



April 12, 2005

As an important step in responding to the January 31, 2005 Regulator Comments submitted to the LMDC on the draft Phase I Deconstruction Plan, the LMDC submitted a Request for Variance to the New York State Department of Labor (NYSDOL) on April 11, 2005. Submitting the Request for Variance to NYSDOL is an important step forward as it will allow the LMDC to finalize the revisions to the draft Phase I Deconstruction Plan in response to the comments received. The LMDC continues to work to revise the Phase I Deconstruction plan for regulatory approval and currently anticipates work on Phase I activities beginning this summer.

The Request for Variance implements many of the requirements contained in the Regulator comments. For example, as required by the Regulators, the LMDC will complete all work in Phase I in compliance with New York State Industrial Code Rule (ICR) 56. The draft Phase I Deconstruction Plan originally proposed that the cleaning and interior gut work would be performed in separate phases, Phase IA and Phase IB. However, under guidance from the regulatory agencies the LMDC will now perform all cleaning and interior gut work under the same protective measures required for asbestos abatement that were previously outlined only for Phase IA

All of Phase I will now include negative pressure containment, use of personal protective equipment, and air monitoring that will be in effect for the deconstruction project until all asbestos, including all World Trade Center dust containing asbestos and other contaminants of potential concern, are properly cleaned and removed. The Request for Variance summarizes and explains why Phase I of the Deconstruction requires modification of specified portions of ICR 56 and how alternative abatement approaches will be used to make the most of unique opportunities and to overcome logistical challenges presented by the 130 Liberty building. To view LMDC's April 11, 2005 Request for Variance [click here](#).

LMDC, its contractors and consultants are committed to compliance with applicable laws throughout the cleaning and deconstruction of the building. Accordingly, the Request for Variance complies with applicable federal, state and local law. To ensure such compliance, the proposed cleanup and abatement (i) will not expose the general public to asbestos, (ii) will minimize worker exposure to asbestos through the use of appropriate controls and personal protective equipment, (iii) will minimize adverse impacts to the community, (iv) will address the practical operational opportunities and challenges provided by the Building, and (v) will prepare the building for exterior cleaning, abatement and demolition to be conducted during Phase II.

Once the Request for Variance has been addressed by the NYSDOL, LMDC will submit the revised Phase I Deconstruction Plan to NYSDOL as well as other federal, state, and city regulatory agencies for their review and approval prior to the start of cleaning or Deconstruction.

The Request for Variance submitted on April 11, 2005 addresses Phase I of the Deconstruction only. It is anticipated that a variance amendment, or a new variance, will be submitted in the future for Phase II of the Deconstruction.

What is New York State Industrial Code Rule (ICR) 56?

What is a Variance?

What happens after the LMDC submits the Request for Variance?

What is New York State Industrial Code Rule (ICR) 56?

The New York State asbestos abatement rules, known collectively as New York State Industrial Code Rule (ICR) 56, apply to the deconstruction of 130 Liberty Street due to two facts: (1) 130 Liberty Street is owned by a state agency and (2) the building is known to contain asbestos. ICR 56 details regulations to be applied during the removal, encapsulation, enclosure or disturbance of friable asbestos, or any handling of asbestos material that may result in the release of asbestos fibers.

ICR 56 specifically contemplates the need for variances from the rule as written to address unique

challenges at complex sites and to make the most of opportunities to use innovative abatement approaches, so long as the abatement methods used protect public health and worker safety to the same, or greater, extent as ICR 56.

What is a Variance?

A variance is a site-specific modification to ICR 56 that address circumstances that arise when the nature of the project does not permit literal compliance with all of the otherwise applicable requirements. Submitting a Request for Variance is standard practice for partial and total demolition projects with asbestos because logistical concerns and limitations associated with demolition activities often prevent strict compliance with the rule as written. Variances are sought in the normal course on a wide variety of projects including school renovation and expansion, hospital interior gut and rehabilitation, industrial factory conversion to residential units and many other circumstances.

To ensure that variance methods are adequately protective, NYSDOL has developed both pro forma variances (known as "Applicable Variances", see <http://www.labor.state.ny.us/pdf/sh480.pdf>) and a detailed review and approval process for site-specific variances. All requests for site-specific variances must identify the sections of ICR 56 from which relief is sought and the alterative methods that will be used to meet the intent of the requirement and abate the asbestos in a safe manner as protective — if not more so — than the original rule. NYSDOL engineers with particular expertise in asbestos abatement review and comment on each aspect of the request for variance and ultimately decide whether the requested site-specific variance satisfies NYSDOL's exacting requirements for protection of human health and safety.

What happens after the LMDC submits the Request for Variance?

The NYSDOL will review the LMDC's Request for Variance and respond to each element of the Request. Approval will be granted if the NYSDOL finds the Request is in compliance with applicable law and will meet rigorous standards for worker and community health and safety. Any approvals granted will be issued to the LMDC in writing. Upon receipt, the LMDC will post the NYSDOL's decision on the Request for Variance on LMDC's web site. LMDC will also be submitting a revised Phase I Deconstruction Plan, including a revised Asbestos Abatement Plan, to all applicable federal, state, and city regulatory agencies for their review and approval prior to the start of deconstruction.

The Request for Variance submitted yesterday addresses Phase I of the Deconstruction only. It is anticipated that a variance amendment, or a new variance, will be submitted in the future for Phase II of the Deconstruction.