Re: File No. 841-94

Storch Engineers
385 West John Street
Hicksville, NY 11801

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

The attached is a copy of a Decision dated August 30, 1994, 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 thirtieth day of August, One thousand nine hundred and ninety-four.

Copy to: NYS Dept. of Transportation

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.
Variance Petition
of
New York State Department of Transportation
Petitioner
in re
Premises: All Locations Statewide

The Petitioner, pursuant to Section 30 of the Labor Law, having filed Petition No. 841-94 on July 5, 1994 with the Commissioner of Labor for a variance from the provisions of Industrial Code Rules 56-5.1(a-g), 56-6.1, 56-8.1(c-m), 56-8.1(o), 56-8.1(p), 56-8.1(k)(1-5), 56-10, 56-12.1(h and i), 56-13.1, and 56-15.2(b-e) 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 June 22, 1994; 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 56-5.1(a)
Case No. 2  ICR 56-5.1(b)
Case No. 3  ICR 56-5.1(c)
Case No. 4  ICR 56-5.1(d)
Case No. 5  ICR 56-5.1(e)
Case No. 6  ICR 56-5.1(f)
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VARIANCE GRANTED. The Petitioner's proposal, to utilize the procedures, as delineated in the stamped five-page "technical specification" attachment entitled "BLANKET VARIANCE NO. 8", to be used during the removal of asbestos-containing asphalt pavement from roadways on Department of Transportation projects, is accepted; subject to the following conditions:

THE CONDITIONS

1. The entire fenced-in area (Figures Nos. 1A, 1B and 1C) shall be considered to be the work area. Uncertified persons shall not
be permitted within the work area. The vacation of the work area and warning signs shall comply with Industrial Code Rules 56-8.1(a) and (b).

2. After a minimum drying period of two (2) hours has elapsed, 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 removal area is dry. Once this work area has been inspected and found to be dry, clearance air tests may be performed. When acceptable results are attained the area shall be encapsulated.

3. Clearance air tests shall comply with Industrial Code Rule 56-17.2(f).

4. If acceptable clearance air test results are not obtained the removal area must be recleaned and new air tests run.

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 shall be conspicuously displayed at the entrance to the personal decontamination enclosure.
2. This DECISION shall apply only to the removal of asbestos containing asphalt pavement on New York State Department of Transportation projects.

3. The Petitioner shall comply with all other applicable provisions of Industrial Code Rule 56-1 through 56-17.

DATED: AUGUST 30, 1994

JOHN F. HUDACCS
COMMISSIONER OF LABOR

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

CSM
Blanket Variance No. 8

Nature of Work: Removal of asbestos containing asphalt from roadways.

Reason for Request: The New York State Department of Transportation requests a variance from ICR 56 on the grounds that literal compliance would be impractical, prohibitively expensive and cause unnecessary hardship. The cost to construct an enclosure around the roadway affected, inhibits the Department from removing the asphalt in a cost effective manner. The proposed procedure will not expose removal workers or the general public to asbestos fibers and is a reasonable approach for the controlled removal of asphalt.

Proposed Removal Methods: The following is an outline of the work procedures to be employed.

1. Scope of Work

   A. The NYS Department of Transportation proposes to remove, intact, large portions of the asbestos containing asphalt roadway by a series of sawcuts as shown in Figure 1. Each segment cut will be removed, containerized, then transported for disposal, by certified asbestos handlers, to a facility approved to accept construction and demolition (C&D) debris.

   B. A New York State licensed Asbestos Contractor shall perform all work associated with the sawcutting then removal of asbestos containing asphalt roadway from the project site(s). All employees and project supervisors involved in the asbestos removal portion of the project will have received three (3) days of training in a course approved by the New York State Commissioner of Health, and be certified asbestos handlers in accordance with Industrial Code Rule 56.

2. Proposed Asphalt Roadway Preparation and Removal

   A. Prior to any removal activities, a construction fence shall be placed around the area(s) to be sawcut a minimum of 25 feet from the cutting/excavation area(s), as shown in Figure 1A, to insure complete isolation of the work area during removal procedures. Work areas where a 25 foot buffer area between the excavation area and pedestrian/vehicular traffic is not feasible, will be required to have erected, along the traffic side of the work area, a rigid barrier consisting of a three foot concrete Jersey Barrier with abutting eight foot high plywood wall spanning the length of the excavation.
Caution signs shall be posted that permit a person to read the sign and take the necessary protective measures to avoid exposure.

B. Prior to sawcutting activities, the Asbestos Contractor will place absorbent boom materials outside the perimeter of the sawcutting but within the work area. The purpose of these booms will be to absorb asbestos containing waste water that may migrate from the sawcutting operation. At the conclusion of the sawcutting operation or when the booms have reached absorbent capacity, whichever happens first, the Asbestos Contractor shall have the booms disposed of as asbestos containing waste and commence final cleaning of the work area or re-apply fresh absorbent booms.

An alternate method to using absorbent booms is to collect the asbestos containing waste water so that it may be constantly HEPA vacuumed away by diligent asbestos handlers utilizing a HEPA vacuum that is capable of vacuuming aqueous materials.

C. The asphalt road surface to be sawcut will be wetted with amended water during the cutting operations. The roadway will be constantly under a spray of amended water while disturbance of the asbestos containing asphalt is being performed. At no time will visible dust be allowed to migrate outside the work area barriers.

D. Once the asphalt has been broken-up with jackhammers, certified asbestos handlers will hand shovel the asphalt into fiber drums that have been lined with two layers of six mil labeled polyethylene disposal bags. The non-friable containerized waste will then be stored on-site in a dumpster until its disposal off-site as C&D debris.

E. Upon completion of removal of the asphalt material to the dumpster(s), the Asbestos Contractor will decontaminate the saw and jackhammer(s) by wet-wiping and/or HEPA vacuuming, and decontaminate the saw blade(s) by steam cleaning and scraping so that asphalt residue does not remain on the blade. An alternative to cleaning the blade is to dedicate it as an asbestos asphalt blade, seal it leak/air tight with polyethylene and duct tape, label it as asbestos containing, and open it up only within the confines of a regulated asbestos work area.

Yet another alternative to cleaning the blade is to dispose of it as asbestos containing material.
F. Clean-up of the work area enclosure(s) shall be performed in accordance with ICR 56 Subpart 15.3 - Demolition requirements, with the provision that the Asbestos Contractor dry thoroughly, with tarring, the solid work area surfaces down to the concrete from where the asphalt was removed. Once the work area has been cleaned and the solid surfaces wiped dry, clearance aggressive air monitoring will immediately commence.

G. Immediately after clearance air monitoring has been completed, the Asbestos Contractor shall seal airtight the excavation with two layers of six mil polyethylene sheeting. The General Contractor shall then cover the polyethylene with steel construction plates. Subsequent to this, the work area barriers may be removed and traffic allowed to resume over the excavation.

Should clearance air monitoring results indicate an airborne fiber concentration at or above 0.01 fibers per cubic centimeter (f/cc) of air sampled or greater than background concentrations, then the work area barriers will be re-established after the General Contractor removes the steel construction plating. Once the work area barriers have been put back into place, the Asbestos Contractor will re-clean the work area until successful clearance air monitoring analytical results have been attained.

When clearance air monitoring analytical results indicate airborne fiber concentrations for all samples are less than 0.01 f/cc or below background concentration, whichever is greater, the General Contractor may then remove both the steel construction plates and the polyethylene sheeting. The polyethylene sheeting may then be disposed of as construction debris.

H. Air sampling shall be conducted daily, both inside and outside the work area. Sample analytical turnaround time shall not exceed 24 hours. If air sample results indicate airborne fiber concentrations at or above 0.01 fibers per cubic centimeter of air sampled, or the background level, whichever is greater, work will be stopped immediately and methods shall be altered to reduce the airborne fiber concentrations to the aforementioned level. Work will not resume until that level is attained. Air monitoring activities shall conform with ICR 56 Subpart 17. The air samples collected throughout the project will then be sent to a certified, approved ELAP laboratory for analysis.

I. Upon receipt of successful clearance air monitoring results, the Asbestos Contractor shall remove the work area barriers unless they will be utilized immediately by the General Contractor for his repair work on the roadway.
3. **Additional Provisions**

A. A personnel decontamination enclosure system (clean room - shower room - equipment room), as part ICR Subpart 56-9, which may be remote from the work area, will be located on site allowing for worker decontamination and storage of personal clothing. This system will be in place prior to preparatory work in the work area and in particular before the disturbance of any asbestos material, and until satisfactory clearance air monitoring results have been achieved.

B. All workers and authorized visitors shall be fully protected with respirators and protective clothing, as per ICR Subpart 56-4.1(d), immediately prior to the first disturbance of asbestos containing or contaminated materials and until satisfactory clearance air monitoring results have been achieved.

C. All workers and authorized visitors will enter and exit the work area directly from and to the personal decontamination system, respectively. Only one entrance through the barriers to the work area will be provided.

D. The dumpster to hold containerized asbestos containing materials shall be so adapted as to have a rigid, closeable and lockable top and end. The dumpster shall be lined with a minimum of two layers six mil polyethylene sheeting, leaving enough polyethylene to completely seal the contents when full. The dumpster shall be posted as containing asbestos waste and transported to an approved disposal site.

E. The Asbestos Contractor shall comply with all other provisions of ICR 56 Subparts 1 through 17.
Figure 1

Code Rule 56 Variance Request

Removal of Asbestos Containing Asphalt from Roadways

Figure 1A: Work Area Where 25' Clearance is Available

Figure 1B: Work Area Where 25' Clearance Cannot be Maintained on One Side

Figure 1C: Work Area Where 25' Clearance Cannot be Maintained on Either Side

Figures 1A, 1B, and 1C
Arrangement of Work Areas