

APPENDIX 6
PHASE II - VARIANCE DECISION FILE NO. 05-
0813 DATED JUNE 23, 2005

June 23, 2005

TRC Environmental Corp
Attn: Mr Arnel Javal
1430 Broadway, 10th Floor
New York NY 10018

RE: File No. 05-0813

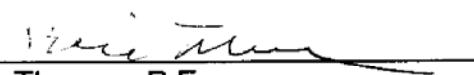
Dear Sir/Madam:

**STATE OF NEW YORK
DEPARTMENT OF LABOR
DIVISION OF SAFETY AND HEALTH**

The attached is a copy of Decision, dated 6/23/2005, which I have compared with the original filed in this office and which I DO HEREBY CERTIFY to be a correct transcript of the text of the said original.

If you are aggrieved by this decision you may appeal within 60 days from its issuance to the Industrial Board of Appeals as provided by Section 101 of the Labor Law. Your appeal should be addressed to the Industrial Board of Appeals, Empire State Plaza, Agency Building 2, 20th Floor, Albany, New York, 12223 as prescribed by its Rules and Procedure, a copy of which may be obtained upon request.

WITNESS my hand and the seal of the
NYS Department of Labor, at the City of
Albany, this day of ,
Two thousand five.


Blaise Thomas, P.E.
Associate Safety and Health Engineer
Engineering Services Unit

cga

STATE OF NEW YORK
DEPARTMENT OF LABOR
STATE OFFICE BUILDING CAMPUS
ALBANY, NEW YORK 12240-0100

Variance Petition

of

TRC Environmental Corporation

On Behalf of

Lower Manhattan Development Corporation

Petitioner

in re

Premises: Vacant High Rise Office Building
130 Liberty Street
New York, New York

**Phase II Rooftop Non-friable ACM Transite
and Caulking Removals**

File No. 05-0813

DECISION

Cases 1- 8

ICR 56

The Petitioner, pursuant to Section 30 of the Labor Law, having filed Petition No. 05-0813 on June 13, 2005 with the Commissioner of Labor for a variance from the provisions of Industrial Code Rule 56 as hereinafter cited on the grounds that there are practical difficulties or unnecessary hardship in carrying out the provisions of said Rule; and the Commissioner of Labor having reviewed the submission of the petitioner dated June 10, 2005; and

Upon considering the merits of the alleged practical difficulties or unnecessary hardship and upon the record herein, the Commissioner of Labor does hereby take the following actions:

Case No. 1	ICR 56-6.1
Case No. 2	ICR 56-8.1(j)
Case No. 3	ICR 56-8.1(k1-k5)
Case No. 4	ICR 56-9.1(a)
Case No. 5	ICR 56-10.1(a)
Case No. 6	ICR 56-11.1(b)
Case No. 7	ICR 56-12.1(c)
Case No. 8	ICR 56-15.2(c-e)

VARIANCE GRANTED. The Petitioner's proposal for rooftop removal of 20,000 sq. ft. non-friable ACM transite panels from the cooling tower, and 100 lin. ft. non-friable ACM caulking from rooftop penthouse windows and exhaust fan penetrations at the subject premises in accordance with the attached 3-page stamped copy of the Petitioner's marked-up submittals, is accepted; subject to the Conditions noted below:

THE CONDITIONS

1. Prior to commencement of "Phase II Rooftop Exterior Abatement and Structural Deconstruction" asbestos project work, revised plans for Phase II of the project shall be submitted to all pertinent federal, state and local regulatory agencies, and all necessary approvals obtained.
2. For Phase II rooftop exterior regulated abatement work areas, all proposed air monitoring for contaminants other than asbestos must be submitted to the appropriate regulatory agency for their review and approval, prior to the commencement of any phase II work. The Department will not grant or deny approval for any proposed non-asbestos contaminant air monitoring procedures.
3. All rooftop Phase I WTC dust/residue cleanup shall be completed as per the provisions of Site-Specific Variance decision #05-0427, prior to commencement of the Phase II rooftop asbestos project.

Remote Personal and Waste Decontamination Units

4. A personal decontamination enclosure system that complies with Subpart 56-9 shall be utilized. An attached waste/equipment decontamination area as per the petitioner's proposal shall also be utilized. The personal decontamination enclosure system can be remote, but must be located on the rooftop that is subject to abatement. These enclosure systems shall

be removed only after satisfactory clearance air monitoring results have been achieved or the abatement project is complete. The walkway from the regulated abatement work area to the personal decontamination system or next work area shall have a cleared pathway. This walkway must be restricted to certified personnel access only.

5. If remote decontamination unit(s) are to be used, workers shall don two (2) suits, as described in ICR 56-4.1(d). Each regulated abatement work area and each exit from a contaminated area to an uncontaminated area, to be utilized for transfer of personnel and waste, shall have an attached air lock which serves as a changing chamber, where workers shall remove their outer suit, wipe off their inner suit and don a clean outer suit prior to proceeding to another work area or to the remote decontamination unit over a walk way as defined above.
6. If remote decontamination units are to be used, an airlock as defined in Subpart 56-1.4(e) of this Code Rule shall be constructed at the entrance to each regulated abatement work area, and shall be large enough to serve as a changing area. This area shall not be used as waste decontamination area or a waste storage area.
7. The regulated abatement work areas, decontamination units, airlocks, and rooftop waste staging/consolidation areas shall be cordoned off at a distance of twenty-five feet (25') or the roof edge, whichever is closer, and shall remain vacated except for certified workers until satisfactory clearance air monitoring results have been achieved or the abatement project is complete. These areas shall have Signage posted in accordance with Subpart 56-8.1(b) of this Code Rule.

Rooftop Non-friable Transite and Caulking Removals (Outdoors):

8. Caulking and transite can either be removed within tents or removed as part of a larger work area. Removals without tents will require plasticizing or sealing of nearby windows and openings, floor (rooftop) plastic sheeting, and other operational safeguards as outlined below.
9. For larger work area removals, any operable windows or openings to the building at the work level within twenty-five feet of the immediate work area shall be plasticized with 2 layers of 6 mil fire retardant polyethylene sheeting. The windows can be plasticized outdoors or for reasons of safety, from the indoors. Window, door, louver and fan units subject to ACM removals, must have their openings plasticized at the interior of the building. Windows that are fixed or non-operable, and will remain sealed airtight for the duration of abatement activities, will not require installation of isolation barriers.

10. (Applies if tents are not used.) Under areas where caulking and transite is removed without tents, floor (rooftop) 6 mil fire retardant plastic sheeting, shall be placed on the rooftop below the ACM subject to removal to prevent spread of any ACM remnants. This dropcloth shall be a minimum of 10 feet wide with an additional 10-ft. of width for every floor above the rooftop level where removal work will take place, up to a maximum of 30 feet or the roof edge, whichever is closer. In addition, if a straight scaffolding, man-lift, swing scaffolding or similar equipment is used for areas above the rooftop, the lift/scaffolding unit shall be plasticized with two layers of 6 mil fire retardant polyethylene on the platform proper with plastic sheeting extended vertically to waist-high (as so equipped) guardrail sides and back of the lift unit. While the platform/lift walking surfaces must be plasticized, the Contractor must provide proper traction surfaces or equipment to assure the safety and comfort of abatement workers while performing abatement activities on the lift/scaffold equipment. After caulking and transite is removed from each work location, the platform and plasticized surfaces toward the building shall be wet wiped and/or HEPA vacuumed clean before reuse. The plasticizing on the lift or scaffolding shall be periodically inspected during use and repaired as needed.
11. The immediate work area shall be considered to be the rooftop area from which the asbestos containing caulking and transite materials are actively being removed. The immediate work area shall extend out from the base of the penthouse or cooling tower and shall encompass all areas utilized for staging, waste packaging/consolidation, removal and cleaning operations. The exterior regulated abatement work area shall extend out from the immediate work area ten feet (10') horizontally in all directions, or to the roof edge, whichever is closer. This area shall remain vacated except for certified workers until final approval of the project monitor or satisfactory clearance air monitoring results have been achieved. This area will be posted with signs and barrier tape in accordance with NYCRR 56 and 29 CFR 1926.1101.
12. Residual caulking will be wet scraped and HEPA vacuumed. Materials removed shall be containerized or immediately wrapped in two layers of 6 mil, fire retardant plastic sheeting and secured air tight prior to transport to the rooftop waste packaging/consolidation area.
13. (Applies if tents are not used.) Under areas where caulking is to be removed without tents, whenever possible an asbestos worker with a HEPA vacuum will position the vacuum hose within four (4) inches of the material being removed to capture small pieces of asbestos caulking and asbestos fines. The hose end will be positioned so, as that as much smaller pieces of caulking as possible will fall into the vacuum hose end. Larger pieces of caulking should be immediately bagged or containerized.

14. Asbestos containing materials will not be allowed to accumulate on the plastic sheeting.
15. The area shall be thoroughly cleaned and all remaining plastic sheeting/tape removed, then an authorized and qualified individual; independent of the removal Contractor, (i.e.: the Project Monitor; Design Engineer; or other representative of the Owner), shall determine if the area is dry and free of all visible asbestos debris/residue. If the area is determined to be acceptable, this qualified individual may authorize clearance air sampling to be performed.
16. For rooftop regulated abatement work areas, air monitoring requirements of ICR 56-17 apply, as well as additional inside work area abatement air monitoring as per the petitioner's proposal.
17. Usage of this variance is limited to those asbestos removals identified in this variance or as outlined in the Petitioner's proposal.

In addition to the conditions required by the above specific variances, the Petitioner shall also comply with the following general conditions:

GENERAL CONDITIONS


1. A copy of this DECISION and the Petitioner's proposals shall be conspicuously displayed at the entrance to the personal decontamination enclosure.
2. This DECISION shall apply only to the removal of asbestos-containing materials and WTC dust/residue from the aforementioned areas of the subject premises.
3. The Petitioner shall comply with all other applicable provisions of Industrial Code Rule 56-1 through 56-18.
4. The Department reserves the right to issue reopenings and/or amendments to this DECISION, based upon additional information submitted by the petitioner or site conditions observed by enforcement personnel.

5. The final say as to interpretation of this variance rest solely with the NYS Dept of Labor Engineering Services Unit. Any deviation from variance conditions shall render this variance Null and Void pursuant to 56-18.2.
6. Prior to commencement of "Phase I Pre-demolition Cleaning and Abatement" asbestos project work, revised plans for Phase I of the project shall be submitted to all pertinent federal, state and local regulatory agencies, and all necessary approvals obtained.
7. This DECISION shall terminate on June 30, 2007.

Date: June 23, 2005

By

LINDA ANGELLO
COMMISSIONER OF LABOR


x0x Blaise Thomas, P.E.
Associate Safety and Health Engineer

PREPARED BY: Christopher G. Alonge, P.E.
Senior Safety and Health Engineer

REVIEWED BY: Blaise Thomas, P.E.
Associate Safety and Health Engineer

130 LIBERTY STREET, NEW YORK,
RoofTOP *EX 6/21/05* REQUEST FOR VARIANCE
PHASE II: EXTERIOR ABATEMENT AND STRUCTURAL DECONSTRUCTION

05 08 18

NATURE OF THE WORK

RoofTOP *EX 6/21/05*
The proposed Phase II ~~Exterior~~ Abatement will be conducted so that the Building can be safely deconstructed to allow for redevelopment of the WTC Site. This Phase of the project entails removal of *RoofTOP* exterior building materials containing asbestos which were present on the Building exterior prior to September 11, 2001. This variance request addresses materials specific to Phase II of the deconstruction, however work may be performed concurrently with Phase I work as addressed in previous Variance File No. 05-0427. *EX 6/21/05*

**SEE VARIANCE CONDITIONS* *EX 6/21/05*

REASON FOR REQUESTING A VARIANCE

LMDC, its consultants and its contractor are committed to compliance with applicable law throughout the cleaning and deconstruction of the Building. Accordingly, the Request for Variance is intended to comply with applicable federal, state and local law. It is the goal of LMDC, its consultants, and its contractor to conduct the proposed abatement in a manner which (i) will not expose the general public to asbestos, (ii) will minimize worker exposure to asbestos through the use of appropriate controls and personal protective equipment, (iii) will minimize adverse impacts of the project on the adjacent community, (iv) will address the practical operational opportunities and challenges presented by the Building and the Building conditions, and (v) will prepare the Building for deconstruction.

PROPOSED EXEMPTIONS

We request exemption from the following sections of Title 12 NYCRR Part 56, also known as Industrial Code Rule ("ICR") 56:

56- 6.1 Ventilation;

56- 8.1(j), (k)(1-5) Isolation Barriers;

56- 9.1 (a) – Attached Personal Decontamination Enclosure System;

56- 10.1 (a) – Attached Waste Decontamination Enclosure System;

56- 11.1 (b) – Pre-abatement Settling Period;

56-12.1 (c) – Handling

56- 15.2(c-e) – Post-abatement Requirements

Exemption from these subsections is requested based on the following:

- a. The subject facility is a vacant 40 floor high-rise office building in lower Manhattan scheduled for deconstruction.
- b. This exterior abatement work will be coordinated with the building deconstruction.
- c. Exterior building materials containing asbestos which were present in the Building prior to September 11, 2001 (referred to herein as "ACAM") are non-friable and will be removed manually utilizing wet methods. *EX 6/21/05*
- d. HEPA filtered local exhaust ventilation, as required by Industrial Code Rule 56-7.1(j), shall be utilized.
- e. All openings within twenty-five feet of the active abatement area (including, but not limited to windows, doors, ducts and grilles) on the roof level shall be sealed with two (2) layers of at least six mil fire retardant polyethylene sheeting ("poly").
- f. A personal decontamination enclosure system "remote" from the work area but otherwise compliant with Subpart 56-9, shall be utilized.
- g. A waste decontamination enclosure system "remote" from the work area but otherwise compliant with Subpart 56-10, shall be utilized.
- h. Exterior work will not be performed within a negative pressure enclosure.

130 LIBERTY STREET, NEW YORK, .
REQUEST FOR VARIANCE
PHASE II: EXTERIOR ABATEMENT AND STRUCTURAL DECONSTRUCTION

05 08 13

I. ROOFTOP COOLING TOWER TRANSITE AND CAULKING MATERIALS

~~* SEE VARIANCE CONDITIONS~~ *CY 6/21/05*

1. The work area shall be cordoned off with barrier tape or line and shall be accessible through only one entrance/exit. The asbestos work area shall extend beyond the active abatement area to the roof edge or a maximum distance of twenty five (25) feet, whichever is less.
2. We propose that in areas where these distances are not attainable due to obstructions (equipment, structural components) an orange construction fence shall be erected at the furthest point achievable to demarcate the work area.
3. The work area below the materials to be removed shall be plasticized using ~~a drop cloth consisting~~ *TWO LAYERS* of six mil fire retardant poly. The poly shall extend outward from below the active abatement area at least ten feet, ~~where possible~~. *CY 6/21/05*
4. The area surrounding the cooling tower and roof top penthouse from which transite or caulking is to be removed shall be plasticized using two layers of at least six mil poly. That poly shall extend outward on the surface of the rooftop from the perimeter of the structure for a distance of at least ~~six~~ *TEN (10)* feet. *CY 6/21/05*
5. Uncertified persons shall not be permitted within the work area. The vacating of each work area and warning signs shall comply with ICR 56-8.1(b).
6. All openings (including, but not limited to windows, doors, ducts, and grilles) on the roof level within twenty-five (25) feet of the active abatement area shall be sealed with two (2) layers of at least six mil poly. *CY 6/21/05*
7. The transite and caulking materials shall be removed using manual methods ~~whenever possible~~. *VET* HEPA filtered local exhaust ventilation shall be utilized, as required by Industrial Code Rule 56-7.1(j), ~~whenever removal of ACM requires the use of power tools~~. *CY 6/21/05*
8. Precautions shall include, but not be limited to, the use of amended water to adequately wet the transite panels and the use of controlled methods to lower the panels. The transite panels shall be transferred to a waste consolidation area for packaging prior to being lowered to ground level for placement into a transportation container. Properly packaged and labeled waste will be transferred from the ground level staging area to the transport container. *ROOFTOP* *CY 6/21/05* *UNFASTENING OF INTACT* *CY 6/21/05*
9. Caulking shall be wetted with amended water during removal and immediately placed in asbestos disposal bags of at least six mil poly and sealed airtight.
10. Personal protective equipment as required by Industrial Code Rule 56-4.1(d) shall be provided and used by all personnel within the work area. *ROOFTOP* *CY 6/21/05* *CORDONED OFF* *CY 6/21/05*
11. A personal decontamination enclosure system "remote" from the work area but otherwise compliant with Subpart 56-9, shall be utilized. The personal decontamination enclosure shall be removed only after satisfactory clearance air monitoring results have been achieved.
12. The Contractor shall establish an equipment area adjacent to the regulated work area for the decontamination of ~~employees and their~~ equipment. This equipment area shall consist of an area covered with an impermeable ~~drop cloth~~ (two layers of six mil poly, at a minimum) on the horizontal *PLASTIC SHEETING* *2* *CY 6/21/05*

PHASE II: EXTERIOR ABATEMENT AND STRUCTURAL DECONSTRUCTION

working surface. The equipment area shall be of sufficient size to accommodate cleaning of equipment and ~~removing the outer disposable personal protective clothing~~ without spreading visible accumulations of contamination beyond the equipment area boundaries. *CK 6/21/05*

13. Air sampling and analysis shall be conducted, in each work area, according to the requirements of Subpart 56-17. *Two, CK 6/21/05* An area sample will be taken within ten (10) feet of the work area boundary in an adjacent non work area, for each day of work in that area. *ANALYSIS CK 6/21/05*

14. In addition to the requirements of Subpart 56-17, air monitoring of the entire work area shall be conducted when abatement activities are being conducted. If air sample results indicate any airborne asbestos fiber concentration(s) at or above 0.01 fibers per cubic centimeter, or the background level, whichever is greater, work shall be stopped immediately, methods shall be altered to reduce the airborne asbestos fiber concentrations(s) to the aforementioned level and work shall not resume until that level is attained.

15. If at any time a worker has to pass through an uncontaminated area to access a remote decontamination unit or the next work area, the worker shall don two suits of PPE, remove one suit while in the work area, wet wipe the inner suit, don a clean suit and proceed either to the next work area or the decontamination unit. *AIRLOCK (CHANGING CHAMBER) CK 6/21/05*

II. NON-FRIABLE EXTERIOR ACM WASTE CONSOLIDATION AREA

1. The Contractor shall establish a waste consolidation area in close proximity to the regulated exterior work area for the preparation and packaging of non-friable waste for transportation and disposal. The waste consolidation area shall consist of an area covered with an impermeable drop cloth (consisting of two layers of six mil poly, at a minimum) on the floor/deck or horizontal working surface. *ROOFTOP PACKAGING CK 6/21/05*
2. The waste consolidation area shall be of sufficient size to accommodate consolidation and packaging of waste. *ROOFTOP PACKAGING CK 6/21/05*
3. The waste consolidation area shall be enclosed with barrier tape at a minimum distance of ~~ten~~ *TWENTY-FIVE* feet from the edge of the impermeable drop cloth. *OR TO THE ROOF EDGE, WHICHEVER IS LESS CK 6/21/05*
4. Prior to being removed from the waste consolidation area, all waste will be wrapped in two layers of 6-mil poly, sealed leak tight. *ROOFTOP PACKAGING CK 6/21/05*
5. The exterior surface of the properly packaged waste shall be wet-wiped prior to removal from the waste consolidation area. Properly packaged waste will be transported from the waste consolidation area directly to the disposal container. *PACKAGING CK 6/21/05*

PROJECT SCOPE

Exterior Caulk (Roof Level)	100	LF
Cooling Tower Transite (Roof Level)	20,000	SF