Re: File No. 203-95
LaBella Associates, P.C.
300 State Street
Rochester, NY 14614-1098

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

The attached is a copy of a Decision dated April 19, 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 nineteenth day of April, 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.
Variance Petition : File No. 203-95
of

New York State Department of Transportation : Cases 1 - 12

Petitioner
in re

Premises: Bridges throughout New York State
Bond Breaker/Joint Filler Removals :
"Blanket Variance No. 9"

The Petitioner, pursuant to Section 30 of the Labor Law,
having filed Petition No. 203-95 on February 24, 1995 with the
Commissioner of Labor for a variance from the provisions of
56-15.2(b-e) and 56-16.1(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 February 22, 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)(9)
Case No. 8  ICR 56-15.2(b)
Case No. 9  ICR 56-15.2(c)
Case No. 10 ICR 56-15.2(d)
The Petitioner's proposal, to utilize procedures as delineated in the technical specification entitled "Blanket Variance No. 9", (5-page stamped copy attached), is accepted subject to the following conditions:

THE CONDITIONS

1. Prior to any removal activities, a construction fence shall be placed at each end of the bridge to surround the work areas at a minimum distance of 25 feet from the removal location.

2. "Jersey" barriers shall be placed adjacent to the eight (8) foot plywood barriers separating the travel lanes from the abatement areas; or the barriers may be constructed using a four (4) foot high section of plywood sheathing on top of the "jersey" barrier.

3. Uncertified persons shall not be permitted within the work area.

4. The vacation of the work area and warning signs shall comply with Industrial Code Rules 56-8.1(a and b).

5. A personal decontamination enclosure system that may be "remote" from the bridge, but otherwise complies with Subpart 56-9, shall be utilized. The personal decontamination enclosure shall be removed only after satisfactory clearance air monitoring results have been achieved.
6. If a "remote" decontamination unit is used, an airlock shall be constructed adjacent to the work area and workers shall don two (2) suits; when leaving the work area, 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.

7. Post-abatement aggressive air monitoring may be performed immediately after abatement is complete and a visual inspection has been successfully performed.

8. Prior to covering trenches with steel plates, the top of the trenches shall be sealed with two (2) layers of six mil polyethylene and secured on their edges with duct tape. The steel construction plates shall then be bolted back into place prior to the construction fence and barriers being removed and the traffic lanes reopened.

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

10. Asbestos-contaminated tools/equipment shall be decontaminated by utilizing a waste decontamination enclosure system that complies with Subpart 56-10 or by utilizing the 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
variances, 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 two-page proposal entitled "Removal of asbestos-containing bond breakers and joint fillers from surfaces on bridges" and its three (3) 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 bond breakers and joint fillers on bridges located on New York State Department of Transportation construction projects.

DATED: APRIL 19, 1995

JOHN E. SWEENEY
COMMISSIONER OF LABOR

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

CSM
Petition for Variance or Other Relief

Description of Work: Demolition and/or renovation of bridges

Structures Affected: Bridges throughout the State of New York

Nature of the Work: Removal of asbestos-containing bond breakers and joint fillers from surfaces on bridges.

DOSH-751 Box 24, Reason for Request for Variance:

New York State Department of Transportation (NYSDOT) requests a variance from certain provisions of Industrial Code Rule 56, on the grounds that NYSDOT would encounter practical difficulties and unnecessary hardship in constructing a full containment enclosure for the removal of asbestos-containing bond breakers and joint fillers from surfaces on bridges.

It is NYSDOT’s intention to provide an equivalent, if not higher, level of protection for removal workers and the general public, while permitting the proper removal of the asbestos material in a cost effective manner. The proposed procedures will not expose removal workers or the general public to asbestos fibers, and is a reasonable approach for the careful controlled removal of asbestos-containing materials.

During the abatement work, only NYSDOT contracted asbestos abatement workers and approved personnel will be allowed access to the abatement areas. This variance is therefore warranted based on the following:

1. Accessibility to the work area will be strictly controlled. Public access to the area during abatement will be prohibited.

2. It is impractical to construct a full containment enclosure and decontamination unit prior to the removal of asbestos-containing materials outdoors on bridges.

3. Due to the non-friable nature of the materials involved, the potential for human exposure to airborne concentrations of asbestos fibers is greatly reduced.

DOSH-751 Box 25
Proposal

Proposed Removal Methods

Since it would not be practical to construct an enclosure completely around the bridge during disturbance of the asbestos-containing materials, the following alternate work procedures are proposed:

1. The portion of the bridge actively being worked on shall be considered to be the Work Area. Barriers and fences shall be established in accordance with one of the methods illustrated in FIGURE 1 or FIGURE 2 (attached). The vacation of the work area and use of warning signs shall comply with Industrial Code Rule 56-8.1 (a and b).
2. Where high volume traffic conditions do not allow partial or entire bridge closure for the entire duration of the asbestos removal, procedures shown in FIGURE 3 (attached) may be used to temporarily isolate the work area from the rest of the bridge prior to re-opening the bridge to traffic.

Thereafter, when traffic volumes decrease and asbestos removal operations may resume, work area isolation of the bridge will again be in accordance with the methods illustrated in FIGURE 1 or FIGURE 2 prior to any asbestos removal on the bridge.

3. The area inside this fence shall be considered to be the work area. The work area shall be accessible through only one entrance/exit. Caution signs shall be posted that permit a person to read the sign and take the necessary protective measures to avoid asbestos exposure. Only properly trained, certified asbestos workers shall be allowed inside this barrier during removal operations.

4. A personal and waste decontamination enclosure system, which may be “remote” from the work area, but still on the job site, will be provide to allow for worker decontamination and cleanup of tools and equipment.

5. Temporary plywood barriers shall be installed around the active removal work area, so as to prevent pieces of asbestos-containing bond breakers/joint fillers from leaving the surface of the bridge and falling below. The bond breaker/joint filler materials will be periodically misted with amended water to maintain a wet condition during removal operations.

6. All bond breaker/joint filler materials removed shall be placed in a dumpster or trailer lined with two layers of at least 6 mil fire retardant poly. Sufficient poly shall be provided so as to facilitate being wrapped over the top of the load and sealed prior to transportation from the site.

7. In addition to the requirements of subpart 56-17, air monitoring of the entire work area shall be conducted daily. If air sampling results indicate any airborne asbestos fiber concentrations(s) at or above 0.01 fibers per cubic centimeter, or the background level, whichever is greater, work shall be stopped immediately, methods shall be altered to reduce the airborne asbestos fiber concentration(s) to the aforementioned level and work shall not resume until that level is attained. Work in progress air samples will not be collected on days when no work is being conducted within the work area.

8. After the Contractor has completed removal operations, a final visual inspection of the removal surfaces and the remainder of the work area shall be conducted by a New York State Certified Project Monitor. Upon satisfactory completion of the visual inspection, final clearance air monitoring shall be conducted in accordance with all applicable provisions of Industrial Code Rule Subpart 56-17.

9. Waste transportation and disposal shall be in accordance with applicable USEPA Regulations (40 CFR Part 61, Subpart M - NESHAPS).

10. A copy of this variance, if granted will be conspicuously displayed at the entrance to the personal decontamination enclosure.

11. The Contractor shall comply with all other applicable provisions of Industrial Code Rule 56.
Figures
WORK AREA ISOLATION METHOD A - ENTIRE BRIDGE CLOSURE

NOT TO SCALE

LEGEND

--- CONSTRUCTION FENCE WITH ASBESTOS WARNING SIGNS

FIGURE 1
WORK AREA ISOLATION METHOD B - 
\( \frac{1}{2} \) BRIDGE CLOSURE

NOT TO SCALE

LEGEND

--- --- CONSTRUCTION FENCE WITH ASBESTOS WARNING SIGNS

\[\] 8 FT. HIGH HARDWALL BARRIER

FIGURE 2
TEMPORARY WORK AREA ISOLATION DURING PEAK TRAFFIC HOURS

NOT TO SCALE

LEGEND

2 LAYERS 6 MIL POLY. UNDER STEEL PLATE

FIGURE 3