

**LABELLA**

LaBella Associates, P.C.

300 State Street

Rochester, New York 14614

## **Appendix 2**

### **Approved NYSDOL Site-Specific Variance**



New York State Department of Labor  
David A. Paterson, *Governor*  
M. Patricia Smith, *Commissioner*

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November 23, 2009

Labella Associates, P.C.  
300 State St.  
Rochester NY 14614

Received By  
LaBella Associates, P.C.

NOV 30 2009

RE: File No. 09-0911

Client: \_\_\_\_\_  
Proj.#: \_\_\_\_\_

Dear Sir/Madam:

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

The attached is a copy of Decision, dated, 11/12/2009, 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, Empire State Plaza, Agency Building 2, 20<sup>th</sup> Floor, Albany, New York, 12223 as prescribed by its Rules and Procedure, a copy of which may be obtained upon request.

WITNESS my hand and the seal of the  
NYS Department of Labor, at the City of  
Albany, this *23rd* day of *November*,  
Two thousand nine

Christopher Alonge, P.E.  
Associate Safety and Health Engineer  
Engineering Services Unit

PD

STATE OF NEW YORK  
DEPARTMENT OF LABOR  
STATE OFFICE BUILDING CAMPUS  
ALBANY, NEW YORK 12240-0100

Variance Petition

of

LaBella Associates, P.C.  
Petitioner's Agent on Behalf of

City of Rochester  
Petitioner

in re

Premises: Former Photech Imaging Systems Site  
1000 Driving Park Avenue  
Rochester, NY

**Interior and Exterior Friable and Non Friable  
ACM and Debris Removals**

File No. 09-0911

DECISION

Cases 1-6

ICR 56

The Petitioner, pursuant to Section 30 of the Labor Law, having filed Petition No. 09-0911 on September 30, 2009 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 September 21, 2009 and additional information received on October 14, 2009 and on November 12, 2009; 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  
Case No. 2  
Case No. 3

ICR 56-7.5 (b) **Denied**  
ICR 56-7.10 (c)  
ICR 56-7.11(b, e)

Case No. 4  
Case No. 5  
Case No. 6

ICR 56-9.1(f)  
ICR 56-9.2 (d)(1) **Denied**  
ICR 56-11.2(f)

VARIANCE GRANTED. The Petitioner's proposal for removal of ACM and ACM debris in quantities as listed in the petitioner's proposal at the subject premises in accordance with the attached 38-page stamped copy of the Petitioner's submittal is accepted; subject to the Conditions noted below:

### THE CONDITIONS

1. As written with modifications noted.

#### **Interior Debris Cleanup and Friable/Non Friable Removals**

2. 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.
3. 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 crawlspace/basement regulated abatement work area and shall be removed only after satisfactory clearance air monitoring results have been achieved for the regulated abatement work area.
4. The regulated abatement work area floors, walls, ceilings, fixtures, and movable and fixed objects contaminated with asbestos debris shall be cleaned as part of this abatement project.
5. **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.**
6. Two-layer six-mil fire retardant plastic sheeting may be used as critical barriers/isolation barriers in lieu of temporary hardwall 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.
7. 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.

8. Removals and cleanup shall include all visible asbestos or suspect asbestos debris.
9. 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.
10. Encapsulation of any asbestos removal surfaces **shall not** be performed, until satisfactory clearance air sample results have been obtained.
11. The contractor shall observe, at a minimum, eight-hour waiting (settling/drying) periods.
12. 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.
13. 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.
14. After abatement of the asbestos and asbestos debris, all plastic sheeting and tape will be treated as contaminated material and properly disposed of as asbestos waste at the end of the project.

#### **Exterior Friable ACM Debris Removal/Cleanup**

15. All provisions of Section 56-11.2(f) "Corrective actions for incidental disturbance of ACM" shall be followed for the removal and cleanup of the friable pipe insulation. The generated ACM waste shall be disposed of as RACM.
16. 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 November 30, 2010.

Date: November 12, 2009

M. PATRICIA SMITH  
COMMISSIONER OF LABOR

By

  
Christopher G. Alonge, P.E.  
Associate Safety and Health Engineer

PREPARED BY: Paul Demick  
Safety & Health Inspector

REVIEWED BY: Christopher G. Alonge, P.E.  
Associate Safety and Health Engineer

09 0911

**Petitioner : City of Rochester**  
**Petitioner's Agent: LaBella Associates, P.C.**  
**Description of Premises:**  
**Former Photech Imaging Systems**  
**1000 Driving Park Avenue, Rochester, NY**

## **ATTACHMENT A**

### **Work Area Description**

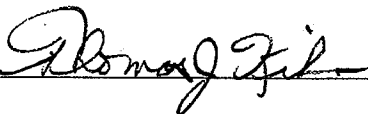
The Photech Imaging Systems Site is an abandoned industrial facility formerly used for the production and processing of photographic film and paper. The facility has been abandoned since the mid 1970's and is decrepit. Roofing and drainage has failed in many areas, with water infiltration following every significant rainfall and snow melt; resulting in significant water damage. This facility is located within an area of the city zoned as industrial. Based on observations made during recent site visits, there is little if any pedestrian traffic in the area. The property borders have been secured with a six foot high chain link fence with a lockable gate.

Prior to the completion of the fencing operations described above, the facility had been vandalized and looted by trespassers. The looting operations have removed most of all valuable metals from site, leaving little more than some bare and insulated steel and iron pipe and HVAC duct work. Limited machine framing and storage rack remain. The looting/vandalism activities have resulted in the scattering of friable asbestos-containing pipe insulation on floors and intermixed within remaining building debris in many areas. Remaining building debris primarily consists of office furniture, laboratory cabinets, files, and ceiling tiles, etc. Most of the ceiling tiles have become wet, and have fallen to the floor. In some isolated areas around the outside of the building both friable ACM (i.e. pipe insulation) and non-friable ACM (i.e. roofing, Transite) have been identified.

The site has undergone several episodes of environmental testing and assessment over the years as issues of foreclosure and sale have been initiated. The City of Rochester obtained the property as a result of unpaid taxes and foreclosure, and is preparing the site for building demolition/Brownfield site development.

Extensive asbestos inspection and testing has also been completed by a variety of parties over the years to identify the in-place asbestos-containing materials (ACMs) as well as asbestos contaminated debris in advance of stalled attempts to abate and demolish this facility. This variance is sought to provide a safe and cost effective method for the cleanup and removal of asbestos-containing materials from the facility prior to demolition. Cost management is an important consideration for the City of Rochester as they proceed with the safe demolition of this eyesore and potentially hazardous facility.

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

Signed: 

Date: 9/21/09

09 09 11

**Petitioner : City of Rochester**  
**Petitioner's Agent: LaBella Associates, P.C.**

**Description of Premises:**  
**Former Phototech Imaging Systems**  
**1000 Driving Park Avenue**  
**Rochester, NY**

## ATTACHMENT B ICR 56 Relief Sought

This variance is based on two similar variances granted to other petitioners; Files 07-0045 and 09-0810.

Relief from the following Sections of ICR 56 Regulations are requested for the removal of ACM:

56-7.5 (b & e)	Attached Personal and Waste Decontamination Systems
<del>56-9.1 (b, c &amp; d)</del>	Final Cleaning Procedures <i>Use ICR 56-9.1(e) relief not needed from 9.1(b,c,d)</i>
56-9.2 (d)(1)	Aggressive Sampling <i>AD 11/2/09</i>
56-7.10 (c)	Pre-cleaning
56-7.11 (b)(2)	Critical Barrier Sheathing
56-7.11 (e)	Floor, Wall & Ceiling Plasticizing

It is requested that this variance, if granted, remain in effect until December 30, 2011.

Signed: *Thomas J. Kelly*

Date: 9/21/09



09 0911

**Petitioner : City of Rochester**  
**Petitioner's Agent: LaBella Associates, P.C.**

**Description of Premises:**  
**Former Photech Imaging Systems**  
**1000 Driving Park Avenue**  
**Rochester, NY**

## **ATTACHMENT C**

### **Hardship Description**

Relief from the above referenced sections of ICR 56 is requested due to the following hardships:

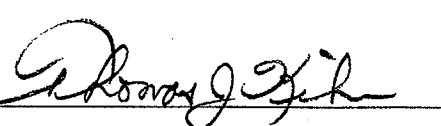
The Photech complex is a large abandoned industrial facility. The logistics of constructing attached personal/waste decontamination units to the various asbestos abatement work areas would present practical difficulties, unnecessary hardships, increase project duration, as well as increasing the overall cost of the project.

The facility has been abandoned for over 30 years and suffers from failed roofing, broken windows, broken doors, damaged walls, etc. Extensive water infiltration occurs with every rain fall. General building debris is wide spread, and includes scattered friable pipe insulation. Much of the interior building surfaces will require cleaning and much of the debris will need to be handled as contaminated with friable asbestos. These conditions and requirements make it infeasible to pre-clean prior to containment and infeasible to plasticize ceiling, walls and floor. The facility has no active fire detection or suppression system, the presence of wood sheathing presents a serious fire safety risk in an otherwise unoccupied facility.

The poor and decrepit condition of the facility, the wide extent of abatement required and the pending demolition of the facility make it improbable that satisfactory clearance air samples can be obtained when using aggressive air sampling.

The City of Rochester is under pressure from the community to remove this eyesore and hazard, and to restore the site to a condition suitable for development, but is under financial pressure to provide suitable funding.

Signed: \_\_\_\_\_



Date: \_\_\_\_\_

9/21/09

09 0911

Petitioner : City of Rochester  
Petitioner's Agent: LaBella Associates, P.C.

Description of Premises:  
Former Phototech Imaging Systems  
1000 Driving Park Avenue  
Rochester, NY

## ATTACHMENT D Proposed Abatement Method

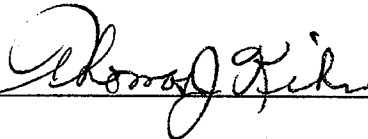
The petitioner is proposing to utilize the work practices and procedures provided below, and additionally perform work in accordance with applicable provisions of Industrial Code Rule 56, with the exception of those stated in Attachment B. These procedures are as follows:

1. Removal and handling of the asbestos-containing materials (ACM) and asbestos contaminated materials shall be performed in accordance with all other applicable provisions of ICR 56. All abatement activities shall be conducted under the daily supervision of a currently NYSDOL certified Asbestos Project Monitor.
2. The Site is currently surrounded and secured by six foot chain link fence, thereby deterring access by unauthorized persons. During the course of this project the fencing will be monitored and maintained to prevent unauthorized access. Only certified workers will be allowed within regulated work areas.
3. ~~One or more large project remote personal/waste decontamination unit shall be located within a short distance of access points to regulated work areas. Airlocks, as per 56-7.5 (d)(3) will be used at the work entrances and the decon unit. Multiple access points to separate work areas will be necessary. The use of not-attached pre-constructed portable decon units, in lieu of the costly manual construction of several, poorer quality attached decons will provide the best worker and waste decontamination equipment and methods. Work is likely to continue into the colder months making the heating of attached decons a costly requirement. The site is vacant and secure, non-certified persons shall not be allowed access to the Designated Pathway between the regulated work area and the decon unit.~~ *\*See version conditions 10/11/09*
4. Critical barriers will be installed where required and the work area shall be put under negative pressure, with 8 air changes per hour. All visible accumulations of ACM and debris in the areas where critical barriers are to be installed shall be cleaned as per 56-7.10 (c)(1) prior to the installation of the barriers. Critical barriers will be constructed either inside or outside of the building depending upon safe access, quality of barrier seal and maintenance considerations.
5. All remaining debris shall be removed prior to abatement of in-place ACM. Debris contaminated with friable ACM shall be handled and disposed of as friable asbestos waste; wetted with amended water and properly containerized.

09 09 11

**ATTACHMENT D**  
**continued**

- 6. Prior to removing pipe insulation, fittings and other friable ACM, six mil polyethylene drop cloth shall be placed on the floor within 10 feet of all abatement activities, shall be sealed to the floor and will remain in place until receipt of clearance criteria for that work area. ACM shall be adequately wetted, removed and immediately containerized.
- 7. Since full plasticization is not required, one thorough cleaning as per 56-9.1 (e) and one settling/waiting period shall be completed, unless clearance air sampling is unsatisfactory; then a re-cleaning of the area and another settling/waiting period is required. Regulated work area floors, walls, ceilings and fixed objects shall be cleaned as part of this abatement project.
- 8. Negative air pressure shall be continuous until receipt of final air clearance criteria for that work area.
- 9. The settling/waiting period shall be a minimum of 12 hours.
- 10. Upon completion of the settling/waiting period and prior to clearance air sampling, a satisfactory visual inspection shall be completed by the asbestos supervisor and the Project Monitor. The visual inspection shall be completed as per the requirements of 56-9.1 (d)(1).
- 11. <sup>10/11/09</sup> ~~Non~~-aggressive clearance air sampling methods shall be completed in the work areas, with the number and location of air samples as per 56-9.2 (d). *See Variance conditions PD 11/12/09*
- 12. After satisfactory clearance air sampling results are obtained, the regulated work area may be dismantled.
- 13. Each of the areas of ACM debris located outside of the building shall be cordoned off with asbestos caution barrier tape at a minimum distance of 25 feet in all directions from the debris. Each such area shall be considered a regulated asbestos abatement area. Each area shall have an attached airlock to be used as the only means of access to each work area. Prior to entering each work area through the airlock, workers shall don two protective suits. Clean-up of each debris area shall be in accordance with all other applicable provisions of Code Rule 56. When leaving the work areas, workers shall remove the outer suit within the airlock and don a clean suit before proceeding directly to the remote personal decontamination unit.

Signed: 

Date: 9/21/09