Re: File No. 465-95
Storch Engineers
385 West John Street
Hicksville, NY 11801

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

May 15, 1995

The attached is a copy of a Decision dated May 15, 1995, 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, 194 Washington Avenue, Albany, New York 12210, as prescribed by its Rules of Procedure, a copy of which may be obtained upon request.

WITNESS my hand and the seal of the Department of Labor, at the City of Albany, this sixteenth day of May, One thousand nine hundred and ninety-five.

Daniel J. Sullivan, P.E.
Principal Safety and Health Engineer

NOTE: It is important that a copy of this Decision (if a variance is granted) be preserved at all times for public inspection for the reason that the violation upon which the petition for variance is based is, through this Decision, removed and the petitioner is thereby deemed to be in full compliance with the Law, thus avoiding the penalties prescribed by Section 213 of the Labor Law.
STATE OF NEW YORK
DEPARTMENT OF LABOR
STATE OFFICE BUILDING CAMPUS
ALBANY, NEW YORK 12240-0100

Variance Petition : File No. 465-95
of : DECISION
New York State Department of Transportation : Cases 1 - 14
Petitioner : ICR 56

in re
Premises: Bridges throughout New York State
Abatement of Caulking from Bridges : "Blanket Variance No. 10"

The Petitioner, pursuant to Section 30 of the Labor Law, having filed Petition No. 465-95 on April 24, 1995 with the Commissioner of Labor for a variance from the provisions of Industrial Code Rules 56-6.1, 56-8.1(j), 56-8.1(k)(1-5), 56-11.1(b), 56-15.2(b-e), 56-16.1(a) and 56-17.2(a) on the grounds that there are practical difficulties or unnecessary hardship in carrying out the provisions of said Rules; and the Commissioner of Labor having reviewed the submission of the Petitioner's agent dated March 2, 1995; and

Upon considering the merits of the alleged practical difficulties or unnecessary hardship and upon the record herein, the Commissioner of Labor finds that:

Case No. 1 ICR 56-6.1
Case No. 2 ICR 56-8.1(j)
Case No. 3 ICR 56-8.1(k)(1)
Case No. 4 ICR 56-8.1(k)(2)
Case No. 5 ICR 56-8.1(k)(3)
Case No. 6 ICR 56-8.1(k)(4)
Case No. 7 ICR 56-8.1(k)(5)
Case No. 8 ICR 56-11.1(b)
Case No. 9  ICR 56-15.2(b)
Case No. 10  ICR 56-15.2(c)
Case No. 11  ICR 56-15.2(d)
Case No. 12  ICR 56-15.2(e)
Case No. 13  ICR 56-16.1(a)
Case No. 14  ICR 56-17.2(a)

The Petitioner's proposal, to utilize procedures as delineated in the technical specification entitled "Blanket Variance No. 10", (8-page stamped copy attached), is accepted subject to the following conditions:

THE CONDITIONS

1. Air monitoring shall be performed both within and downwind of the "active" removal areas during the abatement process; if air sampling results indicate 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 and methods shall be altered to reduce the airborne asbestos fiber concentration(s) to the aforementioned level. This work shall not resume until that level is attained.

2. Once unsatisfactory results have been obtained on a project, the corrected removal procedures and all remaining caulking removals on the project shall be performed within glovebags or negative pressurized tents.

3. Plastic shall also be used wherever necessary to insure safety to roads, rails and waterways which run beneath the work area.

4. If a "remote" decontamination unit is used, an airlock shall be
constructed adjacent to the work area/tent and workers shall don two (2) suits; when leaving the work area/tent, workers shall remove their outer suit in the airlock, wipe off their inner suit and don a clean outer suit prior to proceeding to the remote decontamination unit or another work area/tent.

5. When work is being performed from scaffolding or scissor lifts the airlock may be located on the ground.

6. Post-abatement aggressive air monitoring may be performed immediately after abatement is complete and within the removal area once a visual inspection has been successfully performed.

7. Once successful post-abatement air monitoring results have been obtained, the polyethylene may be removed from the work area by the general contractor.

8. Asbestos-contaminated tools/equipment shall be decontaminated by utilizing a "remote" waste decontamination enclosure system that complies with Subpart 56-10 or by utilizing the "remote" personal decontamination enclosure system in conjunction with the applicable requirements of Industrial Code Rule 56-9.1.

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

GENERAL CONDITIONS
1. A copy of this DECISION, complete with the accompanying stamped copy of the Petitioner's 7-page proposal entitled "Blanket Variance No. 10 - Abatement of Asbestos Containing Caulking from Bridges" and its one (1) attached drawings shall be displayed conspicuously at the entrance to the personal decontamination enclosure.

2. This DECISION shall apply only to the removal of asbestos containing caulking material from the bridges located on New York State Department of Transportation construction projects.

DATED: MAY 15, 1995

JOHN E. SWEENEY
COMMISSIONER OF LABOR

BY
CARL J. THURNAU, ASSISTANT DIRECTOR
DIVISION OF SAFETY AND HEALTH

CSM
Blanket Variance No. 10 - Abatement of Asbestos Containing Caulking from Bridges

Response to Question No. 24:

BACKGROUND

On many bridges found throughout New York State asbestos containing caulking materials were used, as caulking, where joints between concrete and steel and concrete and concrete exists. Previous Polarized Light Microscopy (PLM) analytical results indicate that this material may contain greater than one percent asbestos. This Blanket Variance No. 10 addresses the abatement of these materials from bridges.

REQUEST

Due to the high volume of traffic on many bridges and the logistical difficulties involved in closing a lane(s) of traffic on or beneath a bridge for an extended period of time, it is requested that a general Blanket Variance be granted to the Department of Transportation for the removal of these materials on bridges where encountered. This Petition for Blanket Variance proposes the following modifications of File No. 765-89 and requests a variance from 12 NYCRR Part 56 of the following Subparts:

- Subpart 56-4 Work Area Entry and Exit Procedures
- Subpart 56-6 Engineering Controls
- Subpart 56-7 Materials and Equipment
- Subpart 56-8 Work Area Preparation
- Subpart 56-9 Personal Decontamination Enclosure System
- Subpart 56-10 Waste Decontamination Enclosure System
- Subpart 56-11 Access to and Maintenance of Decontamination Systems and Work Area Barriers
- Subpart 56-12 Handling and Removal Procedures
- Subpart 56-15 Cleanup Procedures
Response to Question No. 25:

Our proposal for the continuance of asbestos abatement health and safety procedures for this Petition for Blanket Variance are described below:

A. Regarding Subpart 56-4, the items which we request variance from ICR 56 include the following, with proposed procedures:

Section 56-4.1 General requirements. The work area will extend out 25 feet from the areas on the bridge where the caulking materials are located and work area isolation will be achieved by the utilization of orange plastic construction fencing, or a similar type of barrier, erected about the work area(s). Where an occupied space (i.e. roadway) infringes on this 25 foot barrier, it is proposed that a barrier wall, constructed of a Jersey barrier and plywood wall for a total height of eight feet, will be erected along the occupied work area border (See Figure 1).

Section 56-4.1(a, d and e) Entry/exit, et. al. Entry to the individual work areas does not require passing through a remote personal decontamination unit, however, exiting the work areas will necessitate passing through and decontaminating through these units. All persons who enter the work area shall sign the entry/exit log, located in the clean room of the on-site remote personal decontamination unit, upon every entry and exit.

B. Regarding Subpart 56-6, the items which we request variance from ICR 56 include the following, with proposed procedures:

Section 56-6.1(a-j). In lieu of use of negative air equipment and the establishment/continuation of a negative pressure differential within the work area(s), the abatement of the non-friable, outdoor caulking materials will only occur during continuous wetting with amended water.

C. Regarding Subpart 56-7, the items which we request variance from ICR 56 include the following, with proposed procedures:

Section 56-7.1(d) Plastic Sheeting. Plastic sheeting, at least six mil in thickness, shall be utilized for construction of the personal/waste decontamination unit(s). However, it is not proposed to erect a work area containment system requiring plastic sheeting. The proposed abatement work is to be performed in the outdoors and only during continuous wetting with amended water.
D. Regarding Subpart 56-8, the items which we request variance from ICR 56 include the following, with proposed procedures:

Section 56-8.1(i) Pre-cleaning. Due to the proposed abatement of these non-friable materials being performed in the outdoors and under controlled wet removal methods, the pre-cleaning of the entire 25 foot delineated work area(s) is not proposed to be pre-cleaned. However, the ground area about the caulking removal locations will be pre-cleaned, for a distance of six feet from the caulking, prior to being covered with two layers of six mil polyethylene sheeting.

Section 56-8.1(j - k) Isolation barriers, et al. Due to the proposed abatements being performed in the outdoors and that the abatement will be performed under wet removal methods, the erection of a containment system comprised of both general and specific isolation barriers is not feasible and hence, not proposed. The work area will extend out 25 feet from the caulking materials to be abated and work area isolation will be achieved by the utilization of orange plastic construction fencing, or a similar type of barrier, erected about the work area. Where an occupied space (i.e. roadway travel lanes, pedestrian walkway, etc.) infringes on this 25 foot barrier, it is proposed that a barrier wall, constructed of a Jersey barrier and plywood wall for a total height of eight feet, be erected along the occupied space.

Section 56-8.2(b) Flooring. Due to the proposed abatements being performed in the outdoors and that the abatement will be performed under wet removal methods, it is not proposed to construct watertight floors within the work area. However, it is proposed that the Contractor lay two layers of six mil polyethylene sheeting on the ground area, about the caulking removal locations, for a distance of six feet from the caulking materials.

E. Regarding Subpart 56-9, the items which we request variance from ICR 56 include the following, with proposed procedures:

Section 56-9.1(a - i) Enclosure - general, et al. An on-site, remote personal decontamination unit which otherwise complies with Subpart 56-9 shall be utilized. The personal decontamination unit shall be removed only after satisfactory clearance air monitoring results have been achieved.

F. Regarding Subpart 56-10, the items which we request variance from ICR 56 include the following, with proposed procedures:

Section 56-10.1(a) Rooms and configuration, et al. An on-site, remote waste decontamination unit which otherwise complies with Subpart 56-10 shall be utilized. The waste decontamination unit shall be removed only after satisfactory clearance air monitoring results have been achieved.
G. Regarding Subpart 56-11, the items which we request variance from ICR 56 include the following, with proposed procedures:

Section 56-11.1(b) Preabatement settling period. In lieu of the twelve hour waiting period upon completion of construction for plastic barriers, and decontamination units, it is proposed that the contractor will begin abatement immediately upon the completion of construction of these items. This is due to the fact that a negative pressure differential will not exist within the work area versus outside the work area, thus not contributing to negative air pressure stress on polyethylene sheeting utilized in the above referenced manner.

Section 56-11.1(e) Testing of barriers and enclosure systems. Because a negative air pressure differential will not exist within the work area as opposed to outside the work area, smoke testing will not be performed to confirm decontamination enclosure systems integrity. However, visual inspection of these enclosure systems will be performed prior to abatement activities each day and at least twice a day thereafter until satisfactory clearance air monitoring results have been achieved. Observations and any modifications shall be documented in the daily project log.

H. Regarding Subpart 56-12, the items which we request variance from ICR 56 include the following, with proposed procedures:

Section 56-12.1(h) Cleanup procedures. Refer to Section 56-15 below.

I. Regarding Subpart 56-15, the items which we request variance from ICR 56 include the following, with proposed procedures:

Section 56-15.1(b) General requirements - Frequency for dust. It is not proposed that the Contractor clean the grass, soil, asphalt, concrete, etc. within the 25 foot delineated work area of general/highway dust and debris. However, dust and debris generated on the polyethylene sheeting laid on the ground about each caulking material location will be cleaned as necessary during these non-friable asbestos abatement activities. The polyethylene covered ground areas will be cleaned daily as per 56-15.1(b).

Section 56-15.2(a - i) Post-abatement requirements. Not applicable.

Section 56-15.3(c) Demolition requirements. Cleanup of surfaces. The only place where polyethylene sheeting will be located within each work area is on the ground directly below/adjacent to the caulking materials being abated. Therefore, the location within the work areas where dust could accumulate would be the ground polyethylene six feet about the caulking material. These areas will be cleaned during final cleanup activities as per 56-15.3(c).
J. Regarding Subpart 56-17, air sampling, monitoring and analysis the requirements of 56-17 shall be followed along with these additional conditions:

Section 56-17.2(b) Pre-abatement and post abatement monitoring. Number of samples-small asbestos projects. A minimum of three air samples outside the work area, one air sample inside the work area and one sample at the entrance to the decontamination unit will be collected per eight hour shift until satisfactory clearance air monitoring results have been achieved.

The following is an outline of the work procedures to be employed.

PART 1 - GENERAL

1.01 SCOPE OF WORK

The work covered by this procedure includes the removal of asbestos containing caulking materials where they are found on a bridge, containerization of the generated asbestos containing waste and disposal of these materials in an approved disposal facility.

1.02 QUALIFICATIONS

All the removal work shall be conducted by a New York State licensed Asbestos Abatement Contractor. All employees and project supervisors involved in the asbestos removal project will be currently certified asbestos handlers and supervisors by the New York State Department of Labor in accordance with Industrial Code Rule (ICR) 56.

1.03 WORK AREA ENTRY/EXIT PROCEDURES

A. Prior to any removal activities, a construction fence shall be placed around the vicinity of the caulking compounds at a minimum distance of 25 feet from the asbestos containing caulk to ensure complete isolation of the work area during removal activities. Where an occupied space (i.e. roadway travel lanes, pedestrian walkway, etc.) infringes on this 25 foot barrier, it is proposed that a barrier wall, constructed of a Jersey barrier and plywood wall for a total height of eight feet, will be erected along the occupied space. Appropriate caution signs shall be posted that permit a person to read the sign and take the necessary protective measures to avoid exposure.
B. Workers and authorized visitors shall, at a minimum, exit the work area through a personal decontamination unit which may be remote from the work area.

C. Workers and authorized visitors shall be fully protected with respirators and protective clothing, as per ICR 56.4.1(d), immediately prior to the first disturbance of asbestos containing or contaminated materials and until final cleanup is completed.

D. Workers and authorized visitors shall not eat, drink, smoke, or chew gum or tobacco in or near the asbestos work areas.

PART 2 - PREPARATION

2.01 WORK AREA PREPARATION

A. The personal and waste decontamination units will be established, erected, and made functional prior to initiation of on-site abatement activities.

B. Electrical equipment within the work area(s) that will be disturbed during abatement activities shall be locked out and tagged out and outside electric and water service shall be established.

C. A minimum of two layers of six mil polyethylene sheeting shall be laid, by the Contractor, around the base of each caulking location for a distance of six feet from the caulking material or until a barrier wall is met.

PART 3 - EXECUTION

3.01 EXECUTION

A. Workers wearing respiratory protection and other appropriate protective clothing in accordance with ICR 56, shall enter the work area and spray a light mist of amended water continuously on the caulking materials to be removed.

B. While the caulking is being kept wet, another worker will scrape out the non-friable, caulking materials from their substrates. Should the area about the caulking need to be enlarged so as to remove the caulk in total, this too shall be performed with a constant mist of amended water and with either manual tools or with power tools that are High Efficiency Particulate Absolute (HEPA) filtered.
C. The removed caulking debris shall be immediately placed into six mil asbestos waste bags by certified asbestos handlers, decontaminated and containerized, sealed airtight and properly labeled. Then the non-friable containerized waste shall be transported to the temporary waste disposal site (dumpster) until its disposal off-site to a facility approved to accept Construction and Demolition (C&D) debris.

D. The work area shall then be decontaminated as proposed above.

E. Air sampling will be conducted in accordance with the requirements of Subpart 56-17 before the start and after completion of the asbestos removal project. In addition to this requirement, air monitoring will be conducted daily within the work areas. Sample and analysis turnaround time shall not exceed 24 hours. If air sampling results indicate any airborne asbestos concentrations at or above 0.01 fibers per cubic centimeter of air sampled, or background level, whichever is greater, work shall be stopped immediately and methods shall be altered to reduce the airborne fiber concentrations to the aforementioned level. Work shall not resume until that level is attained.

PART 4 - ADDITIONAL PROVISIONS

4.01 GENERAL

A. A copy of this blanket variance shall be conspicuously posted at the entrance to the work areas.

B. The Contractor shall comply with all other applicable provisions of ICR 56-1 through 56-17.
EXAMPLE OF AN ABATEMENT CONFIGURATION

SECTION A - A

FIGURE 1