 15, 2009, he was represented by a District Council 37 attorney, Erica Gray-Nelson.

#### ***Akond's PE Stamp Affixed to Document with False Compressive Strength Results***

On April 30, 2009, representatives from the New York City Department of Buildings (D.O.B.) went to ASTC headquarters and requested to speak to the Lab Director, Akond, who was not present. During that visit, they observed four unbroken/untested concrete cylinders exposed to the elements. ASTC president, Alan Fortich, told the D.O.B. representatives that the cylinders were "extras" and produced a compressive strength report (CFR-274-274A) from field testing on the Croton Harmon Station Locomotive Shop (Phase III) MTA Metro North Railroad (MNR) project with four designated cylinders labeled "extra." An extra means that the cylinder remains unbroken/untested in case a back up test is needed in the future.

However, our investigation determined that almost a year earlier, ASTC had issued a report which claimed that those same four unbroken - and therefore untested- cylinders had been tested. This report, dated June 20, 2008, was submitted on the MNR project. That report, which contains fabricated compressive strength numbers, bears Akond's PE and signature stamp. When questioned about CFR-274-274A, Akond stated that he had reviewed the report prior to his signature and PE stamp being affixed to it. Akond's criminal liability for his role in this is reflected in Pattern Acts 39 & 40 (Falsifying Business Records in the First Degree, Penal Law Section 175.10) of the Enterprise Corruption Count of the Manhattan indictment.

#### ***Akond's PE Stamp Affixed to Documents Which He Did Not Review***

The investigation determined that Akond was on vacation outside of the United States from May 26 to July 17, 2009. During that period of time two Concrete Inspection and Testing reports were created by ASTC which bear Akond's signature and PE stamp attesting to concrete compressive strength test results which were allegedly achieved during the time period when Akond could not have been present. Those reports (ASTC reports numbered CFR 117 and 118 contained 28 day concrete compressive strength results for cylinders that were cast on April 29 and 30, 2009. The 28 day results reported on those documents could not have been obtained prior to May 27 and 28, 2009, dates that Akond was outside the country. Copies of the reports were attached to an ASTC

invoice dated July 3, 2009 in connection with a NYC Transit job (contract E-31278, Vent Plant Rehabilitation, 6<sup>th</sup> Avenue and 52<sup>nd</sup> Street). His alleged agreement to allow his Professional Engineer's stamp to be used to stamp materials testing reports that he had not reviewed is encompassed in the Enterprise Corruption count of the Manhattan Indictment (Pattern Act 35, Scheme to Defraud First Degree, Penal Law Section 190.65) as well as Count 27 of the Manhattan indictment charging Scheme to Defraud in the First Degree.<sup>2</sup>

***False statement to OIG regarding Akond's PE stamp***

In a sworn recorded interview of August 12, 2009, Akond attempted to explain the appearance of his signature and PE stamps on these documents by opining that maybe he had stamped the 7 day results on the reports and that the 28 day results were added after he had already stamped the report. He ultimately provided a completely different explanation and stated that he had not reviewed the 28 day results and that if his signature stamp and PE stamp were affixed after those results were obtained, it was done so without his permission.

In a recorded, sworn interview of September 15, 2009, he was specifically asked if he had ever authorized anyone to put results on a report after his signature stamp and PE stamp had been affixed to the report. He said he had not and if anyone did that it would have been a fraud.

***Falsification of his Pre-employment application***

On December 31, 2007, Akond submitted a pre-employment application to NYC Transit which directs an applicant to "BE SURE ALL QUESTIONS ARE ANSWERED COMPLETELY." The EMPLOYMENT INFORMATION section gives the following instructions: "Start with the most recent and work backward 10 years including UNEMPLOYED time. ... Give complete accurate dates, address and telephone number for each employment." At the end of the form there is an Applicant's statement which reads: "I declare, under penalties of the penal law, that I have completed both pages of the Pre-employment Application/Background Verification Questionnaire and that the statements contained therein are to the best of my knowledge and belief, true and correct and that I have not knowingly and willingly made a false statement or given information which I know to be false in connection therewith." Despite signing the applicant statement, Akond did not list his employment as the Laboratory Director of ASTC which commenced in 2007 and continued after his hire by NYC Transit through the end of 2009.

***Failure to obtain Dual Employment permission in a timely manner***

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<sup>2</sup> If proved, these charges could provide the basis for certain penalties up to and including the revocation of his PE license as it is a punishable act of "professional misconduct" for a PE to affix the licensee's signature and seal to documents for which the professional services have not been performed or thoroughly reviewed by the licensee. [8 NYCRR §29.3 (a)(3); Education Law § 6509 (2)(9); 6511].

In addition to failing to disclose his ASTC employment in his pre-employment application, Akond failed to apply for dual employment permission in a timely manner. Rather, it was not until May 1, 2009, one day after the D.O.B. representatives were looking for him at his outside employment location, that he filed for a dual employment form. In that application, Akond disclosed his employment with ASTC and wrote that he started working at ASTC in September of 2007. In the section of the form that asked whether his second employer “conduct[s] business” with NYC Transit, Akond answered “no,” claiming that ASTC was only a sub-contractor working for general contractors and not directly for NYC Transit.<sup>3</sup> Inasmuch as Akond knew that the test reports for which his P.E. and signature stamps were being used were submitted to NYC Transit and other MTA agencies, OIG views this explanation as disingenuous at best.

Akond’s dual employment application was approved by NYC Transit despite the fact that Transit POLICY/INSTRUCTION 4.23.2 (6.51.2) VI B specifically requires employees to obtain permission before engaging in outside employment and that Transit POLICY/INSTRUCTION 4.23.2 (6.51.2) VI B. 2, requires newly appointed employees to get permission for outside employment before starting Transit work.

### ***False statements to the OIG***

In the interviews of May 15 and August 12, Akond admitted that he was aware of the dual employment policy at the time he was hired in February 2008. When asked why he waited until May 1, 2009 to submit his application, he provided two different explanations. His first explanation was that although he was aware of the policy from his very first date of employment, he thought that previous approval he received for dual employment when he was employed by the New York City Department of Environmental Protection (DEP), somehow covered him with his job at NYC Transit. When pressed, he acknowledged that he knew that NYC Transit and NYC DEP were separate entities and that the previous approval would not have obviated his need to comply with NYC Transit’s rules.<sup>4</sup>

His second explanation for the timing of his filing was that it was prompted by his preliminary review and contemplation of filling out a Financial Disclosure form for the New York State Commission on Public Integrity. This explanation belies common sense and logic in that Akond admitted that he was not, and has never been required to file a Financial Disclosure form. Despite this, he explained that he began to review and thought about filling out a Financial Disclosure form

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<sup>3</sup> As a result of this case and others, the OIG urged NYC Transit to change its form to include a requirement to disclose whether the outside employer is a sub-contractor to any MTA agency.

<sup>4</sup> Indeed, the approval that he received from the New York City Conflicts of Interest Board (COIB), dated April 16, 2007, makes it abundantly clear that COIB’s approval was based upon a representation that although ASTC had business dealings with the City, it had none with DEP. Further, COIB’s approval was limited to Akond’s job with DEP and had very precise limitations on his ASTC activities. For example, COIB’s approval stated that Akond “must recuse himself from any ASTC matter coming before DEP and that he may not solicit any engineering business from anyone with whom he deals at DEP;” and “apart from the forwarding of his reports” (by the contractor) “to the Department of Buildings, he” (Akond) “does not communicate, directly or indirectly, with any City agency, other than on ministerial matters, on behalf of ASTC and its clients.” .

in 2009 because he had received a series of emails from DC 37 in which it reported that an application for an exemption from filing was being made by DC 37 on behalf of various job titles being represented by that union. While Akond produced three emails which he said supported his assertion, those emails actually undermine his claim as his job title was not mentioned in the exemption application and the only communication he claimed to have received from the New York State Commission on Public Integrity did not advise him that he had to file. Clearly, his explanation relating to his belief that he was required to file a dual employment form while filling out a financial disclosure is incredible on its face.

As noted above, DOB representatives went to ASTC looking for the Lab Director on April 30, 2009. In addition, on that same day investigators also went to the RFK Bridge looking for the ASTC Laboratory Director as they were told that ASTC was doing work at that bridge at that time. It was the very next day, after almost 15 months of employment with NYC Transit, that Akond submitted his dual employment form. In the interviews of May 15 and August 12, OIG investigators asked Akond whether those visits were the real reason he filed on May 1<sup>st</sup>. Despite the proximity of these events, Akond nonetheless denied that the DOB employee inquiries at both ASTC headquarters and the RFK Bridge had anything to do with his application. Again, this denial lacks credibility.

## FINDINGS

1. Akond did not disclose his employment at ASTC in his initial employment application. His omission of that information would constitute the crime of Offering a False Instrument for Filing in the First Degree and Falsifying Business Records in the Second Degree (Penal Law Sections 175.35 & 175.05) if proved in a court of appropriate jurisdiction and is also a violation of Transit Rule 11(f)
2. Akond's failure to timely submit a request for dual employment authorization. This is a violation of Transit Rule 4(a) and his multiple explanations for that failure were not truthful. His false statements to NYC Transit and OIG violate Transit Rules 4(a), 8(a), 11(f) and/or §1.07 MTA Code of Ethics<sup>5</sup> would constitute the crime of Perjury in the First Degree (Penal Law Section 210.15) if proved in a court of appropriate jurisdiction.
3. Akond has been charged with falsifying concrete compressive strength tests on NYC Transit and other projects in violation of both the Penal Law as well as Transit Rule 11(f).

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<sup>5</sup> Section 1.07 MTA Code of Ethics Cooperation with Audits and Investigations

Employees must cooperate fully and honestly with audits and investigations conducted by the MTA Inspector General, New York State Ethics Commission, Auditor General, Chief Compliance Officer, or other governmental agency. Failure to so cooperate will subject an Employee to appropriate disciplinary penalty, up to and including dismissal.

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### **RECOMMENDATION**

- 1) Akond should be terminated.

In accordance with 1279(6) of the Public Authorities Law, please advise me within 30 days of your receipt of this letter of any actions you plan to take with regard to the foregoing. If you or anyone on your staff has any questions or need additional information, please feel free to contact me or Frank C. Lanzo, Special Investigative Counsel/Director of Training at 212-878-0012.

I would also like to thank your staff for their assistance and cooperation in this matter.

Very truly yours,

Barry L. Kluger