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

Variance Petition

of

LaBella Associates
Petitioner's Agent

On Behalf of

Rochester Housing Authority
Petitioner

in re

Premises: 56 Holland Street
Rochester, NY 14605

Apartment Incidental Disturbance Cleanup

File No. SH-63B1G

DECISION

Cases 1- 4

ICR 56

The Petitioner, pursuant to Section 30 of the Labor Law, having filed Petition No. SH-63B1G on August 23, 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 August 23, 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 56-6.2
Case No. 2	ICR 56-7.10
Case No. 3	ICR 56-7.11(e)
Case No. 4	ICR 56-11.2(f)(4)

VARIANCE GRANTED. The Petitioner's proposal for removal and proper disposal of ACM (5,000 SF) and contaminated components in the partially burnt apartment at the subject premises in accordance with the attached 40-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 responsibly 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.

Establishment of Restricted Area:

9. The regulated abatement work areas, decontamination units, airlocks, and dumpster areas shall be cordoned off at a distance of twenty-five (25) feet and shall remain vacated except for certified workers until satisfactory clearance air monitoring results have been achieved or the abatement project is complete.

10. For areas where compliance with the twenty-five feet barrier/fence requirement isn't possible, the areas shall be cordoned off to the maximum distance possible, and a daily abatement air sample shall be included at the reduced barrier.

Debris Cleanup and Friable Removals:

11. Once the regulated abatement work area is occupied by the abatement contractor, the asbestos project begins and PPE shall be worn at all times even during Preparation.

12. A personal decontamination enclosure system that complies with Subpart 56-7.5 shall be utilized. A waste decontamination enclosure system that fully complies with Subpart 56-7.5 shall be utilized. These enclosure systems **must be attached (contiguous)** to the regulated abatement work area and shall be removed only after satisfactory clearance air monitoring results have been achieved for the regulated abatement work area.

13. The floors, walls, ceilings, fixtures, and movable and fixed objects contaminated with asbestos debris shall be cleaned as part of this abatement project.

14. Prior to removal of ACM debris, installation of critical barriers as per ICR 56-7.11 (a) and establishment of negative air as per ICR 56-7.8 shall be completed. All visible accumulations of ACM in the area of the critical

barriers shall be cleaned as per ICR 56-7.10 (c)(1) prior to installation of the barriers.

15. A minimum of 8 air changes per hour must be observed once the negative air has been established. A minimum four-hour pre-abatement settling period as per 56-8.2(b) shall elapse once the negative air has been established.

16. One layer of 6-mil fire retardant plastic sheeting shall be used as a dropcloth below ACM removal locations. The dropcloth may be limited to beneath the immediate removal locations and the surrounding ten (10) feet.

17. Installation of wall and ceiling plastic sheeting is not required where existing non-porous cleanable wall and ceiling surfaces are located within the work area, and not required for surfaces that are potentially contaminated and shall be cleaned as part of the asbestos project.

18. Potentially contaminated personal items that the tenants wish to keep must be HEPA vacuumed and wet wiped prior to being placed in 6-mil transparent bags. The Contractor shall inform the tenants of the potential asbestos exposure from the items and possible health implications. The Contractor shall record in the project log which items the tenant decided to retain, and the tenant shall sign the log confirming the items they chose to keep.

19. Encapsulation of any asbestos removal surfaces shall not be performed until satisfactory clearance air sample results have been obtained.

20. The contractor shall observe, at a minimum, eight-hour waiting (settling/drying) periods.

21. When relief is granted to not plasticize or when a tent/enclosure unit is used, one thorough cleaning as described in ICR 56-9.1(e) and one settling, waiting period shall suffice, except when an air test fails.

22. After a minimum waiting/drying period has elapsed, the Project Monitor shall determine if the area is dry and free of visible asbestos debris as per 56-9.1(d1). If the area is determined to be acceptable, the Project Monitor may authorize clearance air sampling to be performed in accordance with ICR 56-9.2(d).

23. After abatement of the asbestos and asbestos debris, all plastic sheeting and tape will be treated as contaminated material and properly disposed of asbestos waste at the end of the project.

24. 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.

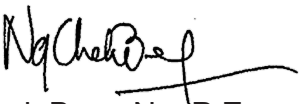
3. The Petitioner shall comply with all other applicable provisions of Industrial Code Rule 56-1 through 56-12.

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 **August 31, 2025**.

Date: August 26, 2024

ROBERTA REARDON
COMMISSIONER OF LABOR

By 

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

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

REVIEWED BY: Demissie Woyecha, P.E.
Professional Engineer 1 (Industrial)

Location: 56 Holland Street, Rochester, New York

Work Area: Apartment

Pertinent Site/Work Area Information

Rochester Housing Authority (RHA) is planning on renovating a vacant apartment unit at 56 Holland Street in Rochester, New York. The unit had a fire break out on the upper level, which affected gypsum board systems in an upper level bedroom, the upper level hallway, and the living room. In preparation for the renovations, LaBella Associates, D.P.C. (LaBella) performed a regulated building materials (RBM) inspection and identified asbestos-containing materials (ACM) throughout the unit. The sampling conducted by LaBella was limited to those materials understood to be impacted by the upcoming renovations, as identified by RHA. The basement of the unit was not included in this inspection as it was not impacted by the fire and will not be included in renovation efforts. All of the ACMs identified as part of this inspection are non-friable, but may be rendered friable during the planned renovations. The following table is not meant to represent all of the ACMs present within the structure, only those understood to be impacted by the renovations. The following ACMs are present:

56 Holland Street				
Type of Material	**General Location**	**Category**	**Condition**	**Estimated Quantity**
White Joint Compound and White Ceiling Stucco Debris	Living Room, Upper Level Hallway, and Bedroom	Category I Friable	Poor	2,350 SF
White Joint Compound	Walls and Ceilings Throughout Apartment Unit	Category II Non-Friable*	Fair	3,950 SF
White Ceiling Stucco	Ceilings Throughout Apartment Unit	Category II Non-Friable*	Fair	950 SF

*This material is considered to be non-friable in its current, intact condition. However, this material has the potential to become friable during any renovation activities that will disturb the material.

LaBella, on behalf of RHA, is petitioning to remove all friable ACM debris and portions of the non-friable ACM prior to cleaning all cleanable surfaces within the unit. For clean-up purposes, all areas within the unit shall be considered contaminated with ACM debris (approximately 5,000 SF). Any and all contents within this space shall be decontaminated and cleaned prior to removal from the work area or disposed of as asbestos-containing waste. Additionally, since the entire work area will be under negative pressure, the petitioner is proposing to remove portions of the remaining intact ACMs within the space to prepare the unit for new construction. This will result in the abatement of approximately 360 SF of gypsum board ceiling systems, 330 SF of gypsum board wall systems, and the associated asbestos-containing joint compound and stucco. We are requesting the following procedures for this work:

ICR 56 Relief Sought

Code Rule 56 Section	Title	Hardship
56-6.2	Number and Location of Background Air Samples	See Below
56-7.10	Regulated Abatement Work Area Pre-Cleaning	
56-7.11(e)	Regulated Abatement Work Area Enclosure – Floor, Wall, and Ceiling Plasticizing and Sealing	
56-11.2(f)(4)	Emergency Projects – Corrective Actions for Incidental Disturbance of Asbestos Containing Materials	

56-6.2: As this work involves the clean-up of asbestos-containing debris throughout the unit, background air sampling shall not be required.

56-7.10: Pre-cleaning the work area is impractical due to the fact that all surfaces within the work area are considered contaminated and will be cleaned prior to final aggressive air clearance testing.

56-7.11(e): Plasticizing and sealing all surfaces shall not be required. All surfaces are considered contaminated and shall be decontaminated as part of the clean-up/abatement project.

56-11.2(f)(4): New gypsum board systems are being installed in the areas with the worst fire damage, and the existing damaged gypsum board systems need to be removed. Since the entire space will be under negative pressure, it would be an inefficient use of the owner's resources not to abate the materials necessary for the planned renovations.

Proposed Abatement Method Description

Removal and handling of the ACM shall be performed in accordance with this approved variance and all other applicable provisions of ICR 56. These procedures are as follows:

Full-Time Project Monitor

1. A full time New York State asbestos-certified project monitor (PM) shall be on site and responsible for the 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 project monitor 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 and are in compliance with all asbestos laws and regulations;
    c. Inform the asbestos abatement contractor of work practices that, in the Project Monitor'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 rules and/or regulations;
    d. Document in the Project Monitor Log observations and recommendations made to the Asbestos Supervisor based upon the inter/exterior observations of the asbestos project made by the PM.

4. The PM shall alert the nearest 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 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 be limited to, fire codes, electrical codes, building codes, wage rates, schedules, etc. While the PM is not responsible for the 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.

9. Usage of this variance is limited to those asbestos removals identified in this variance or as outlined in the Petitioner's proposal.

Establishment of Regulated Areas

10. 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 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 taken at the barrier.

Unit Debris Cleanup

11. Air sampling and analysis shall be conducted in accordance with the requirements of Subpart 56-4, except no background air samples shall be required as per 56-11.2(f)(3).

12. Decontamination system enclosures and areas shall be constructed and utilized as per the requirements of 56-7.5(d).

13. Once the regulated abatement work is occupied by the abatement contractor, personal protective equipment (PPE) shall be worn as part of the Supervisor's instructions in accordance with OSHA asbestos regulations. The Supervisor shall assess the need for the type of PPE required.

14. A personal decontamination unit that complies with Subpart 56-7.5 shall be utilized. A waste decontamination enclosure system that fully complies with Subpart 56-7.5 shall be utilized. These enclosure systems **must be attached (contiguous)** to the regulated abatement work area and shall be removed only after satisfactory clearance air monitoring results have been achieved for the regulated abatement work. Where physical spaces restrictions limit the decontamination enclosure systems, a small decontamination enclosure system may be utilized in compliance with ICR 56-7.5 (c) & 56-7.5(e)(9).

15. Prior to removal of ACM debris, installation of critical barriers as per ICR 56-7.11 (a) and establishment of negative air as per ICR 56-7.8 shall be completed. All visible accumulations of ACM in the area of the critical barriers shall be cleaned as per ICR 56-7.10(c)(1) prior to the installation of the barriers.

16. Two-layer six-mil fire retardant plastic sheeting may be used as critical barriers/isolation barriers in lieu of temporary hard wall barriers normally required as per ICR 56-7.11(b). These plastic sheeting isolation barriers shall be adequately supported for the duration of the asbestos project. All critical barriers and isolation barriers shall remain in place until receipt of satisfactory clearance air results for the regulated abatement work area.

17. Installation of wall and ceiling plastic sheeting is not required where existing non-porous cleanable wall and ceiling surfaces are located within the work area, and not required for surfaces that are potentially contaminated and shall be cleaned as part of the asbestos project.

18. A minimum of 8 air changes per hour must be observed once the negative air has been established. A minimum of four-hour pre-abatement settling period as per ICR 56-8.2(b) shall elapse once the negative air has been established.

19. The floors, walls, ceilings, fixtures, movable, and fixed objects contaminated with asbestos debris shall be cleaned as part of this asbestos project. All potentially contaminated porous materials shall be removed from the work area and disposed of as contaminated waste.

20. Once all movable objects within the work area have been decontaminated and removed, or disposed of as an RACM, a thorough clean of the work area shall be conducted prior to the abatement of the remaining, intact ACMs. The abatement contractor shall refer to the construction documents and coordinate with the general contractor (GC) for any items to be salvaged within the work area.

21. For the removal of the remaining ACM, one layer of 6-mil fire-retardant plastic sheeting shall be used as a drop cloth below ACM removal locations. The drop cloth may be limited to beneath the immediate removal locations and the surrounding ten feet.

Cleaning and Clearance

22. Encapsulation of any asbestos removal surfaces shall not be performed until satisfactory clearance air sample results have been obtained.

23. The contractor shall observe, at a minimum, twelve-hour waiting (settling/drying) periods.

24. After removal and cleanings are complete and a minimum drying period has elapsed, an authorized and qualified Project Monitor shall determine if the area is dry, the scope of work complete, and the work area free of visible asbestos debris/residue. If the area is determined to be acceptable and the final clearance air samples results meet 56-4.11 clearance criteria, the final dismantling of the site may begin.

25. As full plasticization is not required, one thorough cleaning as per 56-11.2(f)(8) and one twelve-hour settling/waiting period shall suffice, except if clearance air sampling is unsatisfactory, then a re-cleaning of the area and another settling/waiting period is required.

26. After abatement of the asbestos and asbestos debris, all plastic sheeting and tape will be treated as contaminated material and properly disposed of asbestos waste at the end of the project.

27. Usage of this variance is limited to those asbestos removals identified in this variance or as outlined in the Petitioner’s proposal.