

STATE OF NEW YORK
DEPARTMENT OF LABOR
STATE OFFICE BUILDING CAMPUS
ALBANY, NEW YORK 12226

In the Matter of

Part 56 of Title 12 of the Official Compilation
Of Codes, Rules and Regulations
Of The State of New York

(Cited as 12 NYCRR 56)
(As Amended January 11, 2006)

Cases: ICR 56-11.5(b), and ICR 56-11.5(c)

COMMISSIONER'S
DECISION

APPLICABLE
VARIANCE-A-1
(AV-A-1)

Controlled Demolition of
Municipally-Owned Vacant
Residential
Buildings/Structures Up to
3-Stories in Height

DATED: August 18, 2006

Pursuant to Section 30 of the Labor Law, the Commissioner of Labor has reviewed the above cited provisions of Industrial Code Rule 56, as they relate to the controlled demolition of municipally owned vacant residential buildings/structures up to three stories in height, containing four or less dwelling units.

The Commissioner of Labor has also reviewed numerous petitions for variance or other relief relative to such asbestos projects and the decisions rendered relative to these petitions.

The Commissioner of Labor finds that the issuance of an Applicable Variance from the above cited provisions of Industrial Code Rule 56, as such pertain to the controlled demolition of municipally owned residential buildings/structures of up to three stories in height (containing four or less dwelling units), would not violate the spirit and purpose of said rules and would secure the public safety as contemplated by said rules.

APPLICABLE VARIANCE

A variance from the cited provisions of Industrial Code Rule 56 is hereby GRANTED subject to the following conditions:

THE CONDITIONS

Building/Structure Survey/Inspection Requirements

1. All requirements of Section 56-5 shall be followed for the identification of ACM within buildings/structures that are not condemned due to being structurally unsound.
2. For buildings/structures that are condemned due to being structurally unsound, all provisions of section 56-11.5 shall be followed for the controlled demolition asbestos project.

Removal of all Friable ACM, Transite/Cement Board & Other Non-friable ACM Prior to Controlled Demolition

3. All friable ACM, non-friable transite/cement board, and other non-friable ACM that will likely become crumbled, pulverized, or reduced to powder during controlled demolition at the subject premises shall be removed in accordance with ICR 56 and this variance decision, including obtaining satisfactory clearance air results for all regulated abatement work areas (as necessary), prior to the commencement of this controlled demolition asbestos project.

Secure the Work Site & Establishment of Regulated Areas

4. The entire controlled demolition area at the work site shall be considered the regulated abatement work area and shall be enclosed within a barrier or fence that defines the regulated area. The active demolition areas, cleanup areas, decontamination system enclosures/areas, staging areas and waste dumpster/trailer areas shall be cordoned off at a distance of twenty-five feet (25'), except where physical restrictions limit the barrier distance (e.g. property boundary, roadway or other right-of-way, neighboring building/structure, etc.), and the regulated abatement work area shall remain vacated except for certified workers until satisfactory clearance air monitoring results have been achieved or the abatement project is complete. The intent of this barrier/fence is to define the regulated area at the work site, alert the public to the asbestos work and associated hazards, and to prevent unauthorized entry onto the work site. Four foot high orange construction fence or snow fence is acceptable for the barrier.
5. For areas where compliance with the twenty-five foot barrier/fence requirement isn't possible, the areas shall be cordoned off to the maximum distance possible, and a daily abatement air sample shall be included within ten feet of the reduced barrier.

6. Signage in accordance with the requirements of ICR 56-7.4(c) shall be posted on the exterior of the work site boundary fence/barrier, to warn the public of the asbestos hazard.

Controlled Demolition Removals

7. The provisions of 56-11.5 shall be followed for all non-friable controlled demolition removals, except as modified by this variance.
8. Decontamination system enclosures and areas shall be constructed and utilized as per the requirements of 56-7.5(d) and 56-11.5.
9. For outdoor regulated abatement work areas, all adjacent building openings within twenty-five (25) feet of the outermost limit of the disturbance shall be sealed with two (2) layers of six (6) mil fire retardant plastic sheeting. If the owner of an adjacent building does not allow openings to be sealed as required, the asbestos abatement contractor's supervisor must document the issue within the daily project log, and have the affected building owner sign the log confirming that the owner will not allow the asbestos abatement contractor to seal the openings in the building as required. In addition, a daily abatement air sample shall be included outdoor within ten feet of the affected portion of the adjacent building.
10. Uncertified personnel shall not be allowed to access any regulated abatement work area, with the exception of waste hauler truck drivers. These truck drivers will be restricted to their enclosed cab, while temporarily in the regulated work area for waste transfer activities only. All equipment operators utilized for demolition or removal activities within the regulated work area must be certified in compliance with ICR 56-3.2.
11. No dry disturbance or removal of asbestos material shall be permitted.
12. Wastewater shall be confined within the controlled demolition area. Water may be allowed to accumulate in basements during demolition activities. Basement floors shall be wet prior to breakup, and basement walls shall be caved in and covered with two (2) feet of soil.
13. All demolition debris, structural members, barrier components, used filters and similar items shall be considered to be asbestos containing materials/asbestos contaminated waste and shall be transported and disposed of by appropriate legal method. Structural members, steel components and similar non-ACM components shall be fully decontaminated as per ICR 56, prior to being treated as salvage.

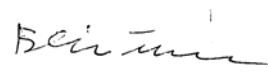
14. In addition to the requirement of Subpart 56-4.9(c), air monitoring within the work areas shall be conducted daily. If more than one shift daily is required to accomplish the work, air monitoring within the work area during abatement shall be performed on each shift, preferably at mid-shift timing.
15. Daily abatement air monitoring is required only on days when abatement or support activities such as ACM disturbance or cleaning activities are performed.
16. The contractor shall observe, at a minimum, the following waiting (settling/drying) periods: Demolition - 2 hrs.
17. After removal and cleanings are complete and a minimum drying period has elapsed, an authorized and qualified Project Monitor shall determine if the work area is dry and free of visible asbestos debris/residue. If the area is determined to be acceptable, the Project Monitor may authorize commencement of clearance air sampling.
18. Upon receipt of satisfactory clearance air sample results for the entire controlled demolition area, the final dismantling of the site may begin.
19. A copy of this Applicable Variance shall be conspicuously posted at the entrance to the personal decontamination unit(s) and to the work area(s).
20. All other applicable provisions of Industrial Code Rule 56-1 through 56-12 shall be complied with.
21. This DECISION supercedes Applicable Variance 107, dated June 3, 1997.

This APPLICABLE VARIANCE shall apply and shall be applied by all enforcement officials to all persons and in all places to which the aforementioned provisions of Industrial Code Rule 56 apply to the controlled demolition of municipally-owned vacant residential buildings/structures with the same force and effect as if this APPLICABLE VARIANCE were duly granted upon separate petition for the use and benefit of every person affected by the cited provisions of Industrial Code Rule 56.

Date: August 18, 2006

LINDA ANGELLO
COMMISSIONER OF LABOR

By



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