

**APPENDIX 1**  
**PROJECT VARIANCE FILE NO. 04-1432 DATED**  
**SEPTEMBER 27, 2004 AND AMENDMENT DATED**  
**OCTOBER 6, 2004**



STATE OF NEW YORK  
DEPARTMENT OF LABOR  
Engineering Services Unit  
Room 154 Building 12  
Governor W. Averell Harriman State Office Building Campus  
Albany, New York 12240

FACSIMILE TRANSMITTAL SHEET

TO: STEPHEN PHARAI

FROM: CHRIS ALONSO

COMPANY: LOUIS BERGER GROUP

DATE: \_\_\_\_\_

FAX NUMBER: 212-363-4341

TOTAL NO. OF PAGES INCLUDING COVER: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

SENDER'S FAX NUMBER: (518) 457-1301

RE: VARIANCE DECISION AS DISCUSSED  
130 LIBERTY

SENDER PHONE NUMBER: (518) 457-1536

NOTES/COMMENTS:

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STATE OF NEW YORK  
DEPARTMENT OF LABOR  
STATE CAMPUS  
BUILDING 12, ROOM 154  
ALBANY, NEW YORK 12240  
TELEPHONE (518) 457-1536  
FAX (518) 457-1301

September 27, 2004

The Louis Berger Group, Inc.  
One Seaport Plaza  
199 Water St. 23<sup>rd</sup> Fl.  
New York, NY 10038

RE: File No. 04-1432

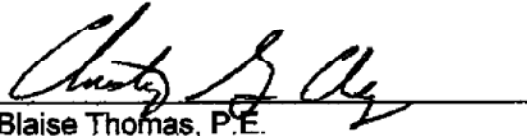
Dear Sir/Madam:

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

The attached is a copy of Decision, dated 9/27/2004, 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 in 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 27<sup>th</sup> day of September, Two thousand  
four.

  
Blaise Thomas, P.E.  
Associate Safety and Health Engineer  
Engineering Services Unit

cga

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

Variance Petition

of

The Louis Berger Group

Petitioner

In re

Premises: Vacant High Rise Office Building  
130 Liberty Street  
New York, New York

**Interior/Exterior Friable WTC Dust  
Contamination Assessment, Planning,  
Building Pre-demolition Asbestos Survey,  
Preliminary Isolation Barrier Installation and  
Emergency Work Necessary for Securing  
Building**

File No. 04-1432

DECISION

Cases 1- 13

ICR 56

The Petitioner, pursuant to Section 30 of the Labor Law, having filed Petition No. 04-1432 on September 27, 2004 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, 2004; 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 56-1.9(e)
Case No. 2	ICR 56-2.1 <b>limited</b>
Case No. 3	ICR 56-2.2 <b>limited</b>
Case No. 4	ICR 56-8.1
Case No. 5	ICR 56-8.1(b) <b>DENIED</b>
Case No. 6	ICR 56-8.1(c, e-q)
Case No. 7	ICR 56-8.1(k1-k5)
Case No. 8	ICR 56-10.1(a)
Case No. 9	ICR 56-11.1(b)
Case No. 10	ICR 56-15.1
Case No. 11	ICR 56-17.1(schedule)
Case No. 12	ICR 56-17.2
Case No. 13	ICR 56-17.3(a)

**VARIANCE GRANTED.** The Petitioner's proposal for access to contaminated portions of the building for WTC Dust Contamination Assessment, Planning, Building Pre-demolition Asbestos Survey and Emergency Work Necessary for Securing Building at the subject premises, in accordance with the attached 22-page stamped copy of the Petitioner's submittal, is accepted; subject to the Conditions noted below

**VARIANCE DENIED.** The petitioner's proposal to install isolation barriers at the perimeter of the building and at all openings and penetrations to contaminated portions of the building is denied, until sufficient and acceptable information regarding the scope of work, quantities of WTC dust and ACM impacted by the barrier work, work procedures, safety precautions and other necessary information is provided.

## **THE CONDITIONS**

### **Concurrent Bidding**

1. The demolition and asbestos abatement contracts may be bid and awarded concurrently. However, no demolition work on the current intermediate portion of the project shall commence by any owner or agent prior to completion of all necessary asbestos abatement work for the current intermediate portion of the entire project, in conformance with all standards set forth in this Part.

**General Building Access Restrictions**

2. Any firm and their employees may access the cleaned and decontaminated portions of the building to complete their work.
3. Firms and their employees that require access to the contaminated portions of the building for roof access, assessment, planning, design, characterization, maintenance of systems, and related work may enter as building owner authorized visitors/representatives. Entry to and exit from the contaminated portions of the building shall proceed using the established procedures within the petitioner's proposal and the building owner's Health and Safety Plan (HASP). A copy of the current HASP is attached to the Decision. Copies of all documents referenced within the HASP (e.g. HASP by R.J. Lee, dated August 5, 2003, and Site Safety Program by Site Safety, dated December, 2001) shall be posted on-site in the immediate vicinity of the personal decontamination enclosure.
4. Any firm accessing the contaminated portions of the building to perform sampling, asbestos pre-demolition survey operations, cleaning operations, or other disturbance activities shall be a NYS DOL licensed asbestos contractor and their employees accessing the contaminated portions of the building shall be NYS DOL asbestos handler certified. These firms and employees shall also have current NYC DEP asbestos handling licenses and certifications. Entry to and exit from the contaminated portions of the building shall proceed using the established procedures within the petitioner's proposal and the building owner's HASP.
  - a. Transition Period - As the LMDC only recently became the new owner of the building, the Department doesn't expect all necessary firms to be NYS DOL asbestos licensed and all necessary employees NYS DOL asbestos certified immediately, but all firms should submit appropriate license and employee certification applications to comply with ICR 56 as soon as possible. A two-week grace period to obtain licenses and a four-week grace period to obtain individual certifications is allowed from the date of this decision. However, all individuals shall have appropriate asbestos handler/worker training and shall have current NYC DEP asbestos handler certifications during this transition period.
5. Once the actual abatement/cleaning phase of the project begins, the access plan will be modified and any individual accessing a regulated abatement work area to do work shall be an appropriately certified asbestos handler and their firm shall be appropriately licensed.
6. A personal decontamination enclosure system that complies with Subpart 56-9 shall be utilized for access to contaminated portions of the building.

7. The regulated abatement work areas, decontamination units, and ACM waste dumpster areas shall be cordoned off until the abatement project is complete. These areas shall have Signage posted in accordance with Subpart 56-8.1(b) of this Code Rule.
8. Daily abatement air monitoring as per ICR 56-17.3 shall be completed during this preliminary stage of the asbestos project. Daily abatement air monitoring at the decontamination enclosure is required only on days when contaminated portions of the building are accessed.

**Emergency Exterior Spandrel Glass Removals:**

9. As per the petitioner's proposal with the following modifications:
  - a. The immediate work area shall be considered to be the Facade area from which the damaged spandrel glass pieces are actively being removed. The immediate work area shall extend out from the base of the structure and shall encompass all areas utilized for staging, removal and cleaning operations. This area will be posted with signs and barrier tape in accordance with ICR 56 and 29 CFR 1926.1101.
  - b. Materials removed shall be containerized or immediately wrapped in two layers of 6 mil, fire retardant plastic sheeting and secured air tight prior to transfer to the waste dumpster for disposal by appropriate legal means.
  - c. Daily abatement air monitoring as per ICR 56-17.3 shall be completed for the duration of the emergency glass removals. Daily abatement air monitoring is required only on days when glass removal or support activities such as ACM disturbance or cleaning activities are performed.
10. Usage of this variance is limited to those asbestos removals identified in this variance or as outlined in the Petitioner's proposal.

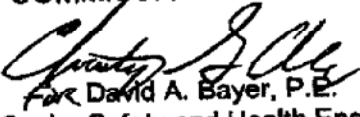
In addition to the conditions required by the above specific variances, the Petitioner shall also comply with the following general conditions:

**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 56-18.
4. The final say as to interpretation of this variance rest solely with the NYS Dept of Labor Engineering Services Unit. Any deviation from variance conditions shall render this variance Null and Void pursuant to 56-18.2.
5. This DECISION shall terminate on September 30, 2006.

Date: September 27, 2004

By

LINDA ANGELLO  
COMMISSIONER OF LABOR  
  
For David A. Bayer, P.E.  
Senior Safety and Health Engineer

PREPARED BY: Christopher G. Alonge, P.E.  
Senior Safety and Health Engineer

REVIEWED BY: David A. Bayer, P.E.  
Senior Safety and Health Engineer



**04-1432****LMDC**  
Remember Rebuild RenewLower Manhattan Development Corporation  
One Liberty Plaza, 20<sup>th</sup> Floor New York, NY 10006  
Tel: 212.962.2300 Fax: 212.962.2431  
www.renewnyc.com

September 21, 2004

RECEIVED  
Office of the Commissioner of Labor  
Albany NY  
SEP 22 2004**VIA FEDERAL EXPRESS**Linda Angello, Commissioner  
New York State Department of Labor  
State Office Building Campus, Room 500  
Albany, NY 12240-0003Re: Petition for Variance: 130 Liberty Street, New York, New York

Dear Commissioner Angello,

Pursuant to § 30 of the New York State Labor Law, please find enclosed the petition of the Lower Manhattan Development Corporation ("LMDC") requesting a temporary waiver of certain provisions of New York State Industrial Code Rule 56 in connection with LMDC's recent acquisition from Deutsche Bank of the building located at 130 Liberty Street in the City of New York (the "Building").

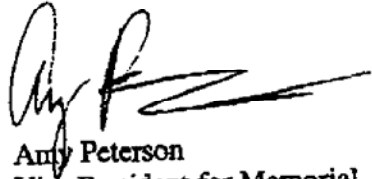
The purpose of the petition is to allow LMDC to complete the containment and securing of the Building and to conduct required studies and tests preparatory to submitting a plan for cleaning and deconstruction. LMDC respectfully requests that the variance be granted immediately as it is essential that the Building be fully contained and secured. LMDC has been informed that the necessary work can not proceed until DOL issues the requested variance. The petition relates to the holding and testing period only; it does not request a waiver of any provisions of applicable law during or after the cleaning and deconstruction activities.

The enclosed petition was prepared for LMDC by The Louis Berger Group, Inc., an LMDC contractor specializing in asbestos abatement activities and possessing a Department of Labor Asbestos Handling License.

**04-1432**

If you have any questions concerning the enclosed or if we can provide you any additional information, please let me know. We would be happy to arrange a tour of the Building if that would be helpful.

Sincerely,



Andy Peterson  
Vice President for Memorial, Cultural  
& Civic Development

Enclosure

cc w/enc: John Douglas  
Christopher G. Alonge

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**ATTACHMENT 1 TO PETITION FOR VARIANCE****RESPONSE TO QUESTION 12:**

A temporary waiver is requested from each of the following provisions of ICR Rule 56: § 56-1.9(e); § 56-6.1; § 56-8.1(b), (c), (e) through (q); § 56-10.1; § 56-11.1(b); § 56-15.1; § 56-17.1; § 56-2.1; §56-2.2; and § 56-17.2 commencing immediately and ending at such time as the cleaning and deconstruction activities at the Building commence in a manner acceptable to the various regulatory agencies with jurisdiction over the project. LMDC is currently providing a personal decontamination enclosure system that complies with ICR 56-9.1, therefore no variance from this requirement is requested at this time.

**RESPONSE TO QUESTION 25:***The Building Is Being Held In A Safe And Secure Manner*

On August 31, 2004, the Lower Manhattan Development Corporation ("LMDC") purchased the building located at 130 Liberty Street, New York, New York (the "Building") from its former owner, Deutsche Bank. At this time, LMDC is maintaining the Building pursuant to plans and protocols that are in all cases at least as stringent as those employed by Deutsche Bank prior to the sale of the Building. Furthermore, in many cases, LMDC is employing plans and protocols that are more stringent than those previously employed by Deutsche Bank.

Deutsche Bank employed three mechanisms to secure the Building and protect workers and the public: (1) exterior air monitoring, (2) a Health and Safety Plan, and (3) physical barriers to prevent the migration of contaminants from the Building. All three of these mechanisms were adopted by LMDC effective August 31, 2004 and all three are in the process of being enhanced and improved.

Commencing on August 31, 2004, LMDC adopted and continued Deutsche Bank's exterior air monitoring and retained Deutsche Bank's prior consultant, Ambient Group, Inc. ("Ambient") for this purpose. Such monitoring has been occurring 24 hours a day since LMDC purchased the Building. Moreover, in the near future, LMDC, working with Ambient and other consultants, will enhance Deutsche Bank's previous monitoring program by (i) adding additional sampling locations and (ii) upgrading the analysis performed on the samples collected.

Additionally, effective August 31, 2004, LMDC issued a Health and Safety Plan ("HASP") for the Building which incorporated Deutsche Bank's HASP. A copy of the current HASP is attached hereto for your ease of reference. All persons entering the Building, for any purpose, are required by LMDC to comply with the HASP. While the "gash" area and the staging/support area in the loading dock area of basement level A were previously surface-cleaned by the former owner of the Building (Deutsche Bank), the remainder of the Building, consisting of entire floors or parts thereof, is considered to be contaminated and personal protective equipment ("PPE") is required as specified by the HASP. Consistent with the recommendations made in the *Initial Building Characterization Study Report* released by LMDC on August 14, 2004, LMDC's HASP

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is in the process of being reviewed and, where necessary, enhanced to take into account the applicable New York State Department of Labor ("DOL") rules and regulations and the results of LMDC's consultants' independent analysis of the contaminants in the Building. Moreover, LMDC and its consultants are currently considering whether additional protective measures are necessary in the "gash" area or the staging/support area in the loading dock area of basement level A. The revised HASP will be sent to DOL after it is issued.

Finally, LMDC is maintaining the engineering controls utilized by Deutsche Bank to prevent migration of pollutants from the Building. Prior to August 31, 2004, some of these controls had fallen into a state of disrepair. Accordingly, LMDC and its consultants and contractors are currently prepared to make necessary repairs and adjustments to these controls and implement additional controls, where necessary, to ensure the Building is adequately contained and secured. For example, LMDC is prepared to seal currently unsealed windows and other openings, repair damaged portions of the seal in the "gash" area, and address other potential openings, such as HVAC vents. LMDC respectfully requests that the variance be granted immediately as it is essential that the Building be fully contained and secured. LMDC has been informed that the necessary work can not proceed until DOL issues the requested variance.

For all of these reasons, LMDC and its consultants and contractors are satisfied that the work LMDC plans to conduct in the near future will ensure that the Building is being held in a safe and secure manner while additional testing and other analysis preparatory to a cleaning and deconstruction plan continues.

#### *A Temporary Waiver Of Certain DOL Regulations Is Necessary*

LMDC requires a temporary waiver of the above-listed requirements of ICR Rule 56<sup>1</sup> during the securing of the Building and the initial phases of its cleaning and deconstruction survey of the Building. As part of the proposed redevelopment of the World Trade Center site, the Building is scheduled to be cleaned and methodically deconstructed, including, but not limited to, removal and disposal of all interior walls, stairs, ceilings, floor coverings, Mechanical, Electrical, and Plumbing items, exterior skin, superstructure concrete, and structural steel. The Building will be deconstructed piece by piece as a safety precaution, and will not include the use of explosion/implosion devices as is often the case with conventional building demolition.

This cleaning and deconstruction can not proceed until a thorough study of the Building has been completed. While the LMDC recently released its *Initial Building Characterization Study Report* (the "Initial Study"), the Initial Study recommended further testing now that LMDC owns the Building and has access to previously

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<sup>1</sup> A temporary waiver is requested from each of the following provisions of ICR Rule 56: § 56-1.9(e); § 56-6.1; § 56-8.1(b), (c), (e) through (q); § 56-10.1; § 56-11.1(b); § 56-15.1; § 56-17.1; § 56-2.1; §56-2.2; and § 56-17.2.

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inaccessible portions of the Building. LMDC's plans to test these formerly inaccessible areas were shared with DOL, and numerous other regulators, at recent meetings. The contemplated further testing can not be accomplished in compliance with the above-referenced DOL regulations, which contemplate that abatement will be performed during this phase. Hence, while asbestos containing material ("ACM") has been identified, further study is necessary to identify all ACM, address asbestos in dust, and address other contaminants in the Building. For this reason, a temporary waiver is required.

The requested waiver will be temporary in nature. At this time, the survey of asbestos in the Building is not yet completed and abatement work has not yet been scheduled. LMDC seeks a waiver only for the initial stages of the project involving securing the Building and the completion of the Building survey and planning of the deconstruction. LMDC anticipates that the waiver will terminate when LMDC is in a position to commence cleaning and deconstruction in a manner approved by DOL and other agencies with jurisdiction. LMDC is not requesting at this time any waiver applicable to the cleaning or deconstruction process.

*The Requested Waiver Will Have No Adverse Impact On Health And Safety*

The requested waiver will have no adverse impact on health and safety. This is so for two reasons. First, as explained above, the work LMDC plans to conduct in the near future will ensure that the Building is held in a safe and secure manner with appropriate controls more protective than those utilized by the prior owner, Deutsche Bank, over the past several years. Second, the requirements from which a temporary waiver are requested are normally implemented during an asbestos abatement project. Requiring LMDC to comply with these requirements at this preliminary stage would effectively prevent the securing and containment of the Building and any further study and assessment of the Building, which all parties involved agree is necessary.

*Various Persons Require Access To Contaminated Areas Of The Building Prior To Cleaning And Deconstruction*

One aspect of the temporary waiver requests that various persons be permitted to access the contaminated portions of the Building prior to the commencement of cleaning and deconstruction. All such access will be in full compliance with the HASP and will be protective of worker health and safety.

Every person entering the Building will comply with the HASP as it exists at the time of entry and, where required by the HASP, will employ the required PPE. Moreover, every person wishing to enter contaminated areas is required to pass through security checkpoints. Effective September 21, 2004, every person desiring to enter a contaminated area must have either (a) a valid asbestos certificate issued by the DOL or (b) asbestos awareness training. Finally, there are no remediation activities taking place in contaminated areas at this time.

The location of ACM, asbestos in dust, and other contaminants discovered to date are set forth in the Initial Study previously provided to DOL and incorporated herein by this

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reference. In summary, other than the "gash" area and the staging/support area in the loading dock area of basement level A, the entire Building is considered to be contaminated with asbestos and other materials. Accordingly, prior to entry into any contaminated area, suitable PPE (including respirators) is required as described more fully in the attached HASP. Additionally, LMDC currently is evaluating whether additional PPE should be required in the previously cleaned portions of the Building. The HASP will be amended, as appropriate, in light of this further evaluation.

Prior to cleaning and deconstruction, access to these contaminated areas is required for a variety of purposes including the following: (1) to conduct ambient air sampling at locations in the basement level and outside the Building; (2) to provide site security and to regulate access to the Building; (3) to repair and seal off currently unsealed openings, including windows, HVAC vents, etc.; and (4) to conduct additional testing and analysis necessary to formulate the cleaning and deconstruction plan. For these reasons, LMDC requests a temporary waiver permitting these activities to occur prior to the commencement of cleaning and deconstruction.

For example, in order to formulate the cleaning and deconstruction plan, further testing of previously inaccessible areas is required including testing of dust that may be contained within interstitial spaces, raceways, curtain walls, interior walls and similar areas. This testing is essential to ensure that LMDC, and its consultants, contractors, and regulators, have a complete understanding of the location of contamination within the Building prior to commencing the deconstruction. Upon completion of testing in these areas, the asbestos survey documents will be updated and incorporated into remediation plans, which will include air monitoring and other appropriate requirements.

#### *Entities Requiring Access to Contaminated Areas*

The following is a list of entities whose presence is required within the Building and for whom a temporary waiver is requested:

- **The Louis Berger Group, Inc.** – Berger is responsible for site hygiene and environmental investigation site safety, as stated in the HASP, and requires access to conduct additional investigations and testing. Berger possesses a current DOL Asbestos Handling License.
- **TRC Engineers, Inc.** – TRC is an environmental consultant to LMDC assisting LMDC and Berger in characterizing the Building and addressing any contaminants found in a safe and effective manner in compliance with all applicable statutes, rules, and regulations. TRC possesses a current DOL Asbestos Handling License.
- **Ambient Group** – Ambient is the environmental consultant to LMDC administering the perimeter air sampling. Ambient requires periodic access to the Building to monitor, administer, and repair (if necessary) the system of monitoring devices.
- **Gilbane Building Company**– Gilbane is LMDC's deconstruction contractor with overall responsibility for general site safety and oversight. Gilbane requires

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periodic access to the Building to assist in formulating the cleaning and deconstruction plan and to ensure and monitor safety requirements.

- **LVI Environmental** – LVI is a subcontractor to Gilbane and is responsible for environmental cleanup work. It is anticipated that LVI will perform the cleaning (asbestos abatement). LVI is also engaged in securing the Building. Accordingly, LVI requires periodic access to the Building to assist in ensuring that it is secure and in formulating the cleaning plan. LVI possesses a current DOL Asbestos Handling License.
- **Controlled Demolition, Inc.** – Controlled Demolition is a subcontractor to Gilbane and is responsible for deconstruction activities. Controlled Demolition is also engaged in securing the Building. Controlled Demolition therefore requires periodic access to the Building to assist in ensuring that it is secure and in formulating the deconstruction plan.
- **Weston Solutions** – Weston is a subcontractor to Gilbane and is responsible for environmental sampling. Weston requires periodic access to the Building to assist in formulating the cleaning and deconstruction plan. Weston possesses a current DOL Asbestos Handling License.
- **Allied Security** - Allied is a subcontractor to Gilbane and is responsible for site safety and security. Allied requires access to the Building to assure that it is, and remains, safe and secure.
- **Other Authorized Visitors** – Other authorized personnel may require access to the Building from time to time, including employees of LMDC, Deutsche Bank, and Deutsche Bank's insurers. Other authorized visitors also include regulators who may desire to tour the Building.

*Every person entering the Building will comply with the HASP as it exists at the time of entry and, where required by the HASP, will employ the required PPE. Moreover, every person wishing to enter contaminated areas is required to pass through security checkpoints. Effective September 21, 2004, every person desiring to enter a contaminated area must have either (a) a valid asbestos certificate issued by the DOL or (b) asbestos awareness training. Finally, please note that there are no remediation activities taking place in contaminated areas at this time.*

**04 - 1432****RESPONSE TO QUESTION 26:**

As explained above, LMDC adopted Deutsche Bank's three mechanisms to secure the Building and protect workers and the public: (1) exterior air monitoring, (2) a Health and Safety Plan, and (3) physical barriers to prevent the migration of contaminants from the Building. As discussed more fully above, all three of these mechanisms will be repaired (if and as necessary), enhanced, and improved. As a result, LMDC has taken--or plans to take-- reasonable steps to prevent contamination from escaping the Building or from spreading to previously cleaned, uncontaminated portions of Building.

LMDC proposes numerous measures for achieving site safety and protecting health in lieu of the requirements of ICR Part 56 for which this variance is requested. These measures are described in detail in Attachment 2 and include the following:

- respiratory protection;
- disposable protective clothing;
- enhanced employee entry and decontamination procedures;
- enhanced supervision and project monitoring; and
- daily perimeter air monitoring.

The proposed procedures prevent exposure of persons in the Building (and the general public) to potentially dangerous asbestos fibers and other contaminants of concern in the Building.



**04 - 1432****ATTACHMENT 2 TO PETITION FOR VARIANCE**

The following work procedures apply during the term of the requested variance:

**1.0 RESPIRATORY PROTECTION**

- 1.1 Only those Employees who have been medically qualified to wear a respirator, and who have been fit tested in the particular respirator (i.e., manufacturer, model, and size) they intend to wear, will be allowed to enter portions of the Building requiring the use of a respirator in the Building.
- 1.2 Each Employer shall provide each of its Employees who may wear a respirator in the Building with personally issued and marked respiratory equipment in accordance with all applicable laws, statutes, ordinances, codes, rules, regulations, orders, resolutions, standards, practices, and health procedures, as well as a written respiratory protection program that includes air monitoring, medical monitoring, training, and fit testing for each Employee who wears a respirator.
- 1.3 Each Employer shall determine and provide the respiratory protection for each of its Employees according to work area and work activity. A respirator of lesser protection may not be used unless sufficient full-shift personal air monitoring has been conducted, representative of "worst case" situations to support a downgrade in protection. At no time on the Site may disposable dust masks be used for respiratory protection.
- 1.4 Each Employee shall ensure that its respirator forms a seal against its face so that the Employee receives air only through the air purifying cartridges or hose attached to the respirator. Facial hair that interferes with the effectiveness of a respirator will not be permitted.
- 1.5 Each Employer shall collect personal air samples of its Employees and shall describe the contaminants to be sampled, the frequency of sample collection, the method of sample collection and analysis, and the method by which Employees will be identified for sampling.
- 1.6 If at any time personal air samples indicate airborne exposures above one-half of the Occupational Safety and Health Act's (OSHA) Permissible Exposure Limit (PEL) (using the protection factor of the respirator and the OSHA formula for exposure to multiple contaminants), respiratory protection will be upgraded for the activities represented until engineering and work practice controls are demonstrated through additional monitoring of the activity to reduce exposure levels below one-half of the PEL.

**04 - 1432****2.0 DISPOSABLE PROTECTIVE CLOTHING**

- 2.1 Each Employee entering the Containment Area must wear protective clothing that provides complete skin coverage. This clothing shall consist of double suits, inner polypropylene, and outer Tyvek coveralls.
- 2.2 Protective clothing that becomes ripped or torn during the workday must be repaired or replaced immediately.
- 2.3 Outer protective clothing must be of the nonporous type and/or specifically manufactured for use in asbestos regulated areas (Tyvek or equivalent).
- 2.4 Disposable protective clothing must be discarded and disposed of as asbestos waste every time the wearer exits from the Containment Area through the decontamination facility.
- 2.5 Wearing of suits through the flaps at the ramp exit of the Building is prohibited.

**3.0 EMPLOYEE ENTRY AND DECONTAMINATION PROCEDURES**

- 3.1 **GENERAL BUILDING ACCESS** - Each Employee entering a Containment Area must observe the "buddy system" at all times, constantly maintaining communication or visual contact among crew members. Each Employee new to the Building shall be escorted by an Employee familiar with the Building, the location of the Containment Areas, physical hazards, and emergency exit routes.
- 3.2 **ENTRANCE TO A CONTAINMENT AREA**
  - 3.2.1 Each Employee to enter a Containment Area shall sign in at the entrance to the Containment Area (this "sign in" is in addition to the general Building access sign-in).
  - 3.2.2 Each Employee who enters the Containment Area shall change into its Double Suit, poly inner and Tyvek outer, Nitrile gloves, and his/her assigned respirator in the change room. Each Employee shall then pass through the equipment room and into the Containment Area.
  - 3.2.3 No Employee may eat, drink, smoke, chew gum, or tobacco in a Containment Area. To do any of the above, the Employee must leave the Containment Area following the complete decontamination sequence.
  - 3.2.4 In the event that an Employee in a Containment Area requires replacement of a protective suit or respirator filter, such Employee should exit the Containment Area utilizing proper decontamination procedures, make necessary repairs or replacements, don his/her respirator and new protective clothing, and re-enter the Containment Area.

**04 - 1432****3.3 EXITING A CONTAINMENT AREA**

- 3.3.1 Each Employee to enter a Containment Area shall sign in at the entrance to the Personal Decontamination Unit and each Employee exiting a Containment Area shall pass through the Decontamination Enclosure System to decontaminate or dispose of his/her clothing and equipment.
- 3.3.2 Before leaving a Containment Area, each Employee shall remove all gross contamination and debris from his/her disposable coveralls and equipment by vacuuming with HEPA vacuums. Removal of materials from protective clothing or equipment by blowing, shaking, or any other means that may disperse materials into the air is prohibited.
- 3.3.3 Each Employee shall then remove his/her outer Tyvek coveralls and place them in the lined barrels.
- 3.3.4 Each Employee shall then proceed to Chamber B and remove his/her inner suit and gloves and place them in the lined barrels provided.
- 3.3.5 Each Employee shall then proceed immediately into the shower room and wash and rinse his/her hair, neck, face, respirator, arms, and hands.
- 3.3.6 No Employee may remove its respirator until after the Employee has showered to prevent inhalation of fibers. Each Employee shall dispose of his/her respirator filter at the end of each workday. Each Employee shall dispose of his/her respirator filters, protective clothing and decontamination waste as asbestos contaminated waste.
- 3.3.7 After showering, each Employee shall go to the clean room, dress in street clothes, and properly store respirators and other equipment.

**3.4 EQUIPMENT DECONTAMINATION AND WASTE DISPOSAL AREA**

- 3.4.1 Each Employee to enter a Containment Area shall sign in at the entrance to the Personal Decontamination Unit and each employee exiting a Containment Area shall also pass through the Decontamination Unit. Each employee shall comply with, and each Employer shall be responsible for such compliance by its Employees with the procedures outlined in the following subsections.
- 3.4.2 **PERSONAL TOOLS AND EQUIPMENT** - Personal tools and equipment that are brought out of the Containment Area (for example, flashlights, radios, PDA, utility knives, etc.) shall be decontaminated in the decontamination system.

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- 3.4.3 **OTHER TOOLS AND EQUIPMENT** - Other tools and equipment (for example, from an Employer's central stores or rental equipment) that are brought out of a Containment Area must be decontaminated in accordance with all applicable laws, statutes, ordinances, codes, rules, regulations, orders, resolutions, standards, practices, and procedures.
- 3.4.4 **SPECIAL EMERGENCY PROCEDURES**
- 3.4.4.1 All Employers, Employees and Third-Parties will be directed to evacuate the Building in the event of a medical or safety emergency, including fire, accident, or any other event that increases risks associated with chemical, biological, and physical hazards, until the increased risk can be assessed and controlled.
- 3.4.4.2 Each Employee shall ensure that its work does not obstruct exits and that its work areas are kept neat, clean, and safe.
- 3.4.4.3 Should someone be transported to a hospital or doctor, a copy of this document must accompany them. **NECESSARY EMERGENCY PROCEDURES MUST TAKE PRIORITY OVER ALL OTHER REQUIREMENTS OF THIS DOCUMENT.**
- 3.4.4.4 The extent of emergency decontamination will depend on the severity of the injury or illness and the nature of the contamination. Decontamination consists of removal of contaminated outer clothing and equipment. If the emergency is such that there is insufficient time or the contaminated clothing cannot be removed, the person should be given required first aid treatment, and then wrapped in plastic or a blanket prior to transportation to medical care. If heat stress is a factor in the victim's illness/injury, all protective garments must be removed from the victim immediately.
- 3.4.5 **DOCUMENTATION** - All Employers, Employees and Third-Parties will be directed to establish and maintain documentation that will record, at a minimum, the following information:
- 3.4.5.1 The Employer's Employees on the Site, their arrival and departure times at the Building, and their destination on the Site.
- 3.4.5.2 Information required to be maintained by the OSHA respiratory protection standard, including medical clearance documents, training and certification records, fit-test records, and the results of personal air monitoring to determine Employee exposures.

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- 3.4.5.3 Incidents and unusual activities that occur on the Site, such as, but not limited to, injuries, accidents, spills, breaches of security, equipment failures and weather related problems.

**3.5 SUPERVISION AND PROJECT MONITORING** – The Lower Manhattan Development Corporation (LMDC) has engaged the Louis Berger Group, Inc. (Berger) to provide the services of the project monitor for this project. Berger's responsibilities are summarized as follows:

- 3.5.1 Berger shall staff the Project with a trained and certified Project Monitor to act on the LMDC's behalf at the job site. This individual shall be designated as the Abatement Project Monitor (APM).
- 3.5.2 The APM shall be on-site 24 hours a day.
- 3.5.3 The APM will review and approve or disapprove all submittals, shop drawings, schedules, and sampling schedules.
- 3.5.4 The APM will assure that all notifications to governmental agencies by the Contractor are submitted and are correct in content.
- 3.5.5 The APM will review and approve the Contractor's OSHA compliance testing laboratory.
- 3.5.6 The APM shall have the authority to direct the actions of the Contractor verbally and in writing to ensure compliance with all applicable regulations. The APM shall have the authority to request corrective action when deficiencies or unsafe practices are observed, or when ambient fiber concentrations outside the Building exceed the acceptable criteria.
- 3.5.7 The APM shall verify daily that all workers used in the performance of the Project are certified by the New York State Department of Labor.
- 3.5.8 The APM shall also monitor, verify, and document all waste load-out operations.
- 3.5.9 The APM shall verify that the Contractor is performing personal air monitoring daily, and that results are being returned and posted at the site as required.
- 3.5.10 The APM shall conduct daily inspections to verify the integrity of the controls in place to control fugitive dust release and to monitor the continued integrity of the contained areas.

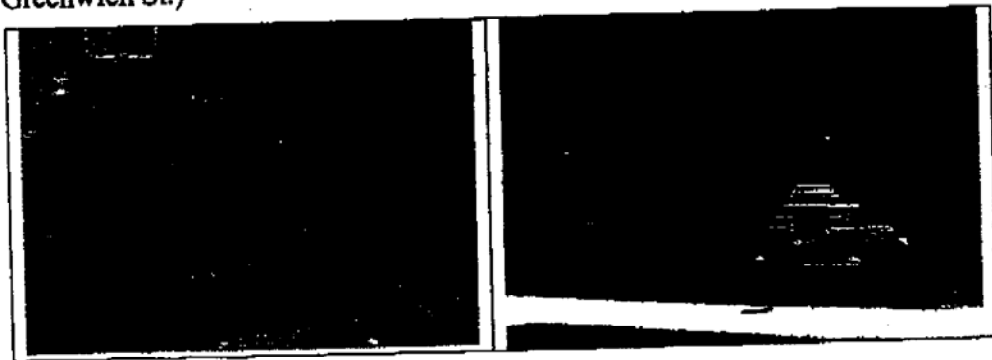
**3.6 DAILY PERIMETER AIR MONITORING** – The Ambient Group, Inc., on behalf of LMDC, is currently conducting perimeter air monitoring at four (4) locations. The EPA AHERA and Health-Based Benchmark for asbestos is being used for comparison of the asbestos air sample results.

The air sampling at the following locations are being analyzed for asbestos (TEM), particulate matter (SEM) and metals(AAS):

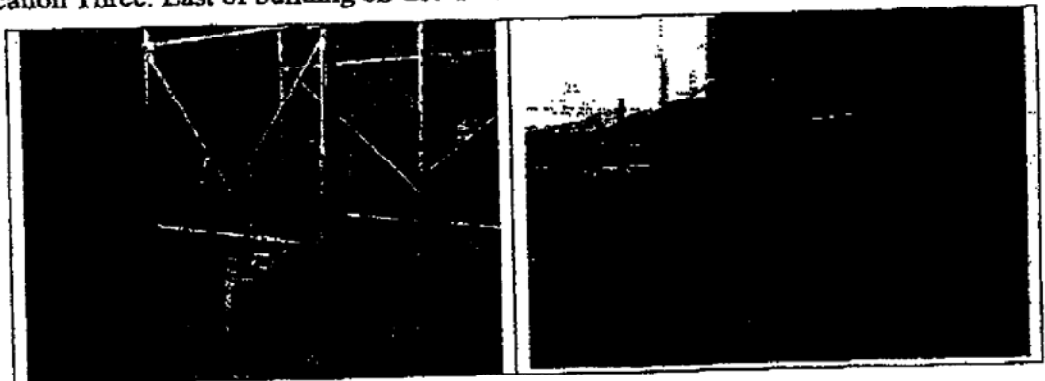
- Location One: South West of building adjacent to column enclosure (Washington St./Albany St.)



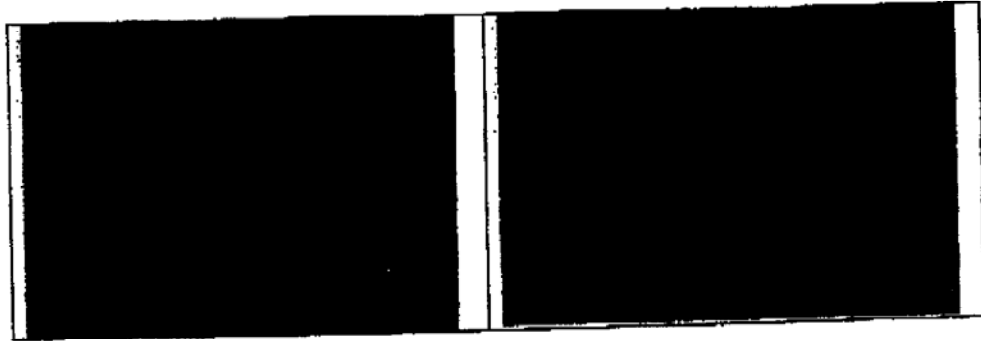
- Location Two: South East of building adjacent to Allied Security Post (Albany St./Greenwich St.)



- Location Three: East of building on Greenwich Street.



- Location Four: North West of building adjacent to Pit (Washington St./Cedar St.)

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LMDC proposes a new air sampling location to the north of the Building along the Liberty Street pedestrian walkway shed and hopes to have this additional sampling location operational in the near future. LMDC is also evaluating whether other air sampling locations should be added.

To date, none of the air sampling results from the four locations currently being sampled have exceeded the comparative criteria used at the time (either EPA AHERA or the Health-Based Benchmark for asbestos).

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**SITE-SPECIFIC  
HEALTH AND SAFETY PLAN  
FOR  
130 LIBERTY STREET  
NEW YORK, NEW YORK**

Prepared for:



Lower Manhattan Development Corporation  
1 Liberty Plaza  
New York, New York

Prepared by:



TRC Environmental Corporation  
1430 Broadway  
New York, New York

August 31, 2004



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**Site-Specific Health and Safety Plan Preface**

This Site-Specific Health and Safety Plan (SSHSP) is designed to prevent occupational injuries and exposures to chemical, biological and physical hazards associated with activities within 130 Liberty Street, New York, New York (Site) prior to commencement of the building cleaning and deconstruction. The SSHSP was prepared for Lower Manhattan Development Corporation (LMDC), the building Owner. A separate SSHSP will be prepared for the actual cleaning and deconstruction activities once they begin. This SSHSP was prepared in accordance with requirements established by the Occupational Safety and Health Administration (OSHA), the National Institute of Occupational Safety and Health (NIOSH), the Environmental Protection Agency (EPA), local State and City Regulations. This plan was also prepared to comply with OSHA 29 CFR Part 1910, Part 1926, and EPA 40 CFR Part 171-178.

All on-site personnel are required to read, review and strictly comply with the SSHSP. It is the responsibility of the Site Hygiene Manager (SHM) and each Employer's Site Safety Representative (ESSR) to ensure that the Plan is implemented and enforced. Like other site-specific documents, the Plan may contain sensitive or confidential information and therefore should not generally be disclosed to other than those working on-site.

The SSHSP incorporates by reference and adopts the provisions of the Health and Safety Plan (HASP) dated August 5, 2003 prepared by RJ Lee Group, Inc. (copy attached) and the Project Safety Program prepared by Site Safety, LLC for Deutsche Bank (included in Appendix A of the HASP) (copy attached). These documents, including documents referenced therein, are made a part of this SSHSP and the requirements of these documents must be adhered to with the following revisions:

- Section 3.1 Site Hygiene Manager (SHM) responsible for overall compliance with the provisions of this SSHSP is Kevin McMahon of Louis Berger Group.
- Section 3.1 Site Safety Manager (SSM) responsible for overall compliance with the provisions of the Project Safety Plan (PSP) is Sean Cavanaugh of RCS

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Consulting, LLC, a subcontractor to CDI and Gilbane.

- Section 3.2 Environmental Investigation Site Safety Manager (EISSM) responsible for Environmental Investigation team compliance with provisions of this SSHSP is Doug Glorie of Louis Berger Group.
- All personnel entering the building must read, understand and comply with the requirements of the SSHSP and sign the attached SSHSP Acknowledgment Form.
- The attached EMERGENCY CONTACT LIST OF KEY EMPLOYEES replaces that included in Appendix B of HASP. **Emergency Response Services required on-site shall be requested via calling the 911 Emergency Response System.** The Emergency Contact List shall be used to contact appropriate organization representatives subsequent to initiation of 911 Emergency Response.
- Current condition of the building includes many additional physical hazards including:
  - Insufficient Lighting
  - Slip, Trip and Fall hazards associated with building debris
  - Electrical Hazards associated with fallen building lighting circuits
  - Unmarked fall hazards including holes in floors and unmarked shafts

LMDC has committed to correcting these conditions; however, since they exist potentially throughout the building, extreme care shall be required when entering and working in the building until these conditions are corrected.

In order to comply with applicable regulatory requirements, all personnel involved with activities at the Site are required to follow this SSHSP in order to protect against recognized environmental, health and safety concerns identified at the Site.

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**Site-Specific Health and Safety Plan Acknowledgement Form**

130 Liberty Street  
New York, New York

I, (print name) \_\_\_\_\_ attest that I have read and understand the contents of this Site Specific Health and Safety Plan (SSHSP) including but not limited to the referenced Health and Safety Plan (HASP) and Project Safety Plan (PSP) for entrance to and activities within 130 Liberty Street, New York, New York.

I agree to abide by the requirements of this SSHSP as they apply to my work on-site.

Signed:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Supervisors Signature

\_\_\_\_\_  
Employer

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**EMERGENCY CONTACT LIST OF KEY PERSONNEL**

130 Liberty Street  
New York, New York

**Subsequent to Activation of 911 Emergency Response System, contact the LMDC, Gilbane and the appropriate Organization Representative**

<b>Employer</b>	<b>Key Contact</b>	<b>Office Phone</b>	<b>Office Fax</b>	<b>Cell Phone</b>	<b>Home Phone</b>
LMDC	Amy Peterson	(212) 587-9719	(212) 962-2431	(917) 842-0505	(212) 769-8798
LMDC	David Ridley	(212) 587-9747	(212) 962-2431	(908) 963-5924	(908) 221-9041
Gilbane	Bruce Messina	(201) 413-5180	(201) 413-5181	(609) 462-5089	(609) 462-5089
RCS Consulting	Sean Cavanaugh	(908) 735-4896	(908) 735-4867	(908) 482-4232	(732) 583-5051
Louis Berger	Stephen Pharai	(212) 612-7900	(212) 363-4341	(973) 715-9753	(201) 955-3308
Louis Berger	Kevin McMahon	(610) 363-5397	(212) 363-4341	(609) 273-1457	
Louis Berger	Doug Glorie	(212) 612-7900	(212) 363-4341	(646) 772-9974	
TRC	Edward Gerdts	(212) 221-7822	(212) 221-7840	(917) 549-6197	(908) 696-1036

08/31/04 version



**Alonge, Christopher G**

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**From:** Pharai, Stephen [sPharai@louisberger.com]  
**Sent:** Monday, September 27, 2004 4:21 PM  
**To:** christopher.alonge@labor.state.ny.us  
**Subject:** RE: Emergency Petition for DOL- (Draft)

## EMERGENCY EXTERIOR SPANDREL GLASS REMOVALS

Chris,

Thanks for the help/assistance provided. Please review and let me know if additional if is required.

With respect to the the inspection of the spandrel glass on the facade of the building, this email represents an addendum to the Variance Application submitted to date for the properly at 130 Liberty Street building. The following additiuonal procedures are proposed:

1. Atlantic Heydt will work at 130 Liberty Street to examine the spandrel glass that is in disrepair in the building. They will perform this work from the exterior on swing scaffold. They will be allied trades workers. The workers will conform to the HASP that is currently in place. The workers will work from swing stage to remove any broken glass that is in danger from falling from the building. This glass will not expose the exterior to a contaminant leak.
2. No exterior asbestos containing material or dust will be disturbed during the inspection.
3. PPE will be worn by the allied trade workers during the inspection and decontamination procedures will be employed.
4. Air Sampling inside and outside the decontamination unit will also be done.

Stephen Pharai  
Manager - Hazmat & IH Services  
The Louis Berger Group, Inc.  
199 Water Street, 23rd Floor  
New York, NY 10038  
Tel. (212) 612-7925  
Fax (212) 363-4341

-----Original Message-----

**From:** Gilbane III, William (NERO) [mailto:WGilbaneIII@GilbaneCo.com]  
**Sent:** Monday, September 27, 2004 3:07 PM  
**To:** Pharai, Stephen  
**Cc:** Messina, Bruce  
**Subject:** Emergency Petition for DOL  
**Importance:** High

Stephen

As per our discussion this afternoon -

Atlantic Heydt will work at 130 Liberty Street to examine the spandrel glass that is in disrepair on the building. They will perform this work from the exterior on swing scaffold. They will be allied trades workers.

The workers will conform to the HASP that is currently in place. The workers will work from swing stage to remove any broken glass that is in danger from falling from the building. This glass will not expose the exterior to a contaminant leak.

Bill & Bob



**STATE OF NEW YORK  
DEPARTMENT OF LABOR  
Engineering Services Unit  
Room 154 Building 12  
Governor W. Averell Harriman State Office Building Campus  
Albany, New York 12240**

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**FACSIMILE TRANSMITTAL SHEET**

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<b>TO:</b> Stephen Pharai	<b>FROM:</b> David A. Bayer, P.E.
<b>COMPANY:</b> Louis Berger Group	<b>DATE:</b> 10/6/2004
<b>FAX NUMBER:</b> 212-363-4341	<b>TOTAL NO. OF PAGES INCLUDING COVER:</b> 14
<b>PHONE NUMBER:</b> 212-612-7925	<b>SENDER'S FAX NUMBER:</b> (518) 457-1301
<b>RE:</b> Variance 04-1432 Reopening	<b>SENDER'S PHONE NUMBER:</b> (518) 457-1536

---

**NOTES/COMMENTS:**

Following is a faxed copy of the Variance Reopening for 130 Liberty St. It may be used immediately. The original will be sent by US Mail. The reopening must be attached to the original Variance and placed on site. I will send copies to the regulatory agencies. Should you have any questions, let me know.

David A. Bayer, P.E.  
Senior Safety & Health Engineer  
Engineering Services Unit  
New York State Dept. of Labor

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[CLICK HERE AND TYPE RETURN ADDRESS]



THE Louis Berger Group, INC.

**APPROVED**OCT 06 2004 *OLB***AMENDMENT #1 TO THE APPROVED VARIANCE #04-1432**New York State Dept. of Labor  
Engineering Services Unit

**PROPOSED WORK:** Securing of the Building envelope for floors 1 through 5 and basement areas on the north side of the Building of the controlled space and the entire "Gash Area" (Floors 7 to 24 on the WTC side of the Building).

***Background & Purpose:***

When LMDC acquired ownership of the Building a survey was initiated to determine whether the Building envelope was sufficiently secured to meet applicable building codes, environmental rules and regulations, and to ensure the safety of neighboring occupants, surrounding properties and others in the area. To date, floors 1 through 5 of the controlled space and the entire "gash area" (Floors 7 – 24 on the WTC side) have been comprehensively surveyed; the survey of the remainder of the Building is underway. As explained to you previously, the results for floors 1 through 5 of the controlled space and the "gash area" indicate that portions of the Building envelope remain open or were improperly secured by the Building's former owner.

It is a priority to secure these areas for the purposes indicated above preparatory to Building cleaning and deconstruction. This Variance Petition summarizes the required work, which can be divided into two categories:

Area 1) Securing previously enclosed areas that have been damaged or deteriorated in what is commonly referred to as the "gash area" (previously cleaned space)

Area 2) Securing areas from the 5<sup>th</sup> floor down which:

- were not previously secured by the former Building owner, or
- were previously secured but where the enclosures are now damaged or deteriorated, or
- were previously secured but the enclosure is not in compliance with applicable New York City building code requirements and/or requirements that the NYSDOL previously indicated will be imposed once the cleaning and deconstruction commences due to the presence of WTC dust in the Building.

As mentioned above, please note that similar securing/repair operations in the non-gash areas of the remainder of the Building (floors 6 – 42 of the controlled space) are anticipated to be necessary and will be detailed separately once the survey in those areas is complete and the plans and specifications required by NYSDOL are prepared. LMDC is working with its contractors and consultants to prepare these documents expeditiously.





THE Louis Berger Group, INC.

**APPROVED*****Worker Requirements:***OCT 06 2004 *AGB****Area 1 ("Gash Area"):***New York State Dept. of Labor  
Engineering Services Unit

Area 1 refers to the "gash area" which had been cleaned by others prior to LMDC ownership of the Building. The "gash area" can be accessed separately without entering controlled (uncleaned) areas of the Building. Despite the fact that the "gash area" has been previously cleaned, workers performing securing operations in these areas will hold a minimum of a NYSDOL Allied Trade license out of an abundance of caution for overall worker safety and health. Work in Area 1 consists of re-securing and/or improving enclosures around doors and other openings but will not "close in" the major opening at the exterior façade of the gash as this area currently presents no problem with regard to the objectives of this work.

***Area 2 (controlled areas of floors 1 – 5 and basement areas):***

Area 2 refers to controlled spaces on floors 1 through 5 and basement areas included in this scope of work. Access to Area 2 requires entry into or through controlled (uncleaned) spaces currently being operated under an approved, and NYSDOL mandated, HASP. Given this restriction, as well as the fact that these areas have not been previously cleaned, this work requires supervision by an asbestos licensed contractor and utilization of workers who hold current NYSDOL Allied Trades or Asbestos Handlers licenses as well as required NYCDEP asbestos certifications.

Working within Area 2 requires full compliance with the personal protective equipment ("PPE") requirements required by the HASP for access to controlled portions of the Building. PPE including Tyvek suits, respirators, safety glasses, hard hats, gloves, etc. per the HASP are required. The HASP also details training and other requirements (ex., current OSHA compliant medical examination, respirator fit test for use of applicable respirators, etc.) for entry into this space. All workers performing work operations in Area 2 under this scope must provide the required documentation demonstrating compliance with these requirements before they will be granted access.

***Work Scope & Operations:***

Repairs and the corresponding details for this scope of work are shown on the enclosed drawings. In summary, areas to be repaired include:

- openings presently unsecured comprising approximately 25,000 square feet;
- presently unsecured louvered areas comprising approximately 13,000 square feet; and



**THE Louis Berger Group, INC.**

- presently secured window openings not currently in compliance with NYC building code and/or environmental regulations previously indicated by NYSDOL to be applicable to the planned cleaning and deconstruction of the Building, comprising approximately 9,000 square feet.

Given that this work requires trades people skilled in various capacities in order to execute code compliant structures, use of workers possessing current NYSDOL Allied Trades licenses will be required.

Where feasible, LMDC's contractor/subcontractors will use existing vertical mullions for structural support. Where this is not feasible, they will install new vertical wooden mullions. The vertical mullions will connect into floor and cross beams as per the attached drawings. Cross bracing will also occur as per these drawings and plywood will be installed in the direction indicated.

Scaffolding and other support platforms as needed are to be provided by the contractor/subcontractors. Elevators are available to bring materials to the work areas; however, it may be more efficient to lift materials to the work areas using a crane. All labor, materials, tools, scaffolds, lifting equipment, personnel protection equipment, fasteners, etc. are to be provided by the contractor/subcontractors.

Removal of existing plywood that does not conform to legal requirements is to be done in a manner to assure that no materials fall or are dislodged from the Building. An adequate safe zone is to be maintained under any overhead work.

Any obstructions that would interfere with the execution of this work are to be removed by cutting or burning in a manner that creates the least disturbance to interior building surfaces and any dust that may be present in the area. As appropriate, the Abatement Contractor will utilize engineering controls (HEPA filtration and/or misting of the area) to minimize the opportunity for dust release and control any generated airborne dust. Appropriate dust control measures must be followed for all activities that have the potential to disturb or create airborne dust. Materials being removed must be secured using slings or rigging to avoid dropping. No cut and drop is permitted.

All removed materials (existing plywood, obstructions, etc.) are to be placed in a manner creating the least disturbance to interior surfaces and dust and maintained in the Building for removal, transportation, and disposal by others at a later date in conformance with all legal requirements. Guidance from all regulatory agencies copied on this letter will be requested prior to such removal, transportation, and disposal. During this temporary holding period, removed

**APPROVED**

OCT 06 2004 *DaB*

New York State Dept. of Labor  
Engineering Services Unit

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**THE Louis Berger Group, INC.**

materials will be piled or stacked within the Building in a safe and secure manner. Locations will be designated on site..

It may be necessary to move existing debris located on the floor in the lobby and other areas to safely install scaffolding and other lifting and access devices. Any such required work will be performed by NYSDOL and NYCDEP licensed asbestos workers with a minimum of disturbance. Again, this debris will not to be removed from the Building at this time but rather will be repositioned and stored in a secured location inside the Building. As appropriate, the Abatement Contractor will utilize engineering controls (HEPA filtration and/or misting of the area) to minimize the opportunity for dust release and control any generated airborne dust. Appropriate dust control measures must be followed for all activities that have the potential to disturb or create airborne dust.

**RESPONSE TO QUESTION 12:**

For the work outlined above a temporary waiver is requested from each of the following provisions of ICR Rule 56: § 56-1.9(e); § 56-6.1; § 56-8.1(b), (c), (e) through (q); § 56-10.1; § 56-11.1(b); § 56-15.1; commencing immediately and ending at such time and in a manner acceptable to the various regulatory agencies with jurisdiction over the project. As previously required by the NYSDOL due to the WTC dust in the Building, a fully operational personal decontamination enclosure system that complies with ICR 56-9.1 is already installed, therefore no variance from this requirement is requested at this time.

**RESPONSE TO QUESTION 25:***The Building Is Being Held In A Safe And Secure Manner*

On August 31, 2004, the Lower Manhattan Development Corporation ("LMDC") purchased the building located at 130 Liberty Street, New York, New York (the "Building") from its former owner, Deutsche Bank. At this time, LMDC is maintaining the Building pursuant to plans and protocols that are in all cases at least as stringent as those employed by Deutsche Bank prior to the sale of the Building. Furthermore, in many cases, LMDC is employing plans and protocols that are more stringent than those previously employed by Deutsche Bank.

Deutsche Bank employed three mechanisms to secure the Building and protect workers and the public: (1) exterior air monitoring, (2) a Health and Safety Plan, and (3) physical barriers to prevent the migration of contaminants from the Building. All three of these mechanisms were adopted by LMDC effective August 31, 2004 and all three are in the process of being enhanced and improved.

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Engineering Services Unit

**THE Louis Berger Group, INC.**

Commencing on August 31, 2004, LMDC adopted and continued Deutsche Bank's exterior air monitoring and retained Deutsche Bank's prior consultant, Ambient Group, Inc. ("Ambient") for this purpose. Such monitoring has been occurring 24 hours a day since LMDC purchased the Building. Moreover, in the near future, LMDC, working with Ambient and other consultants, will enhance Deutsche Bank's previous monitoring program by (i) adding additional sampling locations and (ii) upgrading the analysis performed on the samples collected.

Additionally, effective August 31, 2004, LMDC issued a Health and Safety Plan ("HASP") for the Building which incorporated Deutsche Bank's HASP. All persons entering the Building, for any purpose, are required by LMDC to comply with the HASP. While the "gash" area and a portion of the basement were previously cleaned by the former owner of the Building (Deutsche Bank), the remainder of the Building, consisting of entire floors or parts thereof, is considered to be contaminated and personal protective equipment ("PPE") is required as specified by the HASP. Such PPE previously was required by the NYSDOL due to the WTC dust in the Building. Consistent with the recommendations made in the *Initial Building Characterization Study Report* released by LMDC on August 14, 2004, LMDC's HASP is in the process of being enhanced to take into account the applicable New York State Department of Labor ("NYSDOL") rules and regulations and the results of LMDC's consultants' independent analysis of the contaminants in the Building.

Finally, while LMDC is maintaining the engineering controls utilized by Deutsche Bank to prevent migration of pollutants from the Building, by this variance LMDC and its consultants and contractors are requesting permission to enhance those controls, both by making appropriate repairs and adjustments and by implementing additional controls where necessary.

For all of these reasons, LMDC and its consultants and contractors are satisfied that the Building will be held in a safe and secure manner while additional testing and other analysis preparatory to a cleaning and deconstruction plan continues.

**RESPONSE TO QUESTION 26:**

As explained above, LMDC adopted Deutsche Bank's three mechanisms to secure the Building and protect workers and the public: (1) exterior air monitoring, (2) a Health and Safety Plan, and (3) physical barriers to prevent the migration of contaminants from the Building. As discussed more fully above, all three of these mechanisms are in the process of being enhanced and improved. As a result, LMDC has taken--or is planning to take-- reasonable steps to prevent contamination from escaping the Building or from spreading to previously cleaned, uncontaminated portions of Building.

**APPROVED**OCT 06 2004 *DAB*New York State Dept. of Labor  
Engineering Services Unit

**THE Louis Berger Group, INC.**

LMDC proposes numerous measures for achieving site safety and protecting health in lieu of the requirements of ICR Part 56 for which this variance is requested. These measures are described in detail in Attachment 2 and include the following:

- respiratory protection,
- disposable protective clothing,
- enhanced employee entry and decontamination procedures,
- enhanced supervision and project monitoring and
- daily perimeter air monitoring.

The proposed procedures prevent exposure of persons in the Building (and the general public) to potentially harmful asbestos fibers and other contaminants of concern in the Building.

**APPROVED**

OCT 06 2004 *DAB*

New York State Dept. of Labor  
Engineering Services Unit

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**THE Louis Berger Group, INC.****ATTACHMENT 2 TO PETITION FOR VARIANCE**

The following work procedures apply during the term of the requested variance:

**1.0 RESPIRATORY PROTECTION**

- 1.1 Only those Employees who have been medically qualified to wear a respirator, and who have been fit tested in the particular respirator (i.e., manufacturer, model, and size) they intend to wear, will be allowed to enter portions of the Building requiring the use of a respirator in the Building.
- 1.2 Each Employer shall provide each of its Employees who may wear a respirator in the Building with personally issued and marked respiratory equipment in accordance with all applicable laws, statutes, ordinances, codes, rules, regulations, orders, resolutions, standards, practices, and health procedures, as well as a written respiratory protection program that includes air monitoring, medical monitoring, training, and fit testing for each Employee who wears a respirator.
- 1.3 Each Employer shall determine and provide the respiratory protection for each of its Employees according to work area and work activity. A respirator of lesser protection may not be used unless sufficient full-shift personal air monitoring has been conducted, representative of "worst case" situations to support a downgrade in protection. At no time on the Site may disposable dust masks be used for respiratory protection.
- 1.4 Each Employee shall ensure that its respirator forms a seal against its face so that the Employee receives air only through the air purifying cartridges or hose attached to the respirator. Facial hair that interferes with the effectiveness of a respirator will not be permitted.
- 1.5 Each Employer shall collect personal air samples of its Employees and shall describe the contaminants to be sampled, the frequency of sample collection, the method of sample collection and analysis, and the method by which Employees will be identified for sampling.
- 1.6 If at any time personal air samples indicate airborne exposures above one-half of the Occupational Safety and Health Act's (OSHA) Permissible Exposure Limit (PEL) (using the protection factor of the respirator and the OSHA formula for exposure to multiple contaminants), respiratory protection will be upgraded for the activities represented until engineering and work practice controls are demonstrated through additional monitoring of the activity to reduce exposure levels below one-half of the PEL.

**APPROVED**OCT 06 2004 *DeB*New York State Dept. of Labor  
Engineering Services Unit

**THE Louis Berger Group, INC.****2.0 DISPOSABLE PROTECTIVE CLOTHING**

- 2.1 Each Employee entering the Controlled Area must wear protective clothing that provides complete skin coverage. This clothing shall consist of double suits, inner polypropylene, and outer Tyvek coveralls.
- 2.2 Protective clothing that becomes ripped or torn during the workday must be repaired or replaced immediately.
- 2.3 Outer protective clothing must be of the nonporous type and/or specifically manufactured for use in asbestos regulated areas (Tyvek or equivalent).
- 2.4 Disposable protective clothing must be discarded and disposed of as asbestos waste every time the wearer exits from the Controlled Area through the decontamination facility.
- 2.5 Wearing of suits through the flaps at the ramp exit of the Building is prohibited.

**3.0 EMPLOYEE ENTRY AND DECONTAMINATION PROCEDURES**

- 3.1 **GENERAL BUILDING ACCESS** - Each Employee entering a Controlled Area must observe the "buddy system" at all times, constantly maintaining communication or visual contact among crew members. Each Employee new to the Building shall be escorted by an Employee familiar with the Building, the location of the Controlled Areas, physical hazards, and emergency exit routes.

**3.2 ENTRANCE TO A CONTROLLED AREA**

- 3.2.1 Each Employee to enter a Controlled Area shall sign in at the entrance to the Controlled Area (this "sign in" is in addition to the general Building access sign-in).
- 3.2.2 Each Employee who enters the Controlled Area shall change into its Double Suit, poly inner and Tyvek outer, Nitrile gloves, and his/her assigned respirator in the change room. Each Employee shall then pass through the equipment room and into the Controlled Area.
- 3.2.3 No Employee may eat, drink, smoke, chew gum, or tobacco in a Controlled Area. To do any of the above, the Employee must leave the Controlled Area following the complete decontamination sequence.
- 3.2.4 In the event that an Employee in a Controlled Area requires replacement of a protective suit or respirator filter, such Employee should exit the Controlled Area utilizing proper decontamination procedures, make necessary repairs or replacements, don his/her respirator and new protective clothing, and re-enter the Controlled Area.

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**THE Louis Berger Group, INC.****3.3 EXITING A CONTROLLED AREA**

- 3.3.1 Each Employee to enter a Controlled Area shall sign in at the entrance to the Personal Decontamination Unit and each Employee exiting a Controlled Area shall pass through the Decontamination Enclosure System to decontaminate or dispose of his/her clothing and equipment.
- 3.3.2 Before leaving a Controlled Area, each Employee shall remove all gross contamination and debris from his/her disposable coveralls and equipment by vacuuming with HEPA vacuums. Removal of materials from protective clothing or equipment by blowing, shaking, or any other means that may disperse materials into the air is prohibited.
- 3.3.3 Each Employee shall then remove his/her outer Tyvek coveralls and place them in the lined barrels.
- 3.3.4 Each Employee shall then proceed to Chamber B and remove his/her inner suit and gloves and place them in the lined barrels provided.
- 3.3.5 Each Employee shall then proceed immediately into the shower room and wash and rinse his/her hair, neck, face, respirator, arms, and hands.
- 3.3.6 No Employee may remove its respirator until after the Employee has showered to prevent inhalation of fibers. Each Employee shall dispose of his/her respirator filter at the end of each workday. Each Employee shall dispose of his/her respirator filters, protective clothing and decontamination waste as asbestos contaminated waste.
- 3.3.7 After showering, each Employee shall go to the clean room, dress in street clothes, and properly store respirators and other equipment.

**3.4 EQUIPMENT DECONTAMINATION AND WASTE DISPOSAL AREA**

- 3.4.1 Each Employee to enter a Controlled Area shall sign in at the entrance to the Personal Decontamination Unit and each employee exiting a Controlled Area shall also pass through the Decontamination Unit. Each employee shall comply with, and each Employer shall be responsible for such compliance by its Employees with the procedures outlined in the following subsections.
- 3.4.2 **PERSONAL TOOLS AND EQUIPMENT** - Personal tools and equipment that are brought out of the Controlled Area (for example, flashlights, radios, PDA, utility knives, etc.) shall be decontaminated in the decontamination system.
- 3.4.3 **OTHER TOOLS AND EQUIPMENT** - Other tools and equipment (for example, from an Employer's central stores or rental equipment) that are brought out of a Controlled Area must be decontaminated in accordance with all applicable laws, statutes, ordinances, codes, rules, regulations, orders, resolutions, standards, practices, and procedures.
- 3.4.4 **SPECIAL EMERGENCY PROCEDURES**

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- 3.4.4.1 All Employers, Employees and Third-Parties will be directed to evacuate the Building in the event of a medical or safety emergency, including fire, accident, or any other event that increases risks associated with chemical, biological, and physical hazards, until the increased risk can be assessed and controlled.
- 3.4.4.2 Each Employee shall ensure that its work does not obstruct exits and that its work areas are kept neat, clean, and safe.
- 3.4.4.3 Should someone be transported to a hospital or doctor, a copy of this document must accompany them. **NECESSARY EMERGENCY PROCEDURES MUST TAKE PRIORITY OVER ALL OTHER REQUIREMENTS OF THIS DOCUMENT.**
- 3.4.4.4 The extent of emergency decontamination will depend on the severity of the injury or illness and the nature of the contamination. Decontamination consists of removal of contaminated outer clothing and equipment. If the emergency is such that there is insufficient time or the contaminated clothing cannot be removed, the person should be given required first aid treatment, and then wrapped in plastic or a blanket prior to transportation to medical care. If heat stress is a factor in the victim's illness/injury, all protective garments must be removed from the victim immediately.
- 3.4.5 **DOCUMENTATION** - All Employers, Employees and Third-Parties will be directed to establish and maintain documentation that will record, at a minimum, the following information:
- 3.4.5.1 The Employer's Employees on the Site, their arrival and departure times at the Building, and their destination on the Site.
- 3.4.5.2 Information required to be maintained by the OSHA respiratory protection standard, including medical clearance documents, training and certification records, fit-test records, and the results of personal air monitoring to determine Employee exposures.
- 3.4.5.3 Incidents and unusual activities that occur on the Site, such as, but not limited to, injuries, accidents, spills, breaches of security, equipment failures and weather related problems.
- 3.5 **SUPERVISION AND PROJECT MONITORING** - The Lower Manhattan Development Corporation (LMDC) has engaged the Louis Berger Group, Inc. (Berger) to provide the services of the project monitor for this project. Berger's responsibilities are summarized as follows:

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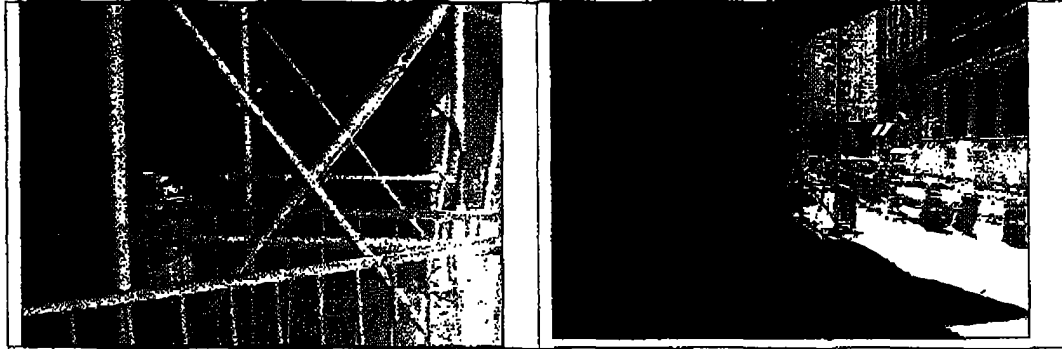
**THE Louis Berger Group, INC.**

- 3.5.1 Berger shall staff the Project with a trained and certified Project Monitor to act on the LMDC's behalf at the job site. This individual shall be designated as the Abatement Project Monitor (APM).
- 3.5.2 The APM shall be on-site 24 hours a day.
- 3.5.3 The APM will review and approve or disapprove all submittals, shop drawings, schedules, and sampling schedules.
- 3.5.4 The APM will assure that all notifications to governmental agencies by the Contractor are submitted and are correct in content.
- 3.5.5 The APM will review and approve the Contractor's OSHA compliance testing laboratory.
- 3.5.6 The APM shall have the authority to direct the actions of the Contractor verbally and in writing to ensure compliance with all applicable regulations. The APM shall have the authority to request corrective action when deficiencies or unsafe practices are observed, or when ambient fiber concentrations outside the Building exceed the acceptable criteria.
- 3.5.7 The APM shall verify daily that all workers used in the performance of the Project are certified by the New York State Department of Labor.
- 3.5.8 The APM shall also monitor, verify, and document all waste load-out operations. No waste load-out is anticipated during the work listed in this amendment.
- 3.5.9 The APM shall verify that the Contractor is performing personal air monitoring daily, and that results are being returned and posted at the site as required.
- 3.5.10 The APM shall conduct daily inspections to verify the integrity of the controls in place to control fugitive dust release and to monitor the continued integrity of the contained areas.
- 3.6 DAILY PERIMETER AIR MONITORING** – The Ambient Group, Inc., on behalf of LMDC, is currently conducting perimeter air monitoring at four (4) locations. The EPA AHERA and Health-Based Benchmark for asbestos is being used for comparison of the asbestos air sample results. The air sampling at the following locations are being analyzed for asbestos (TEM), particulate matter (SEM) and metals(AAS):
- Location One: South West of building adjacent to column enclosure (Washington St./Albany St.)

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- Location Two: South East of building adjacent to Allied Security Post (Albany St./Greenwich St.)



- Location Three: East of building on Greenwich Street.



- Location Four: North West of building adjacent to Pit (Washington St./Cedar St.)

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LMDC proposes a new air sampling location to the north of the Building along the Liberty Street pedestrian walkway shed and hopes to have this additional sampling location operational in the near future. LMDC is also evaluating whether other air sampling locations should be added.

To date, none of the air sampling results from the four locations currently being sampled have exceeded the comparative criteria used at the time (either EPA AHERA or the Health-Based Benchmark for asbestos).

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