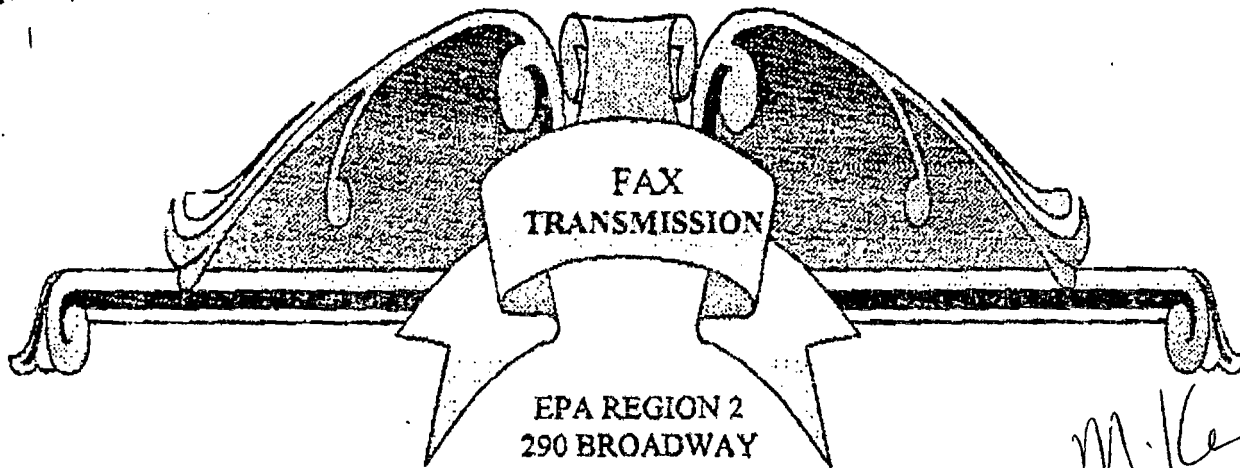


MAY-20-2002 21:55

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212 6373772 P.01/11



TO  
OFFICE

PHONE

FAX

*Mike Gilsenan*

*(718) 595-4544*

*Mike &  
Krish  
have  
copies*

FROM

OFFICE

SUBJECT

DATE

Number of Pages (including cover sheet)

COMMENTS:

*Kathy Callahan*

*5/20/02*

*20*

MAY-20-2002 21:36

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212 6373772 P.02/11

TRANSPORTATION AND  
INFRASTRUCTURE COMMITTEE

Congress of the United States  
House of Representatives  
Washington, DC 20515

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OFFICE OF CONGRESSMAN JERROLD NADLER

Date: 5/17/02 Time: 5:00pm  
To: EPA Region II Kathleen Callahan  
Fax: 212 637 3561/445 Telephone: \_\_\_\_\_  
From: Rep. Jerrold Nadler X Amy Rutkin \_\_\_\_\_  
Brent Heimov \_\_\_\_\_ David Lachmann \_\_\_\_\_  
John Doty \_\_\_\_\_ Rachel Ostendorf \_\_\_\_\_  
Janice Siegel \_\_\_\_\_ David Greengrass \_\_\_\_\_  
Becca Raiser \_\_\_\_\_ Lisette Morton X  
Eric Schmeltzer \_\_\_\_\_ Intern \_\_\_\_\_

*From  
Pat*

Number of Pages (including cover sheet) 19

Comments: Enclosed are comments from Congressman Nadler  
on the EPA's Scope of Work for the WTC cleanup,  
along with additional comments from interested  
parties.

If there is a problem with this fax, please contact our office. Thank you.  
PHONE 202-225-5633 FAX 202-225-6923

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RAILROADS  
REGIONAL WHIP



**Congress of the United States  
House of Representatives  
Washington, DC 20515**

**JERROLD NADLER**

9TH DISTRICT, NEW YORK

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**COMMENTS OF U.S. REPRESENTATIVE JERROLD NADLER (NY-08)  
EPA SCOPE OF WORK  
WORLD TRADE CENTER BUILDING REMEDIATION**

**Asbestos Project Monitor and Air Sampling Contract**

**A. Introduction**

- The term "apartment" in the final sentence too restrictive. The term "dwelling" should be used to clarify that the Scope of Work applies to all units, such as condominiums, co-ops, private homes, etc.

**B. Qualifications**

- Project Monitors should not simply be people with a NYS Asbestos Project Monitor certificate. There should also be EPA employees on site, such as On-Scene Coordinators or Project Managers, and they must document all actions taken at the response site.

**C. Specifications**

- The Scope of Work implies that Project Monitors will receive information from the EPA Hotline, schedule appointments, and ensure that clean-up activities comply with the Scope of Work. However, Project Monitors will not actually be on-site during clean-up activities. Only Air Monitoring technicians are required to be on-site. The Scope of Work makes no mention of anyone from EPA or OSHA being present at the site. There must be federal personnel on-site to ensure that all activities comply with the Scope of Work. Compliance must not be confirmed via second-hand information. Federal personnel at the response scene must enforce it. In accordance with OSHA Regulation 29 CFR 1926, there must be a "competent person" present at the site to ensure the appropriate handling of material, hazards and to ensure worker safety and health.
- The EPA must ensure that the Hotline is staffed with people who can communicate with all members of the public, including tenants of Chinatown, members of the Spanish-speaking community, and all other residents who speak English as a second language.
- 3(e) says that "the project manager shall advise the occupant or his/her authorized representative on the advantages and disadvantages regarding the use of the equipment... [aggressive air testing]." What are the advantages and disadvantages that will be presented to the occupant? Who qualifies as an "authorized representative" of

the occupant? Aggressive air testing should be mandated and not dependent on presentations made by individuals on site.

- 3(j) states all information must be maintained on a software program acceptable to the U.S. EPA. All information in this database must also be accessible to the public and elected officials [GZTF, CAG].
- The Sampling Procedures state that project reports, including sign-off sheets, must be forwarded to the U.S. EPA and NYCDEP. These project reports and sign-off sheets must also be forwarded to the occupants, and made available to the public and elected officials [GZTF, CAG].
- In addition to air sampling, an equal number of microvac samples should be taken following the procedures of ASTM 5755-95 and analyzed using Transmission Electron Microscopy (TEM).

### Scope of Work A

The procedures under Scope of Work A apply to the clean-up of "minimal dust accumulations." The term "minimal dust" is only defined as a "light coating." Neither of these terms are legal definitions. It will be solely up to the EPA coordinator to determine if a site has minimal dust and apply Scope of Work A. However, the EPA coordinator must only be given information regarding the presence of debris. The Scope of Work does not say that the EPA coordinator will actually have to be present on site, and perform the visual inspection. There are also concerns with some of the specific procedures in Scope of Work A.

Procedure #3 states that individuals performing clean up activities are not required to wear personal protective equipment or respirators. This is unacceptable. All workers must wear personal protective equipment and respirators. The health and safety of those performing the work, as well as those present at the site, must be protected, and all response actions must comply with all applicable government regulations.

Procedure #4 provides that air condition units will be pulled into the interior space and cleaned. Will this be done before or after the rest of the apartment is remediated? The removal of the air conditioners may disburse hazardous substances and increase exposure to those present. It may also not be possible to fully clean air conditioners. Any removal of air condition units must be done in a manner that contains hazardous substances that may be present. The air conditioners should be removed, bagged, sealed, disposed of as hazardous waste, and replaced by a government agency or charity organization.

Procedure #5 states that additional clean-up procedures shall be performed where visible dust is observed. What are these additional clean-up procedures? It also states that air sampling shall be performed after the area is free of dust accumulations. As previously stated, wipe-samples should be performed in addition to air sampling.

Procedure #6 states that the results of personal air monitoring shall be shared immediately with OSHA, the employer, the workers or their representatives. The results should also be made available to the occupant and all other people present at the site when the monitoring was conducted.

As a whole, Scope of Work A presents serious concerns. It is not clear that Scope of Work A is appropriate for any aspect of the remediation of buildings following the collapse of the World Trade Center. EPA made clear that the remediation would follow all applicable government regulations. This is also stated in the opening paragraph of the entire contract. However, the contract provides for a less stringent remediation in some buildings, without clarifying why such a scheme is justified, or the legal authority that supports this scheme.

### Scope of Work B

Scope of Work B applies to units where "a visual inspection was performed and visible accumulations of debris from the collapse of the WTC was identified." First, as previously stated, the information regarding the presence of debris is simply provided to the EPA, and not actually obtained by EPA personnel. This is problematic if EPA is to exercise effective oversight. Second, it is not clear if EPA, or project monitors, will be allowed to determine that there is debris, but that it is not from the WTC. If so, what are the criteria for making such a determination? The burden should not be placed on tenants and building owners to prove that debris is in fact from the WTC. It should be clear that all buildings within the zone of contamination qualify for the remediation program.

Scope of Work B more closely complies with applicable federal regulations. However, Scope of Work B states that it only "consists of generic procedures to be followed," and that the "clean-up of visible accumulations of debris will require the submittal of a site specific scope of work." Contractors performing the work at the site must not have broad discretion to decide which procedures to follow when remediating buildings. It must be made clear which procedures must be included in site-specific scopes of work, and it must be made clear in what regard site-specific scopes of work are allowed to differ. More importantly, site specific scopes of work must comply with all applicable government regulations, including OSHA regulation 29 CFR 1926, NYS DOL and NYC DEP regulations.

Procedure #10 states that negative pressure ventilation equipment shall be changed every 30 minutes. This procedure should be modified so that it is changed every 15 minutes. If negative air systems are to be used, make-up air must be from areas that have already been cleaned.

Procedure #11 provides that after debris is removed, surfaces will be HEPA vacuumed, and then a second cleaning shall be performed. The Scope of Work must specify the cleaning method that will be performed following HEPA vacuuming, and this method must be one that will remediate all the hazardous substances, pollutants and contaminants that may be present in WTC debris, or that has been documented as present inside units.

### General Concerns

Is this an EPA Scope of Work or a NYC DEP Scope of Work? If EPA is the lead agency, then all prepared written protocols/scopes of work must be under the heading of the EPA.

MAY-20-2002 21:39

U.S. EPA/DEPP

212 6373772 P.06/11

Is the Project Manager the same as the Project Monitor? There must be an EPA Project Manager or OSC that oversees and coordinates this project.

If the EPA has determined that Scope of Work A shall apply to an apartment, but the occupant requests remediation according to Scope of Work B, will the EPA provide remediation following the latter?

The Scope of Work does not make clear where occupants will be while the remediation takes place. Occupants should not be present while remediation is conducted, as most occupants will not have the proper certification or medical approval necessary to wear protective equipment and respirators. Occupants should not return to their homes until the post-abatement test results demonstrate that the materials have been successfully remediated. If necessary, the federal government should provide temporary relocation expenses for occupants until their dwellings have been successfully remediated.

There must be a post-abatement testing protocol for all hazardous substances, pollutants and contaminants that may be present in WTC debris or that has been documented as present inside units. Post-abatement testing must include, but is not limited to, asbestos, dioxin, fibrous material, fine and ultra fine particulates, lead, and mercury. As previously stated, post-abatement testing must include an equal number of microvac samples taken following the procedures of ASTM 5755-95 and analyzed using Transmission Electron Microscopy (TEM). It is also not clear that the cleaning methods provided in the Scope of Work will remediate all of these materials. For example, simply wet-wiping and HEPA vacuuming may not remediate mercury. Methods must be employed that will successfully remediate all of these materials.

The Scope of Work must allow a Citizens Advisory Group to split samples so that there can be independent test results to compare against that of the contractors.

The Scope of Work must include remediation of all HVAC systems and duct work present at the response site, and all common areas of buildings. Post-abatement testing must include dust samples inside the HVAC systems and duct work.

All dust and debris remediated under this contract, and the equipment used to remediate this material, whether under Scope of Work A or Scope of Work B, must be considered hazardous waste and disposed of accordingly.

The Scope of Work must include all indoor spaces downtown, including, but not limited to, commercial buildings and schools.

The Scope of Work must provide for remediation of buildings as a whole, not just unit by unit. Remediation should not commence until a building has been organized so that the clean up can be conducted comprehensively and the threat of recontamination can be mitigated.

The Scope of Work must be expanded beyond the arbitrary boundary of Canal Street to include all areas contaminated by World Trade Center debris, such as Brooklyn, New Jersey and North of Canal Street in Manhattan. In addition, the EPA must provide translators to ensure effective communication between the agency and all members of the community.

MAY-20-2002 21:40

U.S. EPA/DEPP

212 6373772 P.07/11

The Scope of Work must be consistent with the determination made by Secretary of OSHA John Henshaw on January 31, 2002 that all the settled dust from the collapse of the twin towers must be presumed to contain asbestos, and therefore, OSHA regulations 29 CFR 1926 apply to the removal of this material. The procedures in the Scope of Work must comply with these regulations, as well as all other applicable federal, state and city regulations.

MAY-20-2002 21:40

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**Morton, Lisette**

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**From:** Rutkin, Amy  
**Sent:** Friday, May 17, 2002 12:12 PM  
**To:** Morton, Lisette  
**Subject:** FW: EPA PROPOSAL

On [REDACTED] PII [REDACTED]  
**From:** [REDACTED]  
**Sent:** Friday, May 17, 2002 11:54 AM  
**To:** Rutkin, Amy  
**Cc:** egesmer@gulgas.com  
**Subject:** EPA PROPOSAL

Dear Amy,

Here are my comments. They are based on my perspective as a tenant of 125 Cedar Street, with 10 windows directly facing the WTC site on Liberty Street and Greenwich Street. We are one of the buildings "on the rim," which is still uninhabitable.

Ellen Gesmer has answered the document with specifics and I agree with everything she has written. I would like to add general comments where the EPA plan as written does not meet the needs of my building and the area.

1. The fabric of this neighborhood is such that residential and business sectors cannot be separated. Any plan that does not address this situation is inadequate. For instance, 125 Cedar's direct neighbors are the Engine 10/Ladder 10 firehouse and Deutsche Bank. Any remediation or lack thereof of these buildings directly affects us.
2. The plan names EPA as the oversight agency but does not adequately define the scope of either the plan or EPA's authority. Any plan for cleaning must take a regional approach or at the minimum, block by block. It does no good to clean a single dwelling space in a contaminated building. It does no good to clean a single building surrounded by contaminated buildings. It does no good to clean a block of buildings before adjacent streets are excavated for scheduled repair and construction of the city's infrastructure.
3. Some agency, hopefully EPA, needs to coordinate the actions of all city, state and federal agencies to prevent recontamination and provide a logical, consistent approach to the cleaning process as a whole.
4. What are the limits of EPA authority re individuals and real estate owners? Can the EPA demand that cleaning take place in situations where debris exists? One hopes so.
5. Work Schedule B does not adequately address cleaning of personal possessions. Guidelines need to be drawn and stated for what categories of possession cannot be cleaned and must be disposed of (for instance, many of us at 125 Cedar have been told this includes soft textiles, upholstered furniture, and anything electronic or with electric motors).
6. As a corollary to #5, there is no stated policy regarding who will be responsible for replacing possessions determined to be uncleanable.

Finally, I hope that the EPA policy for testing before work can begin in category B buildings is adequate. If EPA does not test before clean-up, it

MAY-20-2002 21:41

U.S. EPA/DEFP

212 6373772 P.09/11

not only puts workers at risk but provides a perfect political opportunity to continue to say that there has been no contamination, based on tests performed after the contamination has been removed

Sorry to be so late with this. I got the email message this morning at 10:30. Hope it is useful and thanks for including me.

**PII**

Displaced Resident  
125 Cedar Street

MAY-20-2002 21:41

U.S. EPA/DEPP

212 6373772 P.10/11  
Page 1 of 2**Morton, Lisette**

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**From:** Rutkin, Amy  
**Sent:** Friday, May 17, 2002 11:57  
**To:** Morton, Lisette  
**Subject:** FW: EPA Proposal

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

**From:** Ellen Gesmer (mailto:Egesmer@gulges.com)  
**Sent:** Friday, May 17, 2002 12:51 AM  
**To:** Rutkin, Amy  
**Cc:** egesmer@gulges.com  
**Subject:** EPA Proposal

Dear Amy,

Here are my comments. These are based on my perspective as the attorney for the tenants of 125 Cedar St. and in particular, on my experience of trying to negotiate an agreement with their landlord under which it would clean their spaces. (which we're actually close to signing.)

Post-Cleanup Sampling procedures: The building's elevator(s) should be run before sampling starts

Scope of Work A.

para. 1: Who other than an occupant could be an "authorized person?" In addition, an occupant present during cleaning must be given appropriate personal protective equipment and respirator

para. 4: The surfaces to be cleaned should also include the interior of all furniture and appliances.

Scope of Work B.

para. 1: The comparable paragraph in Scope of Work A provides for the cleaning of appliances and equipment. Scope of Work B does not so provide; it is important that appliances be cleaned; or, if they cannot be, they should be removed and replaced by a government agency or charity. The comparable paragraph of Scope of Work A also provides for the cleaning of personal property such as papers; Scope of Work B does not address this.

This paragraph should also provide that both the exterior and interior of furniture be cleaned -- for example, cupboards, bureaus, file cabinets, etc

This paragraph would permit a building owner to approve of the disposal of property without the approval of the unit occupant; however, only the unit occupant should be able to approve the disposal. This then requires the unit occupant be present (as is appropriate, to protect the safety of personal property); consequently, the unit occupant must be provided with appropriate personal protective equipment and respirator

It may also be necessary for personal property to be stored while the cleaning is going forward; in that event, the EPA should arrange for the moving and storage of those items.

**General Comments:**

The Scope of Work should provide that the exterior of each building, including light courts and air shafts, be thoroughly cleaned before the commencement of interior cleaning. At 125 Cedar, for example, items such as air conditioners are at the bottom of the air shafts. These must be removed, and the air shaft itself thoroughly cleaned.

Post-abatement testing should also be done for mold, which is a serious problem in buildings which have remained unoccupied since September 11, and appropriate cleaning procedures must be used to remove mold.

5/17/2002

MAY-20-2002 21:42

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The standards for post-abatement testing must be specified. It is critical that 30 year health based standards be used. With regard to asbestos, for example, these are 50 times more stringent than the AHERA standards. This is important since tenants will be living in these spaces for many years.

I hope this is helpful. Please email me or call me if you need clarification on any of these points.

Best regards,

Elen Gesmer, Esq  
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5/17/2002