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

In the Matter of	COMMISSIONER'S DECISION
Part 56 of Title 12 of the Official Compilation Of Codes, Rules and Regulations Of The State of New York	APPLICABLE VARIANCE-A-3 (AV-A-3)
(Cited as 12 NYCRR 56) (As Amended January 11, 2006)	Non-friable ACM Floor Covering Mastic Removal Using Chemical Methods along with Low-speed Floor Buffers
Cases: ICR 56-7.2(o), 56-7.5(d), 56-7.11(b, e), 56-9.1(f) and 56-11.7(b)(5)	DATED: May 31, 2007

Pursuant to Section 30 of the Labor Law, the Commissioner of Labor has reviewed the above cited provisions of Industrial Code Rule 56 (ICR 56), as they relate to asbestos projects consisting of non-friable ACM floor covering mastic removal using chemical methods along with low-speed floor buffers, completed as per the requirements of Section 56-11.7. The Commissioner of Labor has also reviewed numerous petitions for variance or other relief relative to such asbestos projects and the decisions rendered relative to these petitions.

The Commissioner of Labor finds that the issuance of an Applicable Variance from the above cited provisions of Industrial Code Rule 56, as such pertain to asbestos projects consisting of non-friable ACM floor covering mastic removal using chemical methods along with low-speed floor buffers, would not violate the spirit and purpose of said rules and would secure the public safety as contemplated by said rules.

APPLICABLE VARIANCE

A variance from the cited provisions of Industrial Code Rule 56 is hereby GRANTED subject to the following conditions:

THE CONDITIONS

1. Low-speed floor buffer is defined as an electrically powered floor buffer with a manufacturer limited maximum rotational speed of 300RPM.

2. In lieu of full plasticizing requirements as per Section 56-11.7(b)(5), a minimum of one-layer 6-mil fire retardant plastic sheeting shall be applied to the lower four (4) foot of the walls at the floor covering/mastic removal portions of the work area. This plastic sheeting splashguard shall be installed during work area preparation and shall be removed during the final cleaning portion of asbestos project, as per Section 56-9.1(e).

3. Critical Barriers to each room/area/space where work is being performed shall be installed in conformance to Subpart 56-7.11(a). All openings (critical barriers) shall be wet-cleaned and covered with two (2) layers of (6) six-mil fire retardant plastic sheeting or for around pipes or similar openings expandable foam or other sealant may be used. At openings only accessible to certified personnel, 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.

4. A negative pressure tent enclosure may be constructed and utilized as per ICR 56, where preparation of the entire room/space is either unfeasible or not necessary to adequately access all impacted asbestos material. Tents with greater than twenty (20) square feet of floor space shall be constructed of two (2) layers of six (6) mil fire-retardant plastic sheeting and shall include walls, ceiling and a floor (except for portions of walls, floors and ceilings that are the removal surface) with double-folded seams. Seams shall be duct taped airtight and then duct taped flush with the adjacent tent wall.

5. A remote personal decontamination system enclosure is allowed for each regulated abatement work area where low-speed buffers are utilized consistent with the Section 56-7.2(o) HEPA-filtered exhaust requirement. However, no visible trace of ACM floor tile debris or mastic is allowed on waste bags/containers that are removed from the work area, as well as remote personal decontamination system enclosure floor surfaces, designated pathway floor surfaces, and waste bag/container transfer pathways.

6. An attached personal decontamination enclosure system is required for each regulated abatement work area where non-HEPA exhausted low-speed floor buffers are utilized. The decontamination system enclosures shall be removed only after satisfactory clearance air monitoring results have been achieved for the regulated abatement work area.

7. Appropriate PPE shall be provided to the employee and utilized as per the MSDS recommendations for the chemical mastic removal solvent.

8. Floor buffers may be utilized for agitation of chemical mastic removal solvent, provided the buffer speed is below or equal to 300 RPM, and low abrasion pads are used in combination with chemical mastic remover wet methods.

9. A six (6) hour waiting/settling/drying period shall be observed after completion of the final cleaning, prior to commencement of clearance air sampling.

10. All mastic waste, used PPE, and other waste generated during mastic removal and cleaning operations shall be bagged/containerized as per ICR 56, and treated as RACM during transport and disposal.

11. All other applicable provisions of Industrial Code Rule 56-1 through 56-12 shall be complied with.

This APPLICABLE VARIANCE shall apply and shall be applied by all enforcement officials to all persons and in all places to which the aforecited provisions of Industrial Code Rule 56 apply to asbestos projects consisting of non-friable ACM floor covering mastic removal using chemical methods along with low-speed floor buffers, with the same force and effect as if this APPLICABLE VARIANCE were duly granted upon separate petition for the use and benefit of every person affected by the cited provisions of Industrial Code Rule 56.

Date: May 31, 2007

M. PATRICIA SMITH
COMMISSIONER OF LABOR

By 

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