

STATE OF NEW YORK
DEPARTMENT OF LABOR
STATE OFFICE BUILDING CAMPUS
ALBANY, NEW YORK 12226-0100

Variance Petition

of

Rome Environmental Solutions & Testing, LLC
Petitioner's Agent

On Behalf of

Herkimer County Industrial Development Agency
Petitioner

in re

Premises: Former Chips Garage-House/Garage
4360 Acme Road
Frankfort, New York 13340

Controlled Demolition with ACM in-Place

File No. SH-63KMG

DECISION

Cases 1-4

ICR 56

The Petitioner, pursuant to Section 30 of the Labor Law, having filed Petition No. SH-63KMG on September 27, 2024 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 September 27, 2024 and additional information received on October 2, 2024; 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 56-8.9(g)
Case No. 2	ICR 56-9.2(d)(1)
Case No. 3	ICR 56-11.5(c)(7)
Case No. 4	ICR 56-11.5(c)(11)

VARIANCE GRANTED. The Petitioner's proposal is for controlled demolition with asbestos in-place at the subject premises in accordance with the attached 43-page stamped copy of the Petitioner's submittal, is accepted; subject to the Conditions noted below:

THE CONDITIONS

Full-Time Project Monitor:

1. A full-time independent project monitor (PM) shall be on site and is responsible for oversight of the abatement contractor during all abatement activities to ensure compliance with ICR 56 requirements including but not limited to ICR 56-3.2(d)(8) and variance conditions.
2. In addition, the PM shall ensure that no visible emissions are generated during abatement activities. If visible emissions are observed, work practices shall be altered according to the PM's recommendations.
3. The PM shall perform the following functions during asbestos abatement projects in addition to functions already required by ICR-56:
 - a. Inspection of the interior of the asbestos project work area made at least twice every work shift accompanied by the Asbestos Supervisor.
 - b. Observe and monitor the activities of the asbestos abatement contractor to determine that proper work practices are used comply all applicable asbestos laws and regulations.
 - c. Inform the asbestos abatement contractor of work practices that, in the PM's opinion, pose a threat to public health or the environment, and are not in compliance with ICR-56 and/or approved variances or other applicable asbestos rules and/or regulations.
 - d. Document in the Project Monitor Log observations and recommendations made to the Asbestos Supervisor based upon the interior/exterior observations of the asbestos project made by the PM.
 - e. Duties specified in variances issued for the project.
4. The PM shall alert the local District Office of the NYSDOL Asbestos Control Bureau whenever, after the PM has provided recommendations to the

Asbestos Supervisor, unresolved conditions remain at the asbestos project site which present a significant potential to adversely affect human health or the environment.

5. The PM is not onsite to direct the abatement workers in their work. That is the responsibility of the Contractor's designated Supervisor. The ultimate caliber of work performance and quality of the completed project is the responsibility of the contractor who performs the work.
6. The PM is not responsible for enforcing Local, State, Industry, or Federal regulations, rules or codes which are not directly applicable to the contracted asbestos abatement activities. These would include, but not limited to, fire codes, electrical codes, building codes, wage rates schedules, etc. While the PM is not responsible for enforcement of these items, the Contractor is still responsible for compliance with such requirements as applicable.
7. The PM is responsible for any duties specified in his/her contract with the Owner.
8. All generated waste removed from the site must be documented, accounted for, and disposed of in compliance with the requirements of NESHAPS and NYSDEC.

Condemnation Letters for Controlled Demolition Variances:

9. For structurally unsound buildings that are in imminent danger of collapse, the local authority having jurisdiction of Code Enforcement Official (AHJ/CEO) shall attest to the condition of the building/structure in writing as required by EPA NESHAPS CR 61.145(a)(3). The local AHJ/CEO shall condemn the building and issue a written order to demolish the building because it is structurally unsound and in imminent danger of collapse. The AHJ may base the order on the findings of a properly qualified, independent third party that conducts an inspection.
10. The condemnation letter that indicates the building is ordered to be demolished due to being structurally unsound and in imminent danger of collapse from the municipality or other AHJ must be submitted with the request or 10-day notification. A copy of this letter shall be posted at the work site and submitted to the EPA as required by CR 145(b)(4)(xiv).
11. A separate asbestos project notification shall be submitted for each building/structure that is to be demolished as per ICR 56-3.4(b).

Secure the Work Site:

12. The entire controlled demolition area and all surrounding portions of the site to be utilized for demolition cleanup, staging areas and regulated abatement work areas, shall be enclosed within a barrier or fence. The intent of this barrier is to define the restricted area at the work site, alert the public to the asbestos work and associated hazards, and to prevent unauthorized entry onto the work site.

Establishment of Regulated Areas:

13. The regulated work areas, decontamination units, airlocks, and dumpster areas shall be cordoned off at a distance of twenty-five feet (25') where possible 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 56-7.4(c) of this Code Rule. For areas where twenty-five feet isn't possible, the areas shall be cordoned off as practical, and a daily abatement air sample shall be included in the vicinity of the barrier.
14. Entry/Exit of all persons and equipment shall be through one designated and secure "doorway" in the barrier or fence, which shall provide an adequate and appropriate means of egress from the work site.
15. 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 within ten feet of the affected portion of the adjacent building.

Controlled Demolition Removals:

16. The provisions of 56-11.5 shall be followed for all controlled demolition removals, except as modified by this variance.
17. Decontamination system enclosures and areas shall be constructed and utilized as per the requirements of 56-7.5(d) and 56-11.5.
18. 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.

19. No dry disturbance or removal of asbestos material shall be permitted.
20. Wastewater shall be confined within the controlled demolition area as required by ICR56-11.5(c)(10) and the variance petition.
21. All decontamination areas shall be within the regulated abatement work area. An equipment decontamination area shall be cordoned off within the worksite for cleaning of heavy equipment, i.e., backhoes, excavators, loaders, etc. The ground surface in this decontamination area shall be banked on the sides to confine the contaminated wastewater.
22. 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.
23. All material shall be treated as RACM including soil around and beneath the demolition abatement area, except for structural members, steel components and similar non-porous and non-suspect items that can be fully decontaminated.
24. Non-porous cleanable objects/materials, non-ACM material (concrete, structural steel members, metal components and similar non-suspect materials) may be fully decontaminated for disposal by appropriate legal methods. Prior to disposal, the Project Monitor shall verify that the material has been properly cleaned/decontaminated.

Perimeter Air Sampling:

25. In addition to the requirement of Subpart 56-4.9(c), air monitoring shall be conducted daily at the perimeter of the work area.
26. A minimum of two upwind air samples shall be collected. The samples shall be spaced approximately 30 degrees apart from the prevailing wind direction.
27. A minimum of three downwind samples shall be collected. The samples shall be equally spaced in a 120-degree arc downwind from the source.
28. 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.

29. Daily abatement air monitoring is required only on days when abatement or support activities such as ACM disturbance or cleaning activities are performed.
30. In lieu of post-abatement clearance air monitoring in compliance with ICR-56-9.2(d), the most recent daily abatement air samples collected during removal and cleaning operations in the regulated work area, shall be used for comparison with ICR 56-4.11 clearance criteria. All other applicable provisions of ICR 56-4 shall be followed for the duration of the abatement project.
31. After removal and cleanings are complete and a minimum drying period has elapsed, the Project Monitor shall determine if the area is dry and free of visible asbestos debris/residue. If the area is determined to be acceptable and the most recent daily abatement air sample results meet 56-4.11 clearance criteria, the final dismantling of the site may begin.

Site Soil Cleanup:

32. After demolition debris has been removed, the site shall be inspected. Any required cleanup shall include all visible asbestos or suspect asbestos debris. Soil removal shall meet ASTM 1368 (latest edition), Section 9.1.1-9.1.5 inspection criteria.
33. No pieces of ACM shall be present on top of the soil.
34. Visibly contaminated soil or soil suspected of being contaminated shall be removed down to the level where no visible contamination is noted.
35. The Project Monitor shall write in the project log that the area has been cleaned and has passed a visual inspection.

Preparation of Waste Transport Equipment:

36. Waste transport equipment (dumpsters/trailers) used to haul bulk demolition materials offsite do not need to be doubled lined as required by ICR 56-11.5 (c) (11).
37. Demolition debris shall be adequately wet during handling and loading into trailers or other equipment.
38. Debris shall be secured to prevent movement during transport.
39. Such trailers must be made air, dust and watertight prior to leaving the site.

Final Clearance:

40. After removal and cleaning are complete, an authorized and qualified Project Monitor shall visually inspect the work area as per ICR 56-9.2(e). If the area is determined to be acceptable and the most recent daily abatement air sample (including perimeter air samples) results meet ICR 56-4.11 clearance criteria, the final dismantling of the site may begin. All other applicable provisions of ICR 56-4 shall be followed for the duration of the abatement project.
41. 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:

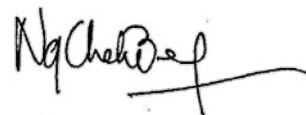
GENERAL CONDITIONS

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 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 56-12.
4. The NYS Department of Labor Engineering Service Unit retains full authority to interpret this variance for compliance herewith and for compliance with Labor Law Article 30. Any deviation to the conditions leading to this variance shall render this variance Null and Void pursuant to 12NYCRR 56-12.2. Any questions regarding the conditions supporting the need for this variance and/or regarding compliance hereto must be directed to the Engineering Services Unit for clarification.
5. This DECISION shall terminate on **October 3, 2025**.

Date: October 3, 2024

ROBERTA REARDON
COMMISSIONER OF LABOR

By



Chek Beng Ng, P.E.
Professional Engineer 2 (Industrial)

PREPARED BY: Paul Demick
Associate Safety & Health Inspector

REVIEWED BY: Chek Beng Ng, P.E.
Professional Engineer 2 (Industrial)