The Petitioner, pursuant to Section 30 of the Labor Law, having filed Petition No. 24-91 on January 11, 1991 with the Commissioner of Labor for a variance from the provisions of Labor Law Section 241, Subdivision 10 on the grounds that there are practical difficulties or unnecessary hardship in carrying out the provisions of said Subdivision; and the Commissioner of Labor having reviewed the submission of the Petitioner dated January 10, 1991; 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:

11-12-92
VARIANCE GRANTED. The Petitioner's proposal to conduct concurrent bid advertisements for asbestos removal and demolition projects, in situations involving the demolition of buildings containing asbestos or asbestos material and located on NYS Department of Transportation highway construction projects is accepted, subject to the requirement that the work shall be carried out in accordance with the following proposed procedures and added conditions:

PROPOSED PROCEDURES

1. Concurrent Advertisement for Bids for separate NYS Department of Transportation asbestos abatement and building demolition contracts.

2. Common bid-opening date.

3. Award, execute and complete all asbestos abatement contract work in accordance with all applicable laws.

4. Satisfy all post abatement and clearance air testing requirements.

5. Award, execute and complete building demolition contract work.

THE CONDITIONS

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1. Condition 3 - The execution and completion of the asbestos abatement work shall be in conformity with all applicable provisions of Industrial Code Rule 56.

2. Condition 4 - Post abatement and clearance air testing requirements shall conform to all applicable provisions of Subpart 56-17 of Industrial Code Rule 56.

3. Condition 5 - The awarding, execution and completion of the building demolition contract work shall not occur until the provisions of Condition 4 are met in all areas of the NYS Department of Transportation demolition project.

4. This Decision shall relate only to the NYS Department of Transportation demolition projects.

5. This Decision shall terminate at the conclusion of the demolition of the asbestos-containing structures on each NYS Department of Transportation highway construction project.

DATED: February 14, 1991

THOMAS F. HARTNETT
COMMISSIONER OF LABOR

BY CARL J. THURNAU, ASSISTANT DIRECTOR
DIVISION OF SAFETY AND HEALTH
The Petitioner, by letter dated May 2, 1991, pursuant to Section 30 of the Labor Law, requested a re-opening of File No. 24-91, Decision dated February 14, 1991, with regard to Condition 3 of the Commissioner of Labor's Decision dated February 14, 1991; and

The Commissioner of Labor has reviewed the contents of the May 2, 1991, submission and that of File No. 24-91; and

Based upon these reviews, the Commissioner of Labor does hereby take the following action:

Variance File No. 24-91, Decision dated February 14, 1991, is hereby re-opened and Condition No. 3 of said Decision shall now read as follows;
3. The New York State Department of Transportation may advertise for a bid and award a single contract for a project which involves an asbestos abatement and building demolition work on a building or buildings, provided that such contract shall require that all necessary asbestos remediation work on a subject building be completed in full compliance with Industrial Code Rule No. 56 or any variance issued by the New York State Department of Labor that may pertain to the project, prior to the commencement of demolition work on such building. Specifically, the provisions of Condition No. 2 of the original Decision shall be satisfied prior to the commencement of any demolition work on such building. As an alternative, the New York State Department of Transportation may concurrently advertise for and award separate contracts for asbestos abatement and building demolition, subject to compliance with the foregoing requirements and with all other conditions set forth in the original Decision dated February 14, 1991.

DATE: MAY 16, 1991

THOMAS F. HARTNETT
COMMISSIONER OF LABOR

BY

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

DJS/njp

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