



THE CITY OF NEW YORK
LAW DEPARTMENT
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MICHAEL A. CARDOZO
Corporation Counsel

JESSE LEVINE
Assistant Chief WTC Unit
212 341 3713

Re: World Trade Center File Retention

Dear NYC Employee:

These original World Trade Center documents have been collected and scanned by the New York City Law Department. **DO NOT DISPOSE OF THESE DOCUMENTS**; they must be preserved to serve as evidence in the event future WTC-related legal actions are brought against the City.

If you would like to dispose of any of these documents, contact me directly at the New York City Law Department at (212) 341-3713. If I am not available, please contact Carlos Dennis at (212) 788-8696. If appropriate, the Law Department will arrange for the pick up of any documents that you no longer need.

Also, in the event you are planning to leave your current position, please email me at jlevine@law.nyc.gov to inform me of the identity of the new custodian of these documents.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Jesse Levine".

Jesse Levine, Esq.

May-20-2002 21:43

U.S. EPA/DEPP

212 6373772 F.01/09

radler

Morton, Lisette

From: Rutkin, Amy
Sent: Friday, May 17, 2002 2:30 PM
To: Morton, Lisette
Subject: FW: EPA proposal

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

From: Ellen Gasmer [mailto:egasmer@gulges.com]
Sent: Friday, May 17, 2002 12:57 PM
To: Rutkin, Amy
Subject: EPA proposal

Dear Amy,

After reading Kathleen Moore's comments, I would like to add one more. Residential and commercial spaces in this neighborhood are connected not only because they are next door to each other or across the street but in the same building. 125 Cedar has a commercial space on the ground floor as do many (if not most) residential buildings downtown. Therefore, if the EPA is not cleaning commercial spaces, then there will be a large uncleaned space within most residential buildings. Given that the residential and commercial spaces often share elevators and HVAC systems, recontamination is unavoidable.

Thanks for taking the lead on all of this.

Regards,

Ellen Gasmer, Esq.
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MAY-20-2002 21:44

U.S. EPA/DEPP

212 6373772 P.02/09

Morton, Lisette**Importance: High****-----Original Message-----****From:** Rutkin, Amy**Sent:** Friday, May 17, 2002 12:23 PM**To:** Morton, Lisette**Subject:** FW: Comments re: Asbestos Project Monitor and Air Sampling Contract**Importance:** High**-----Original Message-----****From:** dianedav [mailto:diane@Specialr.com]**Sent:** Friday, May 17, 2002 3:17 PM**To:** Rutkin, Amy**Cc:** Maureen51@aol.com; JohnL; Virginia; Marie; Paul; Dorothy; Neil; John; Lynn; Kathryn; Howard; Cynthia5; Pearl; Louise&Fred; Alan5; Felicia; Aida; AlanC2; "lynn@osbbusiness.com"@unknown.house.gov; MaryJoe; Hope; Ron; Robert; Terry; Glen; Susan; Chris; Michella; AlanC; Elizabeth; Annette; Lisa; Lonnie; Jacquie; Jean; Jan; James; Bonnie; Elizabeth; Emily; Diana; Alan Gerson**Subject:** Comments re: Asbestos Project Monitor and Air Sampling Contract**Importance:** High**Dear Amy:**

The technical terms of the document are a bit beyond our expertise, but seem pretty thorough; although as we all know, 8 months have gone by and people have already disturbed most of the debris/dust in their apartments.

"Visible dust" is the same dust that will come back over and over again - unless the person never returned to their apartment over these 8 months. Therefore, thorough cleaning of this "visible dust" is great - but not permanent.

In any case, once again it is our firm stand that without the cleaning of common areas: elevators/hallways/lobby/stairwells/ terraces and rooftops, we believe the cleaning of all apartments are just a partial measure. There was an unacceptable level of asbestos found on the 31st floor of 310 Greenwich Street during a random testing done by our management company. Also, when we recently had a professional come by to visually inspect IFN, he said that he can see that Kathryn Freed's terrace at 40 Harrison Street most definitely showed debris and pulverized dust - which he knows without even testing must contain asbestos as well as many other contaminants. (Like most tenants here, she has not gone out to her terrace for fear of breathing in whatever is accumulated there - some visible - some not.)

We also feel strongly that again, without the NCP put back into active procedure, other efforts are less effective than a band-aid; and we fear greatly rebuilding on possibly contaminated ground. The construction that will begin - first on 7 World Trade Center will further serve to disperse toxic debris into the air, thus recontaminating offices, stores and homes within the ground zero vicinity..... and since the wind blows from West to East, who knows how far these dangerous particles will travel through lower Manhattan?

THEREFORE: Our utmost desire is that the NCP is put into immediate effect, thereby securing all of the above and more. We support Congressman Nadler's desire for the NCP to be put immediately back into action and request that we be informed as to whatever we can do - along with our tenants - o help speed up this necessary measure.

Our recommendations relating to this document now, are :

1. The proposal should make clear that we need the cleaning of all buildings; should include not only residences- but schools, offices, stores, residential buildings. Each one of those will in themselves require specific different type of cleanups.
3. Cleanup of all air ducts and conduits - all air systems (not just air conditioner units) - all intakes and outtakes of

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air systems. (As revealed during the Clinton/Lieberman hearings, the air systems at Stuyvesant were never done - only the outside of the ducts were cleaned - but a thorough cleaning of all pipes leading from and to air system were left infected.)

4. Clean up of outside of buildings (roofs, walls, terraces) simultaneously with the start of indoor cleanup. WINDOWS AND WINDOW SILLS MUST BE INCLUDED IN THE INDOOR AND OUTDOOR CLEANUP. (the proposal mentions air conditioners - the windows and window sills also have buildup which will come in the minute the windows are open.)

5. Clean up of all common areas in all buildings.

6. Clean up of streets and construction sites - beyond the "watering down" methods. The streets/parks/trees/grass must be cleaned... the sand removed from park playgrounds - and not replaced until the area is safe. The top soil removed so topical toxins are taken away. The grass somehow should be dealt with - before people begin lounging all over the grass in warm weather.

Sincerely,

Diane Lapson VP IPNTA

John Scott VP IPNTA

Independence Plaza Tenant Association

6/17/2002

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Page 1 of 1

Draft, Thank you so much for your help.

Morton, Lisette

From: Rutkin, Amy
Sent: Friday, May 17, 2002 11:55 AM
To: Morton, Lisette
Subject: FW: Draft, Thank you so much for your

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

From: Howard Bader [mailto:hbader1@nyc.rr.com]
Sent: Thursday, May 16, 2002 10:25 PM
To: Rutkin, Amy
Subject: Re: Draft, Thank you so much for your help.

Amy, I have to prepare for court testimony tomorrow (9am - 12 pm) so I was a little rushed reviewing this. I think you did a good job covering the key points. A few comments:

Similar to the asbestos microvac samples, it should be emphasized that testing for dioxin, lead, mercury and fibrous material is surface not air testing. Sample quantities should be similar to asbestos air (except maybe dioxin which is around \$750 per sample). I don't think the ultra fine particulate testing is very relevant anymore, similar to benzene it was an airborne issue which doesn't appear to exist anymore. Howard Bader.

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

From: Rutkin, Amy
To: 'hbader1@nyc.rr.com'
Sent: Thursday, May 16, 2002 5:47 PM
Subject: Draft, Thank you so much for your help.

<<EPA Scope of Work Comments draft1.doc>>

AMY RUTKIN

Chief of Staff

U.S. Congressman Jerrold Nadler (NY-08)

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amy.rutkin@mail.house.gov

5/17/2002

ASBESTOS PROJECT MONITOR AND AIR SAMPLING CONTRACT**Asbestos recommendations**

Joel R Kupferman, Esq., Executive Director of the New York Environmental Law & Justice Project

This outline was done at last minute. Various points probably have been left out.

1. All federal regulations should apply for the debris removal disposal
2. All debris must be tested with Transmission Electron Microscopy (TEM)
3. EPA must completely accept responsibility and culpability for the environmental disaster that occurred due to the coverup and inaction.
4. Remediation zone must include areas that have been exposed (north of Canal, Brooklyn, NJ, etc)
5. All violations should be referred to the Assistant Chief of the Environmental Enforcement Section at DOJ
6. What the EPA must do
 - a. EPA should be doing the cleanup not NYC DEP
 - i. EPA has ultimate jurisdiction, enforcement, and authority on this matter
 - ii. Although some NYC & State agencies have administrative penalties, the authority, many times actions were taken without assessment of any penalties.
 - iii. NYC DEP has a long history of non-compliance
 - (1) NYC in general and NYC DEP has proven to be more than "lax" in enforcing asbestos and other environmental regulations
 - (2) They have continuously made false, inaccurate or incomplete statements
 - (a) It is in their best interest to cover-up their inaction by claiming that abatement is not necessary
 - (3) NYC DEP admitted that it only issued one Asbestos violation since 9/11.
 - (4) Scaffolding Fatal accident: A contractor who had an impersonator take a safety test was fined only \$350 and served no jail time.
 - (5) City agencies have been notorious in their failure to recuse themselves in instances including conflict of interest issues, complacency, lack of enforcement, sweetheart deals, and other behavior that puts the public at risk.
 - (a) One example, includes Department of Sanitation hiring of Rapid Demolition/Hi-Tech Environmental/

(b) NYC DOH was ready to rehire Clarke Mosquito Control despite the \$1 million OSHA fine and contract provision that forbade re-contract in face of such labor violations

(6) They abrogated their right to have any role due to the fact their reliance completely on landlord self-certification

collection, any processing, packaging, transporting, or deposition of asbestos containing waste material generated at the facility, they must use one of the disposal methods specified in 40 C.F.R. Section 152(b) (1), (2), or (3), thereby violating 40 C.F.R Section 152(b) and Section 112(c) and (e) of the Act, 42 U.S.C. Section 7412(c) and (e).

- c. Those contractors unfit to hold a permit and who have been denied a permit in any state must not be allowed

i. Full disclosure of contractor's prior violations, enforcement history, and should be accompanied by a copy of the inspection report and any other documentation of violations.

ii. 40 C.F.R. Section 61.146 requires each owner or operator of a demolition operation where there is the regulated amount of asbestos to provide the Administrator of EPA with written notification of intention to demolish or renovate, setting forth specified information, at least 10 days prior to the commencement of the operation. Timely, complete, and accurate notices of demolition operations permit EPA to conduct efficient, unannounced inspections to ensure that work practice standards to prevent emission of asbestos are being met. Such notices are particularly important due to the short duration of most demolition operations. In the WTC cleanup - better and more timely notice should be given

- d. Strict monitoring, recordkeeping and reporting requirements must be adopted to with the applicable if only the minimum requirements provided under applicable regulations are imposed compliance of all relevant actors will not be assured will not assure compliance of a bad actor.

- e. The following information must be made public"

i. The name and position of the person responsible for supervising all work involving asbestos-containing material (ACM).

ii. The name, address, telephone number and contact person of the firm(s) which will transport any asbestos-containing waste from the site.

iii. A description of the procedures and equipment to be used to prevent visible emissions of asbestos-containing material, and to decontaminate workers.

iv. A description of the location and amount of asbestos containing material in the facility which will undergo renovation or demolition.

v. The name of the person who determined whether asbestos-containing material was located at the site and the basis on which such determination was made.

vi. Decontamination facilities must be made available, equipped, and used at each jobsite which involves removal of asbestos containing material.

- f. Each contract should include penalty/ liquidated damages clause

i. www.epa.gov/cean/enforcement/caad144.html

Consent decree model Dept of Justice & Asbestos violator

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13. Federal whistleblower laws and protections should apply to all involved actors
14. Compliance history of contractors published and reviewed.
 - a. Similar to NYSDEC bad actor policy see NYS Dept. of Environmental Conservation "Record of Compliance Enforcement Guidance Memorandum (Feb. 1993) should be used as a model.
 - b. Whichever ever has been consulted for Historical information - e.g., CDS, national contractor registry, interna. Regional tracking system must be kept public via the website
 - c. History must incl. de everything that is found on National Asbestos Registry System (<http://cfpub.epa.gov/nars/>) an example is shown as follows:
 - d.

Contractor Name : A.A.C. ENVIRONMENTAL CORP.

Street Address : 65 WAVERLY AVENUE

City : BROOKLYN

State : NY

Zip Code : 11205-

NARS ID : N44919

On	Year	Loc	Agency	Type	Contract #	—Deficient Notif.—				Work Practs.		
						Notif	NOVs	Warn	Order	Insp	NOVs	Order
4	1999	02NY	S	113443691	1	0	0	0	0	0	0	0
4	1999	02R2	E	2797	1	0	0	0	0	0	0	0
1	2000	02R2	E	2797	10	1	0	0	0	0	0	0
1	2000	02NY	S	113443691	6	1	0	0	1	0	0	0
2	2000	02R2	E	2797	2	0	0	0	0	0	0	0
2	2000	02R2	E	2797	3	0	0	0	0	0	0	0
1	2001	02NY	S	113443691	1	0	0	0	2	0	0	0
2	2001	02NY	S	113443691	2	1	0	0	1	0	0	0
2	2001	02R2	E	2797	1	0	0	0	0	0	0	0
3	2001	02NY	S	113443691	1	0	0	0	0	0	0	0
3	2001	02R2	E	2797	2	0	0	0	0	0	0	0
4	2001	02NY	S	113443691	1	0	0	0	0	0	0	0
4	2001	02R2	E	2797	1	1	0	0	0	0	0	0

15. Complaint(response to):
 - a. Automatic ceasing of work- A STOP WORK ORDER must be issued immediately
 - b. Establishment of 24 hour monitored complaint line
 - c. The complaint line must be Multi-lingual (including Cantonese, Mandarin, Fujianese, & Spanish among others)
 - d. Immediate response teams available to physically inspect. Locations of which complaints have been made

16. Transport and Removal
 - a. NYSDEC must supervise
 - b. Assignment of certain number of enforcers
 - c. Determination of "acceptable" disposal site
 - i. Siting
17. Protection of asbestos workers
 - a. Monitoring - medical test baselines - There must be a medical baseline of all cleanup workers involved in WTC cleanup
 - b. Designation and funding for occupation clinic - the CBNS/NYCOSH van must be used as a model
 - c. Any and all workers comp. Issues must be on a 'fast-track' in ensuring proper and expedited medical treatment - The treatment -his should be guaranteed at the federal level in conjunction with a trust fund which should be used in case of later illness/debilitation/death.
18. Removal of Waste Product
 - a. All federal regulations should apply for debris removal disposal
 - b. DEC
 - i. Must monitor at all stages of disposal
19. PRE-CLEANUP-
 - a. Full testing of apartments
 - b. Samples should be archived for further testing/examination
 - i. Including but not limited to disposed carpet samples

NEW YORK ENVIRONMENTAL LAW & JUSTICE PROJECT

member of the Clean Water Network, National Coalition against the Misuse of Pesticides

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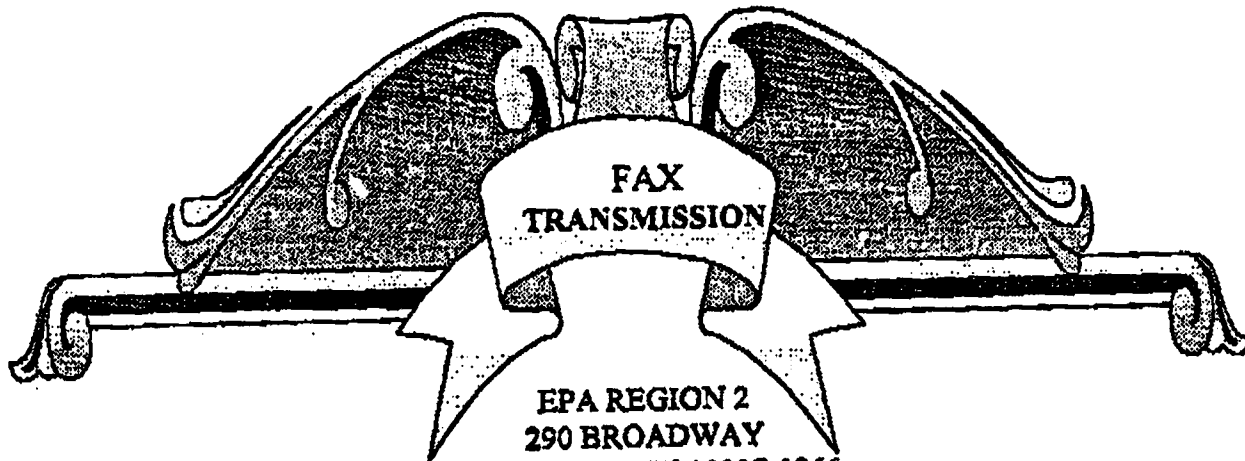
Joel R. Kupferman, Esq.; Executive Director
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MAY-20-2002 21:36

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212 6373772 P.01/11



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TO: Mike Gilsenan
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FROM: Kathy Callahan

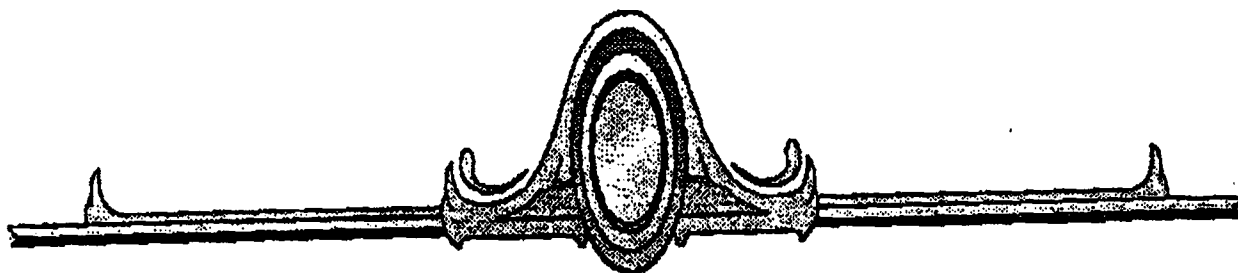
OFFICE:

SUBJECT:

DATE: 5/20/02

Number of Pages (including cover sheet): 20

COMMENTS:



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TRANSPORTATION AND
INFRASTRUCTURE COMMITTEE

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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 _____
 Brett 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 202-225-5635 FAX 202-225-6923

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HIGHWAYS AND TRANSPORT
RAILROADS
REGIONAL WWIP



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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, CAO].
- 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, CAO].

[?]

- 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:

If EPA wants to commit more people.

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.

What's the OSHA say on this?

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.

EPA call

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.

w/ wipe samples

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.

OK?

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.

That is what it means

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.

kind?

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 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.

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.

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.

Morton, Lisette

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

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

From: Kathleen Moore [mailto:moore@amnh.org]
Sent: Friday, May 17, 2002 11:54 AM
To: Rutkin, Amy
Co: egesmar@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 Gasmer 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 cleanup, it

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.

Kathleen Moore
Displaced Resident
125 Cedar Street

Morton, Lisette

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. 11. 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

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,

Ellen Gesmer, Esq.
Gulielmetti & Gesmer, P.C.
401 Broadway, Suite 1901
New York, New York 10013-3005
phone: 212-219-2114
fax 212-966-2162
www.gulges.com

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4/17/2002

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

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E-mail: jernold.nadler@mail.house.gov
Web: http://www.house.gov/nadler

OFFICE OF CONGRESSMAN JERROLD NADLER

Date: 5/24/02 Time: _____

To: Bob Alvertrone

Fax#: 212 595 4418 Telephone#: 212 595 4544

From: Rep. Jerrold Nadler X Amy Rutkin X

Brett Heimov _____ David Lachmann _____

John Dory _____ Rachel Ostendorf _____

Janice Siegel _____ David Greengrass _____

Becca Raiser _____ Lisette Morton _____

Eric Schmeltzer _____ Intern _____

Number of Pages (including cover sheet): 4

Comments: Ltr from OSHA to Lowell Peterson

If there is a problem with this fax please contact our office. Thank you.
PHONE 202-225-5655 FAX 202-225-6925

02/19/2002 12:26 E.P.A. → 92256523
FROM: MEYER, SUOZZI, ENGLISH & KLEIN

+2122341311

T-286 P 02/04 NO. 637 2002
9-575

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210



JAN 27 2002

Mr. Lowell Peterson
Meyer, Suozzi, English and Klein, P.C.
Counselors at Law
1350 Broadway, Suite 501
New York, New York, 10018

Dear Mr. Peterson:

Thank you for your October 16 letter to the Occupational Safety and Health Administration (OSHA). This letter constitutes OSHA's position only on the requirements discussed and may not be applicable to any issue not delineated within your original correspondence. You presented steps that Local 78 of the Asbestos, Lead, and Hazardous Waste Laborers union thinks are imperative to protect the workers and residents in the area of the World Trade Center from the settled dust produced by the collapse of the twin towers. The steps the union recommends and our replies are provided below.

Step 1: All of the dust must be tested for asbestos using the Transmission Electron Microscopy method.

Reply: In that the materials containing asbestos were used in the construction of the Twin Towers, the settled dust from their collapse must be presumed to contain asbestos. Therefore, the use of Transmission Electron Microscopy (TEM) is not necessary in order to establish that the applicable provisions of the Construction Asbestos standard, 29 CFR 1926.1101 apply during the demolition or salvage of the affected structures.

Step 2: All dust which tests positive must be removed by licensed contractors using certified asbestos handlers.

Reply: As you may know, contractor licensing and asbestos handler certification are city and state programs. Your concern, however, is directed toward ensuring the appropriate handling of asbestos hazards. OSHA's requirements, per 29 CFR 1926.1101(o)(1), address the need for a "competent person" and state that this individual must be on the worksite. The competent person must have the qualifications and authorities for ensuring worker safety and health as required by Subpart C, General Safety and Health Provisions for Construction (29 CFR 1926.20 through 1926.32).

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The general definition of a "competent person" is presented at 29 CFR 1926.32(f). According to the standard, a "competent person" is, *"one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them."* Paragraph 1926.1101(b) further defines a "competent person" as, *"in addition to the definition in 29 CFR 1926.32(f), one who is capable of identifying existing asbestos hazards in the workplace and selecting the appropriate control strategy for asbestos exposure, who has the authority to take prompt corrective measures to eliminate them, as specified in 29 CFR 1926.32(f)."* The Construction Asbestos standard further incorporates the provisions of 29 CFR 1926.20(b)(2) which requires frequent and regular inspections of job sites, materials, and equipment to be made by the competent person. These requirements are geared toward ensuring maximum safety and health for employees on worksites where asbestos is present.

Step 3: HEPA filters must be evaluated.

Reply: The National Institute for Occupational Safety and Health (NIOSH) is the Federal agency assigned the responsibility for approving respirators and filters. All respirators and filters required by OSHA standards must be NIOSH certified. OSHA's Respiratory Protection Standard, 29 CFR 1910.134, governs the workplace use of respirators.

A NIOSH-certified HEPA filter is, *"a filter that is at least 99.97% efficient in removing mono-disperse particles of 0.3 micrometers in diameter."* Equivalent particulate filters certified by NIOSH are the N100, R100, and P100 filters.

The 0.3 micrometers (microns - μm) diameter particle used in the certification testing of the HEPA (and 100-series) respirator filters is approximately the most penetrating for particulate filters. Although it seems contrary to expectation, smaller particles do not penetrate as readily as 0.3 μm particles. That is to say, these filters eliminate other particle sizes at least as well as the certified efficiency value of 99.97%.

Step 4: The remaining debris must be taken out properly.

Reply: Asbestos-containing waste must be presumed to be intermixed with the remaining debris at the World Trade Center site because materials containing asbestos were used in the construction of the Twin Towers. Therefore, in accordance with 1926.1101(g)(1)(ii), wet methods must and are being used to control employee asbestos exposures while removing the remaining Twin Towers debris except where employers

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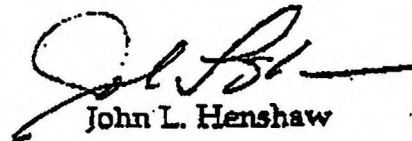
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3

demonstrate that the use of wet methods is infeasible. The debris must be kept wet at all times until it has been loaded and transported away from the site.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statutes, standards, regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretations of the requirements discussed. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>. If you have any further questions, please feel free to contact the Office of Health Compliance Assistance at 202-693-2190.

Sincerely,



John L. Henshaw

01/17/02 11:23 FAX

001

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

JERROLD NADLER

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201
Varick
Suite
669

OFFICE OF CONGRESSMAN JERROLD NADLER

Date: _____ Time: _____

To: PETER BRANDT

Fax#: _____ Telephone#: _____

From: Rep. Jerrold Nadler _____	Amy Rutkin _____
Brett Heimov <u>✓</u> _____	David Lachmann _____
John Doty _____	Rachel Ostendorf _____
Janice Siegel _____	David Greengrass _____
Becca Raiser _____	Lisette Morton _____
Eric Schmeltzer _____	Intern _____

Number of Pages (including cover sheet): 6

Comments: _____

If there is a problem with this fax please contact our office. Thank you.
PHONE 202-225-5635 FAX 202-225-6923

101 P. 01

Heimov, Brett

From: Schmelzer, Eric
Sent: Thursday, January 17, 2002 10:38 AM
Subject: MAJOR WTC RELEASE: NADLER EXPOSES EPA DOUBLE-STANDARD

Jan. 17, 2002
CONTACT: Eric Schmelzer
 202-225-5635
FOR IMMEDIATE RELEASE

**Nadler Exposes Dramatic EPA Double-Standards and Mishandling
 of Hazardous Materials Testing and Removal in
 Downtown Manhattan Residences**
Calls for Full Testing and Cleanup, Comprehensive and Independent Investigations

NEW YORK - Calling into question the integrity of the Environmental Protection Agency's (EPA) actions in lower Manhattan since the World Trade Center attacks, Rep. Nadler exposed a gross disparity in how the EPA has responded to the aftermath of the 9/11 attacks compared with other instances of hazardous materials contamination around the country. Congressman Nadler made the announcement at a City Hall press conference and was joined by members of the Ground Zero Elected Officials Task Force, and Hugh Kaufman, Chief Investigator for the EPA National Ombudsman.

Rep. Nadler charged that the EPA has abrogated its responsibility to protect public health by proclaiming lower Manhattan "safe" without comprehensive data to support that statement. And the Congressman revealed that the EPA had its own office building at 290 Broadway extensively tested and properly cleaned, in stark contrast to EPA directives which told Manhattan residents to follow NYC Department of Health (NYCDOH) guidelines that advise cleaning with "wet rags." The Congressman stated that these guidelines may be in violation of the federal law that EPA is responsible for overseeing. As a result of these findings, the Congressman made a number of immediate demands of the EPA and called for the continued, unfettered and independent investigation by the EPA National Ombudsman and for Congressional Hearings.

EPA Region II officials have claimed in multiple public statements that they have no responsibility for indoor testing and cleaning of residences in lower Manhattan. In a November 20th *New York Daily News* article, Region II Counsel Walter Mugdan said, "They [the federal regulations] were never contemplated to apply to someone cleaning an apartment." Bonnie Bellow, spokesperson for Region II, said in a recent *St. Louis Post-Dispatch* article, "That's not our job and we have no policies or procedures for doing that type of testing." She also stated, "We are not a health agency." However, today Congressman Nadler said that he had spoken with EPA officials who dispute the accuracy of those statements. The EPA National Ombudsman, Robert Martin, confirmed that the agency is, in fact, currently doing indoor testing and removal of hazardous materials in Herculanum, Missouri, and has also done so in McFarland, California, and Kellog, Idaho.

"The EPA has failed to uphold its own mission - 'to protect human health and to safeguard the natural environment - air, water and land - upon which life depends.' It is absurd that the EPA has claimed publicly that it doesn't have the legal authority to do necessary environmental tests and remediation in response to the World Trade Center attacks when it has clearly done residential work throughout the country," said Congressman Nadler. "Why is New York being treated differently?"

"And given that the EPA has not tested inside people's homes, despite my repeated requests for it to do so, I find it deeply troubling that Administrator Whitman said she was 'glad to reassure the people of New York... that their air is safe to breathe, and their water is safe to drink.' She clearly did not have comprehensive data to support that claim either way," he added.

Congressman Nadler also revealed today that the Federal buildings at 290 Broadway and 26 Federal Plaza were tested inside and outside for high levels of hazardous materials and, when some were found, the areas were cleaned (HEPA

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U.S. EPA/DEPP

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vacuumed) by properly trained personnel. Some sources have also indicated that even greater cleanup measures were taken.

However, even when the EPA received test results from a study commissioned by the Task Force that indicated serious levels of asbestos and other materials inside downtown apartments, the EPA continued to guide residents to the NYC Department of Health (NYCDOH) for direction. The NYCDOH directed residents who are the same distance away from Ground Zero as the Federal buildings, to clean asbestos-laden dust "with wet rags and mops" or "wet brooms."

"We must ask why is what the EPA says is good enough for New York residents not good enough for the EPA itself? Either the cleanup measures taken at the EPA office were necessary to protect its workers or the EPA wasted taxpayer dollars on an unnecessary cleanup," stated Congressman Nadler.

Moreover, the Congressman argued, that by delegating authority to the more lenient City standard, the EPA may have violated the law, as the agency is compelled to ensure that such City standards are at least as stringent as Federal law.

"Today, I have leveled some serious charges at the EPA because I believe I have the moral responsibility to do so. However, I want to make perfectly clear that we still do not know the extent of the presence of hazardous materials in some areas downtown. It may or may not be dangerous in some indoor areas of lower Manhattan. I believe that given that we don't have all of the facts, we cannot conclude anything. I do know that we must get the proper facts and act swiftly and appropriately to get the job done right," said Rep. Nadler.

CALLS FOR ACTION

Rep. Nadler and the Ground Zero Elected Officials Task Force called for four actions by the EPA:

- 1) Expedited testing of lower Manhattan residences and workspaces for hazardous materials levels. If shown to be necessary by test results, the proper cleaning of such indoor spaces by the EPA or appropriate government agency or its designated contractors. Such a testing and cleanup effort must be coordinated by a single agency utilizing the strictest Federal guidelines.
- 2) The full, independent and unfettered investigation by the EPA National Ombudsman into EPA's response to the September 11th attacks in New York.
- 3) The release of all documents detailing the justification of the cleanup of 290 Broadway and 26 Federal Plaza, how that cleanup was conducted, by whom, and at whose expense;
- 4) An immediate explanation from EPA of why it didn't utilize or enforce strict, Federal guidelines regarding hazardous testing and cleanup downtown, in favor of more lenient City standards.

In addition, Congressman Nadler called for immediate Congressional hearings into all of these matters.

Rep. Nadler has served in Congress since 1992. He represents the 8th Congressional District of New York, which includes parts of Manhattan and Brooklyn, including the area surrounding 'Ground Zero.' He is the Chair of the Ground Zero Elected Officials Task Force.

###

-- Rep. Nadler's statement is attached

Statement of Representative Jerrold Nadler (D-NY)
Exposing EPA Mishandling of Response to Sept. 11th Attacks
January 17, 2002

Thank you all for being here. I am joined today by members of the Ground Zero Elected Officials Task Force and by Hugh Kaufman, Chief Investigator for the EPA National Ombudsman. I want to also thank the New York Environmental Law and Justice Project for their assistance in bringing some of these matters to my attention.

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U.S. EPA/DEPP

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Today, we are calling into question the integrity of the Environmental Protection Agency's (EPA) testing and cleanup of hazardous materials in downtown Manhattan. There is a gross disparity in how the EPA has responded to the 9/11 attacks as against other instances of hazardous materials contamination around the country. I fear that the EPA has abrogated its responsibility to protect public health by proclaiming lower Manhattan "safe" without comprehensive data to support that conclusion. The EPA has conducted NO test of residential homes in New York City, even though it has done so in other cases around the country. The EPA must eliminate this disparity now. The EPA must test residential homes immediately, and if necessary, clean all contaminated areas using properly trained personnel under the strictest federal guidelines.

In addition, I call upon the EPA National Ombudsman to expand his investigation into the Agency's handling of the post 9/11 attacks here in New York. This investigation must be performed independently, thoroughly and expeditiously without any obstruction. I urge Administrator Whitman not to continue her quest to dissolve the office of the Ombudsman and, in so doing, further call into question the integrity of the Agency.

On September 18th, Administrator Whitman said she was "glad to reassure the people of New York. . .that their air is safe to breathe, and their water is safe to drink." I sincerely hope she was right. However, given that the EPA has not tested inside people's homes, despite my repeated requests for it to do so, how could the EPA have comprehensive data to support this claim either way? More importantly, when the EPA was presented with test results showing elevated levels of hazardous materials in downtown apartments, it chose to do nothing.

EPA Region II officials have claimed in multiple public statements that they have no responsibility for indoor testing and cleaning of residences in lower Manhattan. In a November 20th *New York Daily News* article, Region II Counsel Walter Mugdan said, "They [the federal regulations] were never contemplated to apply to someone cleaning an apartment." Bonnie Bellow, spokesperson for Region II said in a recent *St. Louis Post-Dispatch* article "That's not our job and we have no policies or procedures for doing that type of testing." She also stated, "We are not a health agency."

However, I have spoken with EPA officials who dispute the accuracy of those statements. The EPA National Ombudsman, Robert Martin, confirmed for me that the agency is, in fact, currently doing indoor testing and removal of hazardous materials in Herculaneum, Missouri, and has also done so in McFarland, California, and Kellog, Idaho.

The EPA has claimed publicly that it does not have the legal authority to do necessary environmental tests and remediation in response to the World Trade Center attacks. This is absurd. How can they make this claim when they have clearly done residential work throughout the Country? Why is New York being treated differently?

I also find it repugnant that an official at the EPA would deny a public health responsibility when its own mission statement says that the EPA's goal is to 'protect human health and to safeguard the natural environment - air, water and land - upon which life depends.

I have also learned that the Federal buildings at 290 Broadway, which houses the EPA, and 26 Federal Plaza, were tested inside and outside for high levels of hazardous materials and, when some were found, the areas were cleaned (Hepa vacuumed) by properly-trained personnel. Some sources have also indicated that even greater clean-up measures were taken.

However, even when the EPA received test results from a study commissioned by the Task Force that indicated serious levels of asbestos and other hazardous materials inside downtown apartments, the EPA, instead of directing systematic testing and remediation where contamination was found, instead directed residents to the NYC Department of Health (NYCDOH), which instructed them to clean asbestos-laden dust "with wet rags and mops" or "wet brooms" - procedures guaranteed not to remove or prevent asbestos contamination.

We must ask why is what the EPA says is good enough for New York residents not good enough for the EPA itself? Either the cleanup measures used at the EPA office were necessary to protect its workers or, the EPA wasted tax-payer dollars on an unnecessary cleanup. And if such cleanup measures were necessary at the EPA offices, why are such cleanup protocols not necessary at many, or all, of downtown's residences and offices?

Today, I have leveled some serious charges at the EPA because I believe I have the moral responsibility to do so. However, I want to make perfectly clear that we still do not know the extent of the presence of hazardous materials in some areas downtown. It may or may not be dangerous in some indoor areas of lower Manhattan - we just don't know. I believe that given that we don't have all of the facts, we cannot conclude anything. I do know that that we must get the proper facts and act swiftly and appropriately to get the job done right.

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U.S. EPA/DEPP

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Therefore, I demand that the following actions be taken by the EPA:

First, the EPA must begin expedited testing of lower Manhattan residences and workspaces for hazardous materials levels. If shown to be necessary by the test results, the proper cleaning of such indoor spaces must be undertaken by the EPA, or by another appropriate government agency or its designated contractors. Such a testing and cleanup effort must be coordinated by a single agency utilizing the strictest Federal guidelines.

Second, I am calling for a full, independent and unfettered investigation by the EPA National Ombudsman into the EPA's response to the September 11th attacks in New York.

Third, I am formally requesting the release of all documents detailing the justification for the cleanup of 290 Broadway and 26 Federal Plaza, how it was conducted, by whom, and at whose expense, and an immediate explanation from EPA regarding why it didn't utilize or enforce the Federal guidelines regarding hazardous testing and cleanup downtown, and permitted the use instead of more lenient City standards.

Finally, I call upon my colleagues in Congress to begin immediate hearings into these matters.

We must act now so that we don't have to pay a terrible price later. Our health and safety is at stake. Clear and proper guidelines must be in place so that if such an event were to, G-d forbid, happen in the future, we don't find ourselves in this same situation.

###

Eric M. Schmeltzer
Press Secretary
Office of Rep. Jerrold Nadler
202-225-5635

Avaitroni, Robert

From: Ilan, Lee
Sent: Wednesday, March 27, 2002 1:30 PM
To: Alessandra Sumowicz; Anita Sher; Bob Adams; Bob Avaitroni; Diana Chapin; Edward Gabriel; Eric Kim; James Miller; Jessica Leighton; Jordan Barowitz; Kelly McKinney; Laurel Blatchford; Mike Gilsenan; Sam Benson; Susan Kupferman
Subject: FW: US Rep Nadler responds to 3/25 EPA Press Release (+ EPA Release)

FYI

- Lee

U.S. REPRESENTATIVE JERROLD NADLER

NEWS RELEASE

From New York's 8th Congressional District
March 25, 2002 CONTACT: Eric Schmeltzer

FOR IMMEDIATE RELEASE 202-225-5635

U.S. REP. NADLER CRITICIZES EPA'S CONTINUED EVASION OF CLEANUP RESPONSIBILITY

NEW YORK - Rep. Jerrold Nadler (D-NY) today rebuked the Environmental Protection Agency (EPA) for its continued evasion of its responsibility to act in accordance with laws and policies mandating it to clean up sites contaminated by acts of terrorism and its disregard for the residents of Lower Manhattan. In response to a press release issued today by the agency, Rep. Nadler again called on the EPA to "come clean about its utterly inadequate response and proceed swiftly to clean up both the inside and outside of buildings in Lower Manhattan."

The EPA press release announced that New York City Department of Environmental Protection (DEP), with EPA guidance, will remove debris from rooftops and facades. The agencies also announced that they "will work to build on an indoor air study conducted in November and December." When contacted, the EPA did not provide immediate details on how the indoor air study will be expanded.

"Once again, the EPA is ignoring indoor areas where people live and work. As for the indoor air study, we have yet to learn the details of what was done in November and December, let alone what will be done today," said Rep. Nadler. "I fail to see why the EPA needs to do a study anyway, when it is clear from the National Contingency Plan and from Presidential Directives that the EPA has the mandate to coordinate all response efforts taken to remediate hazardous materials, including contamination inside buildings."

"I cannot understand why the Administration is letting the plight of the residents of Ground Zero fall on deaf ears," he added.

The National Contingency Plan is authorized by the CERCLA statute (42 USC §9604), and provides the framework for EPA's response to the release of hazardous substances, pollutants and contaminants.

Commenting on EPA Regional Administrator Kenny's statement in the press release that "Actions speak louder than words..." Rep. Nadler said, "When it comes to the needs of the residents and workers who have been victims of the terrorist attack, the EPA refuses even to mouth the right

words, let alone perform any actions on indoor environments that would ensure the health and safety of people living and working in and around Ground Zero.”

(MORE)

Rep. Nadler pointed out that in a speech delivered by EPA Administrator Christine Todd Whitman in November 2001, she acknowledged the EPA’s responsibility for cleanup of buildings contaminated in a terrorist attack.

Under the Presidential Decision Directive 62, signed by then-President Clinton in 1998, she said, “the EPA is assigned lead responsibility for cleaning up buildings and other sites contaminated by chemical or biological agents as a result of an act of terrorism.”

“If Administrator Whitman was so clear on the duties and responsibilities in November 2001, why did she not enforce them two months earlier, and why does the EPA continue to shirk its duties more than six months after the attack,” asked Rep. Nadler.

Rep. Nadler was elected to Congress in 1992. He represents the 8th Congressional District in New York, which includes parts of Manhattan and Brooklyn, including the area now known as Ground Zero.

EPA RELEASE FOLLOWS:

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FEDERAL, STATE AND CITY AGENCIES ANNOUNCE ACTIONS FOR LOWER MANHATTAN AIR QUALITY

FOR RELEASE: Monday, March 25, 2002

(#02114) New York, New York - Today the Environmental Protection Agency (EPA), along with New York City and other federal and state agencies, announced additional actions to address outdoor and indoor air quality. As part of the overall effort to continue to protect air quality, DEP will remove residual debris from rooftops and facades with EPA’s guidance. OSHA will work in a coordinated effort with the City and EPA to ensure the safety and health of the workers performing this cleaning.

EPA and New York City will expand the program to remove residual debris from rooftops and facades around the World Trade Center site. In addition, agencies will work to build on an indoor air study conducted in November and December. These actions are a result of the collaborative efforts of the EPA Administrator Christie Whitman’s Task Force on Indoor Air and New York City Mayor Michael Bloomberg’s Lower Manhattan Air Quality Task Force.

"Actions speak louder than words, and these actions will help increase confidence about outdoor and indoor air quality," said Jane Kenny, EPA Regional Administrator. "We have been working hand-in-hand with the city to resolve the public's health concerns."

"I am extremely pleased that EPA continues to work with the City to address concerns regarding air quality in Lower Manhattan," said incoming DEP Commissioner Christopher Ward.

Tests conducted since September 11th have indicated that there is no evidence of significant long-term health risks to residents and office workers from the air quality in Lower Manhattan. Inspectors from the City and EPA have surveyed area rooftops and facades identifying buildings where residual debris remains. As removal of debris from the World Trade Center site nears completion, City, State and Federal agencies are committed to continuing to protect and improve the downtown environment.

City, state and federal health and environmental agencies are working collaboratively to continue to assess the cleaning that was conducted and determine testing criteria. Building on earlier tests, EPA will conduct field work to assess cleanup techniques and provide information for ongoing cleaning. The Agency for Toxic Substances and Disease Registry, with support from the New York City Department of Health and EPA, is planning to expand the indoor air study conducted in December 2001.

As these projects are developed, the Federal Emergency Management Agency (FEMA) will fund components that are eligible under its programs. As the agency responsible for coordinating federal assistance in support of the city's long term recovery efforts, FEMA is working closely with all concerned agencies.

Both the EPA and New York City Task Forces will work cooperatively to continue to protect air quality. The Lower Manhattan Air Quality Hotline (212-221-8635) will continue to be the principal point of information dissemination to businesses, residents and visitors regarding air quality and environmental issues in and around the World Trade Center site. The City's Task Force will also coordinate additional community outreach and local initiatives as part of the broader effort to build public confidence in the downtown environment.

For more information, call the City's Lower Manhattan Air Quality Hotline at 212-221-8635 between 11:00 am and 7:00 pm Monday through Friday. In addition, information can be found on EPA's web site at: www.epa.gov; OSHA's web site at: www.osha.gov; NYC DOH's web site at: www.ci.nyc.ny.us/html/doh/home.htm; and NYCDEP's web site at: www.nyc.gov/html/dep/html/airmonit.html.

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Sent: Tuesday, February 12, 2002 3:58 PM
Attach: RepJerroldNadler-2-11-02-SenateHearingsOn9-11disaster.pdf; UCdavis-2-11-02-UnprecedentedAmountsOfFineParticles-.pdf; UC Davis-synchrotron-11-2-01-says EPA.pdf; ChiTribune-2-12-02-Nadlerhearing.pdf; latimes-2-12-02-particulatesUCDavis.pdf
Subject: 2/11/02 Congr. Nadler testimony, press, and UC Davis particulate study

(See attached file:

RepJerroldNadler-2-11-02-SenateHearingsOn9-11disaster.pdf)(See attached file: UCdavis-2-11-02-UnprecedentedAmountsOfFineParticles-.pdf)(See attached file: UC Davis-synchrotron-11-2-01-says EPA.pdf)(See attached file: ChiTribune-2-12-02-Nadlerhearing.pdf)(See attached file: latimes-2-12-02-particulatesUCDavis.pdf)

Please see the attached files for the testimony on 2/11/02 from Congressman Nadler, some associated press, and the findings of the UC Davis of particulates and asbestos 1 mile north of Ground Zero for the month of October. Obviously, more sensitive methods were used than by EPA, since EPA found no asbestos whatsoever at Pier 25, its northernmost sampling point, and asbestos only only 3 days in October at West and Barclay, a block away from Ground Zero.

Also notice that the 11/2/01 press release from UC Davis stated that EPA had requested their help. But it appears that EPA later disowned the study.

02/22/2002

TESTIMONY OF U.S. REPRESENTATIVE JERROLD NADLER (D-NY)

Submitted to
The Senate Committee on Environment and Public Works
Subcommittee on Clean Air, Wetlands, and Climate Change
February 11, 2002

A+

Impact of the September 11th Attack on Air Quality and Public Health in Lower Manhattan

Thank you, Chairman Lieberman. I would like to thank you and Senator Clinton for holding this field hearing today, and for inviting me to testify, regarding the continuing impact of the September 11th attacks on the air quality in Lower Manhattan.

As the Congressman representing "Ground Zero" and the surrounding area, I am deeply concerned about the environmental and health effects posed by the collapse of the World Trade Center for my constituents, and for those who go to school or work in the area. It has now been exactly five months since the terrorist attacks and, unfortunately, the people in Lower Manhattan still do not know whether or not it is safe to live and work in the area. The Environmental Protection Agency (EPA) has failed in its mission to "... protect human health and to safeguard the natural environment ..." by not exercising its full authority to test and clean all indoor spaces where people live and work. As such, the EPA has created a full-scale crisis of public confidence.

Yet, all is not lost. The EPA can and must act now to remedy this situation and make Lower Manhattan safe and to restore public trust. Despite statements to the contrary, the agency does currently have the authority and resources to do so, and it must do so quickly. However, if the EPA continues to fail New Yorkers, I will introduce legislation to mandate action.

I am going to begin by being very blunt. We now know enough to be alarmed and outraged at the federal government's response to the environmental impact of 9/11. First, we know that EPA Administrator Christine Todd Whitman misled the public on September 18th, 2001 when she said she was "glad to reassure the people of New York that...their air is safe to breathe, and their water is safe to drink." She made that statement without the indoor data necessary to make such a pronouncement. Second, we know that the EPA has made a series of conflicting comments about the presence and quality of hazardous materials, and has even knowingly withheld critical data regarding the causticity of the dust. Third, we know that the EPA delegated authority to New York City to handle indoor environments, but did nothing to ensure that the City's response was appropriate. This left New Yorkers to their own, uninformed devices, often without the means to take care of themselves and their families. This is true even as the EPA had its own building at 290 Broadway professionally tested and cleaned. And finally, we know that the EPA has treated New York differently than it has treated other locales contaminated by hazardous materials. New York was at the center of one of the most calamitous events in American history, and the EPA has essentially walked away.

Ms. Whitman's statement, reassuring the public about the safety of air and water, which has been echoed by many at all levels of government, was based only on the EPA's outdoor tests

-- the results of which are still in dispute. At that time, there had been no systematic testing of indoor air or dust in residential or commercial buildings by any government agency, let alone by the EPA. In fact, the EPA did not intend to do testing even of outdoor air in residential areas of Lower Manhattan until my Ground Zero Elected Officials Task Force requested that it do so on September 21st. Ironically, the very first public testing conducted inside residences, which was commissioned by our Task Force, commenced on the very day Ms. Whitman made her misleading statement. The results were made available to the EPA on October 12th. The test results showed elevated levels of hazardous materials in these residences. The EPA did nothing and Ms. Whitman did not adequately clarify her statement.

In recent weeks, the EPA has stated repeatedly that the City of New York, not the EPA, is responsible for indoor testing. The City, however, didn't get around to testing inside homes until November and December. The full results of these test are still not available and, according to the Health Department, won't be until the Spring. I do not understand why the results of tests undertaken by a public agency are being delayed for public release. Our test results took less than a month to be released. Nevertheless, just three days ago, the City Department of Health issued a press release regarding this limited indoor testing. Despite a pacifying headline, many the limited data in the press release has caused the scientists with whom we've consulted to believe that full results would directly contradict Ms. Whitman's statement. The release does make it clear, as did our commissioned study, that there were disconcerting levels of hazardous materials in peoples' apartments.

Ms. Whitman's reassurances are deeply confusing in light of other statements made by agency officials and of other information we now have that the EPA has not itself released. For example, in a copy of a January 25, 2002 speech given by Walter Mugdan, EPA Region II counsel, which I have obtained, I find that he states, "... a significant number of the WTC bulk dust samples that we analyzed did have more than 1% asbestos." But an Oct 3rd 2001 EPA memo "Confirm[ing] No Significant Public Health Risk" states, "The vast majority of EPA and OSHA samples of air and dust analyzed for asbestos have been at levels that pose no significant risk to residents and workers returning to their homes or area businesses." This statement has been made repeatedly by EPA Region II officials. How are New Yorkers to interpret these conflicting remarks? I can't even tell you what they mean -- except that they cannot both be true.

Confusing remarks are one thing, withholding critical data pertaining to the public health is another. We know that it took a Freedom of Information Act request by the New York Environmental Law and Justice Project to get test results showing dangerous levels of hazardous materials in outdoor ambient air. The EPA claimed that this was an "oversight." But now we have a new, frightening bombshell.

According to this Sunday's St. Louis Post Dispatch, the United States Geological Survey (USGS), using the country's best detection equipment and methods, found pH levels in World Trade Center dust that are "... as corrosive as drain cleaner" and passed this information along to health experts at the EPA on a "government-only" website. That's right. As corrosive as drain cleaner. (By the way, it took less than 2 weeks in September for these test results to be ready.) I submit this article for the record.

Andrew Schneider, the paper's Pulitzer Prize-winning environmental journalist, charges "the USGS data was not released by the EPA nor apparently were the environmental agency's own test results on the dust." The EPA claims to have released this data to the public, but when Schneider reviewed all of the EPA's statements made since 9/11, he found nothing that warned of these high pH levels. According to the New York Committee for Occupational Safety and Health (NYCOSH), such dust "once its in contact with moist tissue – the throat, the mouth, nasal passages, the eyes and even sweaty skin – it becomes corrosive and can cause severe burns." This is utterly scandalous. We must find out why the EPA hid this information from the public and we must see all the data now. I hope that Senators Clinton and Lieberman will join me in calling on the federal government to explain why New Yorkers were misled, and to demand the immediate release of the full compliment of data.

The EPA has not only provided false reassurances and misleading information. The EPA has also abrogated its responsibility to act. In a statement issued on January 17th in response to a press conference I held, the EPA states that it, "has lead [sic] the effort to monitor the outdoor environment while the City of New York has taken the lead regarding the reoccupancy of buildings." At least the EPA admits that it has delegated authority to the city. Unfortunately, the EPA has yet to provide any justification for doing so, nor has it provided any evidence of the oversight measures it is compelled to take to ensure that the city is acting in accordance with the strictest federal standards. On January 23rd, I sent a formal inquiry to Administrator Whitman asking for answers to these and other questions about the City's response, which I submit for the record today. It has been over three weeks since the letter was sent and I have yet to get a response.

The EPA might say today, as it has in the past, that it does not have the proper legal authority to take the steps we are requesting to test and clean the areas affected by the collapse of the World Trade Center. It will probably say that the Clean Air Act, for example, does not govern indoor air and that it is therefore the responsibility of the local and state governments, or even that of the landlords and residents themselves. This is, again, all utterly misleading.

Under Section 303 of the Clean Air Act, the EPA has the authority in an emergency situation to protect human health when there is an "imminent and substantial endangerment" presented by a source of pollution. The intent of Congress is clear in this regard. A Senate Report from 1970 on Section 303 states, "The levels of concentration of air pollution agents or combination of agents which substantially endanger health are levels which should never be reached in any community. When the prediction can reasonably be made that such elevated levels could be reached even for a short period of time – that is that they are imminent – an emergency action plan should be implemented." In short, the EPA should not wait for people to actually get sick before it acts, and it clearly has the authority to act under this law. Indeed, an EPA memo entitled "Guidance on the Use of Section 303 of the Clean Air Act" was issued to the Regional offices on September 15, 1983 outlining these very points. I submit a copy of this memo for the record.

But the Clean Air Act is not the only governing statute. The EPA has the authority to act on indoor air under the National Contingency Plan (NCP) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). In fact, I understand that the EPA has

indeed been utilizing some of the NCP protocols at Ground Zero – however, they have not relied on this authority, or any other, to test or remediate indoor environments.

As we speak, the EPA is in fact doing indoor testing and remediation in Herculaneum, Missouri and other locales without Superfund designation. We must learn why the EPA is treating New York differently and I ask the Senators present here today to help me find out. This double-standard is unconscionable.

The EPA was unwilling to act on its own, and yet did nothing to ensure that those ostensibly charged with acting did “the right thing.” The EPA, on its website and in public press releases referred residents to the New York City Department of Health, which recommended that people clean their potentially asbestos-laden dust with a “wet rag or wet mop.” Clearly such cleanup measures are inadequate, as seen by the EPA’s own actions taken in its building at 290 Broadway. I again today ask why the EPA applied stricter measures to federal buildings than the City advised for local residences and business equidistant from the World Trade Center.

Given the lack of action, credible information or oversight, I believe the EPA has failed in its responsibility to protect the public health of the citizens of Lower Manhattan. This is quite simply shameful, for public health is the first thing we, as a government, must protect.

In order to ensure a full and fair public assessment on the EPA’s actions following September 11th, I have also asked the EPA National Ombudsman, Robert Martin, to investigate these matters. Mr. Martin has been doing so, and I am disappointed he has not been invited to testify and share the status of his investigation with the Committee. However, I understand there is a time constraint today, so I have attached a statement from Mr. Martin to be included in the record. As you may also know, Administrator Whitman is attempting to place the Office of the Ombudsman under the control of the Inspector General, effectively stripping the Ombudsman of his independence and ability to investigate these claims. I sincerely hope that Administrator Whitman will stop her quest to eviscerate the office of the Ombudsman, and in so doing, further undermining the integrity of the agency.

I realize that I have leveled serious charges here today, but I believe I have the moral responsibility to do so. The salient point is that we still do not know the extent of the presence of hazardous materials in some areas of the city. It may or may not be dangerous in many indoor areas of lower Manhattan – we just don’t know. I am dismayed that there seems to be an unwillingness on the part of our public agencies to get this information. But given that we do not have all of the facts, we cannot conclude anything. I do know that we must get the facts and act swiftly and appropriately to get the job done right.

We must not fall into the catch-22 of saying there is no evidence of a public health emergency without taking any steps to get such evidence. And the burden should not be on the landlords and residents themselves when the testing procedures and cleanup measures are expensive and must be conducted by properly trained personnel.

The EPA has the statutory and regulatory authority to test and remediate indoor environments in Lower Manhattan, and has exercised such authority elsewhere. I am calling on

the EPA today to immediately commence a program of full-scale testing and remediation using the best available technology, and to make a report of all such test results and actions available to the public. The EPA must also issue the test results in a manner which is tied directly to health standards, so that we can truly assess the public health risk posed to the people of Lower Manhattan. And finally, testing procedures should in no way impede the expeditious remediation of hazardous materials found by other government agencies, or private researchers. Similarly, should the EPA find dangerous levels of hazardous materials before the full spectrum of testing is completed, cleanup measures should commence immediately.

If the EPA fails to act again, despite its current authority, I will introduce legislation to compel it to do so.

People might say that the measures I am requesting here today are expensive. That may be, but we must protect the public health. And although the cost may be high today, imagine what the cost will be in the future if it turns out that there really are dangerous levels of hazardous materials in Lower Manhattan. Imagine the City's and EPA's contingent liability to lawsuits twenty years down the road. And envision the potential health care costs.

It is in the best interest of the residents, workers, students and businesses for the government to act swiftly and appropriately to address the public's environment and health concerns. We cannot afford to wait while all the agencies point fingers at each other. There is still time to right this situation.

And time is of the essence. My office has received numerous complaints from people experiencing adverse health effects such as headaches, nosebleeds, and respiratory ailments. The symptoms are so widespread that they have been dubbed "The World Trade Center Flu." Public confidence is at stake. People know when they are sick, they know when something is not right, and they know when they are being lied to. I sincerely hope that we do not have another "Love Canal" on our hands, but the best way to avoid that is to do the necessary testing and cleanup now.

Thank you for inviting me to testify before you today. I look forward to working with my colleagues in both chambers of Congress, and with all interested parties, to ensure that New York City is safe and prosperous for many years to come.

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The team analyzed the particles by size in eight ranges from coarse (12 micrometers to 5 micrometers in diameter) to ultrafine (0.24 micrometers to 0.09 micrometers in diameter). Most of the ultrafine mode (particles less than 0.1 micrometers) was not collected.

Coarse particles are typically filtered by the nose or coughed out of the throat and upper lungs. They can irritate mucous membranes, causing coughs and nosebleeds. In some individuals, they can cause allergic reactions: eyes; nose, throat and skin irritation; coughing, sneezing and respiratory distress. They can also cause breathing problems or aggravate pre-existing breathing problems, such as asthma.

However, very fine particles can travel deep into human lungs. Such small particles may have no immediate health effects in moderate concentrations, but they typically are removed from the lungs through the bloodstream, increasing the possibility of health impacts.

There are no established safe limits for inhaled very fine particles. The closest reference is the U.S. EPA "PM₁₀" which limits the allowable mass of airborne particles in the size range 2.5 micrometers to 10 micrometers. This is based on health studies of typical air samples, in which very fine particles are a small fraction of the total mass.

In contrast, in the World Trade Center samples analyzed at UC Davis, the very fine particles are a large fraction of the mass.

In a news conference today, the DELTA researchers described key findings in these categories: very fine particles, metals, asbestos and glass.

Very fine particles

There were numerous events when bursts of wind lasting six to eight hours carried unprecedented amounts of particles to the sampling site.

In the largest spike, the DELTA Group analysis found 58 micrograms per cubic meter of very fine particles in period – "an extremely high peak," Cahill said.

Cahill said the very fine particles contained high levels of sulfur and sulfur-based compounds, which in early samples appear to have been dominated by sulfuric acid. The very fine particles also contain high levels of very fine silica, potentially from the thousands of tons of glass in the debris.

Cahill noted that even those large amounts were likely to be smaller than those present at Ground Zero and parts of Lower Manhattan, since weather data show that typically only part of the dust clouds traveled directly to the sampling site.

"Even on the worst air days in Beijing, downwind from coal-fired power plants, or in the Kuwaiti oil fires, we did not see these levels of very fine particulates," Cahill said. The amounts of very fine particles, particularly very fine silica, decreased sharply during the month of October.

Coarse particles

Similar to the high concentrations of very fine particles, virtually all the air samples from the trade center site showed high concentrations of coarse particles – those about 12 micrometers to 5 micrometers in diameter.

"These particles simply should not be there," Cahill said. "It had rained, sometimes heavily, on six days in the weeks before the attack. That rain should have settled these coarse particles." The finding suggests that coarse particles were continually generated from the hot debris pile. This observation is at least qualitatively supported, for while the samples were being analyzed, the coarse particles appear to be coated with combustion products, including soot, Cahill said.

Metals

Many different metals were found in the samples of very fine particles, and some were found at the highest levels recorded in air in the United States.

However, there are few established safety guidelines for airborne metals. One metal for which there is a guideline is lead, which was present at low levels in fine and very fine particles.

Some of the metals for which there are no guidelines that were present in very fine particles in relatively high concentrations were iron, titanium (some associated with powdered concrete), vanadium and nickel (often associated with steel).

fuel-oil combustion), copper and zinc. Mercury was seen occasionally in fine particles but at low concentrations. Those metals are widely used in building construction, wiring and plumbing. Some are common in computers.

The metal content of the coarse particles is still being analyzed.

Asbestos and glass

Although some asbestos was used in the buildings for fireproofing and in floor tiles, and the DELTA group checked carefully using the electron microscope, they found very few asbestos fibers, even in the very fine particles.

Some particles that appeared to be glass were seen, but they were not in the form of long shards, which can be asbestos fibers.

Clean-up recommendations

All evidence indicates that ambient air in New York City now is little influenced by the World Trade Center except especially since the fires are out and the debris pile has cooled.

However, the presence of large amounts of very fine particles as late as October means that indoor clean up must be done carefully, Cahill said. Very fine particles will have penetrated crevices and fabrics in a way normal dust does not. They are easily re-suspended, which re-exposes the room's occupants to them.

Cahill strongly supports the recommendations made by the New York Department of Health regarding washing and said:

- Don't use vacuum cleaners or brooms because they re-suspend particles. Do use wet rags, mops and wet mops.
- Wipe all surfaces, including window blinds, picture tops and door frames, with wet rags.
- Drapes and curtains should be washed or dry-cleaned. Furniture fabrics should be steam-cleaned. Carpet should be wet-cleaned.
- Use high efficiency electrostatic or HEPA air filters in furnaces and air conditioners.
- Keep humidity reasonably high indoors, to keep very fine particles from floating around.

UC Davis DELTA Group

The UC Davis DELTA Group is one of the world's leading research groups in analyzing the size, composition and movement of airborne particles. DELTA Group scientists analyzing the trade center samples included Cahill; professor James Shackelford, Ph.D., who led the scanning electron microscopy; chemistry professor Peter H. Plesch, who led the mass spectroscopy; assistant research engineer Steve Cliff, Ph.D., who is project manager for the program, and laboratory and field manager Michael Jimenez-Cruz, toxicologist.

Key collaborators from other institutions were Kevin Perry, Ph.D., a former Cahill postdoctoral collaborator and assistant professor of meteorology at the University of Utah, Salt Lake City; Graham Bench, Ph.D., a project manager at the Center for Accelerator Mass Spectroscopy, U.S. Department of Energy's Lawrence Livermore National Laboratory; his team of scientists; and Jodye Selco, Ph.D., a visiting professor at UC Davis and a professor of chemistry at the University of Redlands, Redlands, California.

The DELTA Group's many previous research projects include studies of the smoke from the Kuwaiti oil fires, international ACE studies (for Aerosol Characterization Experiment), which are designed to shed light on the aerosols in global weather, water pollution and human disease. The most recent, ACE-Asia, operated under National Science Foundation funding with 21 aerosol-sampling sites from Asia to western North America from March 2001.

DELTA Group currently is continuing analyses of the 2001 ACE samples, as well as studies of Alaskan air quality, the nature of diesel-vehicle exhaust, the impacts of air pollution on human health in California's great Central Valley and the environmental health of the Lake Tahoe Basin.

For more information, visit the DELTA Web site at: <http://delta.ucdavis.edu>.

http://www-pubcomm.ucdavis.edu/default.lasso?-database=news_db.fmp_&-layc... 2/11/2002

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U of S News

Synchrotron Research Assists In Wake of Sept. 11

Organization: University of Saskatchewan Communications

Email: communications.office@usask.ca

Released: Nov. 2, 2001

FOR IMMEDIATE RELEASE - November 2, 2001

2001-11-05-OTHER

U of S NEWS TIP:

Synchrotron Research Assists In Wake of Sept. 11

In the wake of the collapse of the World Trade Center towers, a California synchrotron will help identify airborne pollutants that could adversely affect the lungs of recovery workers and residents in the surrounding area.

Synchrotrons in the U.S. and Europe are also helping to provide new leads for finding drugs to combat anthrax, a significant threat as an agent of biological warfare and terrorism.

"These recent examples of important and diverse applications of synchrotron science underscore the exciting research opportunities that will be available to scientists at the Canadian Light Source (CLS), Canada's first synchrotron now being constructed on our campus," said University of Saskatchewan President Peter MacKinnon.

A synchrotron acts like a gigantic microscope that generates intense beams of brilliant light to view the microstructure of materials. The U of S-owned CLS national facility will begin operations in January, 2004. (For information on the CLS, visit www.cls.usask.ca)

Identifying Airborne Pollutants

The U.S. Environmental Protection Agency has enlisted a University of California, Davis research group to help monitor the composition and movement of smoke and dust particles from the World Trade Center excavation site.

To detect rarely measured, very fine and ultra-fine (to 0.09 microns -- one micron equals one one-thousandth of a millimetre) particles that can lodge deeply in the lungs, the Advanced Light Source (ALS) at the University of California Berkeley Lab will be used to analyze the air samples. The first set of results is expected by mid-November.

"Details about the composition of these airborne particles should help authorities determine what safety measures are needed at the site, the length of work shifts, and whether workers need better measures to control the dust to protect local residents," states an Oct. 31 ALS users' newsletter.

Since October 1, a monitoring device on the roof of a building downwind from ground zero has been collecting air samples. In early November, the first batch of samples will be shipped back to California for analysis.

At UC Davis, an electron microscope and a mass spectrometer will be used to scan the air samples for asbestos, carcinogenic organic compounds and other toxins produced when plastic burns.

At the ALS, the X-ray microprobe beamline will be used to analyze the samples for the presence of elements sodium through uranium, but especially for toxic metals such as mercury, lead, and cadmium. (For more information, see http://www-als.lbl.gov/als/als_news/#3)

Battling Bioterrorism

Synchrotron science is also coming to the aid of medical scientists seeking ways to battle the bacterium responsible for anthrax disease.

Bacillus anthracis secretes a toxin made up of three proteins. Recently, *Nature* magazine took the unusual step of publishing on the Internet an important paper that describes the crystal structure of one of these proteins -- "lethal factor" or LF, the crucial pathogenic enzyme of anthrax toxin. (See <http://www.nature.com/nature/anthrax>)

The work was done with the help of five American and European synchrotrons (light sources at Stanford, Cal.; Daresbury, U.K.; Grenoble, France; Chicago, Ill.; and Long Island, N.Y.).

Scientists now have a picture of how the lethal factor enzyme attacks cells. Now drug companies can search for chemicals that will block this activity, paving the way for potential new anti-anthrax drugs.

Probing the structure of proteins to come up with drugs against various toxins and safe, effective vaccines is exactly the kind of work that will be done on a planned protein crystallography beamline at the CLS. The synchrotron is the tool of choice for this type of work because it's faster and more precise than conventional technology.

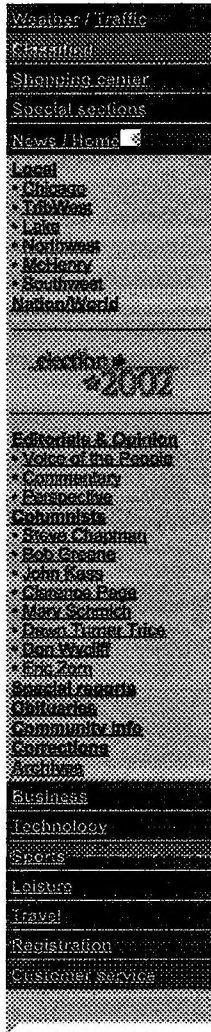
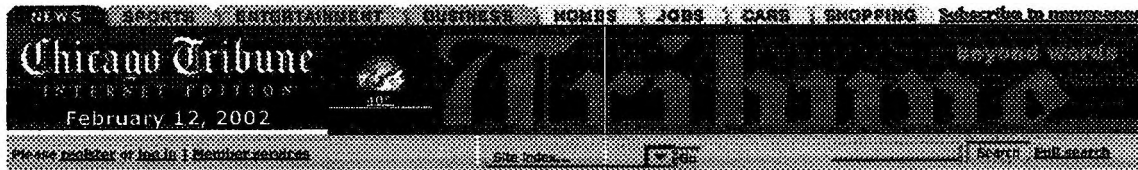
Scientists from across Canada will use the CLS in the search for new vaccines and drugs. VIDO (Veterinary Infectious Disease Organization), a U of S-based global leader in infectious disease research, recently turned the sod for a \$14.3-million expansion next door to the CLS, enabling researchers to decode proteins manufactured by genes and combat infectious diseases in both animals and humans.

-30-

For more information, or to arrange interviews with synchrotron scientists, contact:

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By Stevenson Swanson
Tribune national correspondent
Published February 12, 2002

NEW YORK — In a sharp departure from the nearly universal praise that government agencies have received for their handling of the Sept. 11 attacks on the World Trade Center, federal environmental officials came under heavy criticism Monday for telling New Yorkers that pollution posed no problem in lower Manhattan after the attacks.

By reassuring the public that the air around the trade center was safe, the Environmental Protection Agency misled the public, charged Rep. Jerrold Nadler (D-N.Y.), testifying at a Senate subcommittee hearing on air quality.



The EPA's statements were based only on outdoor monitoring, he said, and did not take into account the potential for cancer-causing asbestos and other toxins from burning trade-center debris to reach high concentrations in nearby apartments and offices.

"We now know enough to be alarmed and outraged at the federal government's response to the environmental impact of Sept. 11," Nadler, who represents lower Manhattan, told Sens. Joseph Lieberman (D-Conn.) and Hillary Rodham Clinton (D-N.Y.). "New York was at the center of one of the most calamitous events in American history, and the EPA has essentially walked away."

Nadler's testimony was the harshest attack so far in a controversy that has gathered momentum in recent weeks as confusion has spread over how offices and homes near ground zero should be cleaned.

The EPA was responsible for monitoring outdoor air quality, but shortly after Sept. 11 it delegated responsibility for ensuring that indoor air was safe to New York City agencies.

EPA regional administrator Jane Kenny said later during the hearing that the agency "used the most extensive data ever" in assessing air quality in the neighborhood around the trade center site. Reassurances by EPA Administrator Christie Whitman in September about the safety of the air were meant to apply only to the outdoor air, and Kenny

City officials said that tests in some lower Manhattan buildings found low levels of asbestos, but critics say that private test results of offices and apartments have found unsafe amounts of the toxin in the dust that blew in through broken windows or was sucked in by ventilation systems.

That has left apartment dwellers and business owners adrift as they try to determine whether their cleanup efforts have been sufficient.

"It took eight guys in white suits and respirators five days to clean my apartment," testified Elizabeth Berger, who lives with her husband and two children in an apartment 150 feet from ground zero. "But is it clean? No one tells you what to keep and what to toss."

Berger said her family threw away their sheets and towels, hundreds of stuffed animals, and five mattresses, but doubts remain about asbestos that may have settled in cracks in their floors or that may blow in through their building's central heating system.

City officials said they were overwhelmed by the number of tests and permits required to guarantee safe removal of pollutants from interiors.

"I am not convinced that the environmental response to the Sept. 11 attack was as well-coordinated as other aspects," Lieberman said.

During the hearing at New York's landmark U.S. Custom House south of the trade center site, several experts agreed that air quality in lower Manhattan has generally returned to pre-Sept. 11 levels and that relatively few violations of pollution standards have occurred since late September.

But many firefighters and other rescue workers at ground zero labored without respirators, leading to respiratory ailments such as the persistent "World Trade Center cough," shortness of breath and nosebleeds.

To determine whether any long-term health effects show up, a registry is being created to track firefighters who worked at the site.

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February 12, 2002

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RESPONSE TO TERROR

Danger Found in Trade Center Air

■ Science: Researchers discover extremely high levels of pollution. 'Situations like this just don't exist' in most of the world, project leader says.

By GARY POLAKOVIC, TIMES STAFF WRITER

Smoke and dust from the destroyed World Trade Center buildings exposed residents of lower Manhattan to weeks of some of the highest levels of air pollution ever studied, a team of California scientists reported Monday.

Carefully analyzed samples of air collected about a mile from the World Trade Center site in the weeks after the attacks show extraordinarily elevated levels of tiny particles laced with soot and metals, the researchers said. Fires smoldering in the rubble turned glass, concrete and computer equipment into an aerosol fallout that was far more intense and persistent than expected, they added.

"No one has ever reported a situation like the one we see in the World Trade Center samples," said Tom Cahill, an atmospheric physicist at UC Davis and the leader of the project. "In New York City and in most of the world, situations like this just don't exist." Cahill and his colleagues report finding almost no asbestos and very little lead in the air—two pieces of good news for worried New Yorkers. They also found that the pollution levels had dropped sharply by late October. But those reassurances for many in the city may be outweighed by the intensity of the pollution the researchers did find: weeks of very high levels of sulfur and sulfuric acid, titanium, nickel and minute particles of silicon from pulverized glass and concrete.

For many of the pollutants, the exact health effects are unknown. But recent studies have shown that tiny particles can penetrate lungs and be absorbed into the bloodstream. Exposure to particles has been linked to elevated rates of cancer, heart attacks and asthma.

The condition of New York's air in the aftermath of the trade center disaster has been the subject of heated political debate for months. The federal Environmental Protection Agency has said their studies showed air in Manhattan was safe. But many New York residents and politicians and the EPA's own ombudsman have suggested the agency has improperly downplayed health concerns.

Independent Study Widens Debate

The new research represents the first publicly available assessment from

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LA Opinion

independent, university-based researchers. The findings quickly exacerbated an already irate debate.

government's response to the environmental impact of 9/11," said Rep. Jerrold Nadler (D-N.Y.), whose district covers much of the affected area.

"The EPA has created a full-scale crisis of public confidence," Nadler said at a Senate Environment and Public Works Committee hearing called to examine the government's response to New York's pollution exposure.

EPA spokeswoman Bonnie Bellow declined to comment on the findings, saying agency officials had not been able to read and review the research.

"We recognize people have concerns, and we are concerned about people's safety," Bellow said.

Cahill, however, said the EPA failed to identify more air pollutants over a wider area because the techniques and equipment it used do not capture the tiniest particles, which the agency's own scientists have acknowledged are the most hazardous.

"The EPA could have identified these particles within a couple of days if they looked for them, but they didn't," Cahill said.

The researchers from California, who have extensive experience analyzing airborne pollutants, collected air samples in Manhattan at the request of the Energy Department from Oct. 2 to mid-December. Rainstorms washed out most of the large particles, they found. But large masses of tiny specks remained airborne until the fires were extinguished in late October.

Scientists collected particles continuously for three months and used seven tests to sort them based on color, size and chemical composition. They scanned particles with lasers and electron microscopes at Davis and the

national laboratories to determine their chemical compositions.

The results showed that the level of particles in New York's air outdid even the worst pollution from the Kuwait oil field fires.

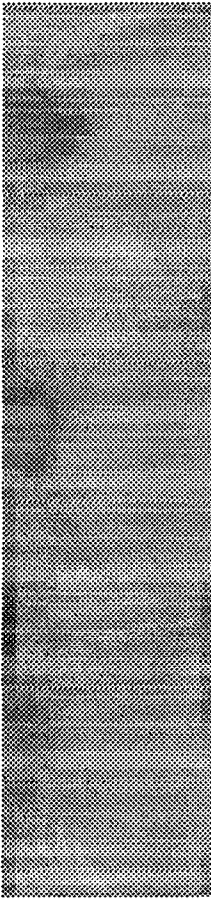
The main problem was tiny particles, which can penetrate deep into the

concentrations were 50 times greater than those found in California's San Joaquin Valley, one of the smoggiest places in the nation, Cahill and his associates reported.

Harmful Particles Slip Indoors

While the widespread pollution from the fires has ended, scientists who conducted the research say danger has in many cases moved indoors.

The particles, many of them more than 100 times smaller than the diameter of a human hair, easily slip past windows and doors and collect



on drapes and carpets. Confined inside apartments or offices, they can pose a long-term health risk unless properly removed.

"These particles are ultra-fine and can suspend in the air for a long, long time. They behave more like a gas and are hard to remove," Cahill said.

While the exact health risk is uncertain, many New York residents have refused to move back into apartments or offices. Parents have refused to send children back to schools near the trade center site until they are convinced the air is safe.

The researchers endorsed recommendations from the New York City Health Department that New Yorkers wipe all interior surfaces with wet cloths and avoid vacuuming or sweeping.

"I would be extremely careful moving into indoor space or else you will re-suspend these particles for a very long time," Cahill said.

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News...



FROM COUNCIL MEMBER

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FOR IMMEDIATE RELEASE

Gerson Says EPA Revelations Confirm Community's Fears about Inadequate Testing and Cleanup

***Gerson Legislation Would Require Scientifically Significant Air
Sampling in All Areas under the Plume***

***Gerson Will Hold City Council Hearing in early September,
Joins Other Elected Officials Calling for Thorough Investigation***

New York, NY, August 25, 2003 – Council Member Alan Jay Gerson cites recent revelations by the EPA Inspector General about misinformation given to New Yorkers about the air quality following 9/11 as confirmation of the fears expressed all along by his constituents in Lower Manhattan. Gerson had assailed the initial study as scientifically flawed, and introduced legislation following the EPA's cleanup efforts to require scientifically significant air sampling in all areas under the plume. The EPA study used "grab samples" of dust rather than an adequate testing of ambient air, and left out significant areas under the plume such as the Lower East Side and Brooklyn Heights.

"The recent report by the EPA Inspector General confirms what many downtown residents experienced and feared," said Gerson. "It's a sad day for our city and for our country when citizens cannot count on the EPA to be an objective, scientific guardian of their environment and health. It is especially egregious when political leaders would sooner take a chance at putting people's health at risk by downplaying potential risks rather than trust citizens with the truth."

Legislation

Gerson's legislation calls for the DEP to conduct state-of-the-art testing, ground sampling, and ongoing air monitoring in all areas under the plume created by the collapse of the World Trade Center towers. Sites that must be included in the analysis are all residential and commercial units as well as airshafts, parks and common areas. The analysis must

- more -

Gerson Says EPA Findings Confirm Community Fears, page 2

cover all sensitive areas and enough random areas to achieve a scientifically significant sampling that gives a valid assessment of a wide array of toxins and their potential health impact. (The legislation is limited to testing because the City Council does not have jurisdiction to legislate that the EPA redo its cleanup.)

In the legislation, Gerson joins the call of Congress Member Jerrold Nadler for a full EPA assessment for the Lower East Side and Brooklyn Heights, ignored in the original study, and for a building-to-building review of all areas already cleaned. "I also join the community in commending Congress Member Nadler for his tenacious pursuit of this issue," commented Gerson.

"It is not too late to save lives because the health consequences happen gradually over many years," added Gerson. "And many experts confirm that toxins remain in place for long periods of time to be breathed in slowly and insidiously."

Hearing and Investigation

Gerson also called for an assessment of the role played by the Bloomberg administration in the final outcome of the EPA's work. From the start, cleanup operations were mandated as a joint city-federal project, and he feels the city should be held responsible to check on the efficacy of the EPA's work in compliance with its joint role as well as its municipal responsibility to safeguard the health of its citizenry.

"The city administration and the DEP cannot escape complicity given their shared responsibility to safeguard citizens," said Gerson. "If necessary, criminal charges, including impeachment of any high officials involved, must be pursued."

As chair of the Select Committee on Lower Manhattan Development and representative of the district, he will hold a public hearing on the EPA testing and cleanup efforts in early September. He also joins Congress Member Nadler in calling for a thorough investigation of the Inspector General's recent findings.

Study Scientifically Flawed

When the EPA report was first released, Gerson cited the agency's research as shortsighted in its goal and methodology. On behalf of health concerns of his constituents in Lower Manhattan, he proposed a new approach that would focus on the actual health impact on victims, rescue workers and residents who inhaled, ingested and came in contact with particulate toxins.

"To uncover the actual health impact of the 9/11 tragedy, we need to examine people, not dust," added Gerson. "Now, we see that the EPA is guilty of an egregious breach of public trust, and that makes the EPA's performance ethically scandalous as well as scientifically flawed."

- more -

Gerson Says EPA Findings Confirm Community Fears, page 3

Study Shortfalls

The EPA itself acknowledges that its study's scientific application is limited to the toxicity of "the fine fraction of WTC dust from a single exposure," based on "current scientific understanding of the toxicity these contaminants pose to people." It confirms that "It cannot be stated with certainty what effects resulted when people were engulfed in the initial cloud of dust or were subsequently exposed to the elevated concentrations that were found."

- ❑ It uses an acceptable risk level of 1 in 10,000 parts, breaking with the EPA's own standard of 1 in 1 million.
- ❑ It assesses the theoretical risk to healthy adult subjects, ignoring the special conditions of the many seniors and children
- ❑ It ignores the potential domino health effect of exposure to many toxins at one time, some of which may make subjects hypersensitive to others
- ❑ It did not test air or dust immediately following 9/11, with samples collected days after the plume has subsided
- ❑ It collected samples at fixed locations, all but one outdoors, while residents are exposed to dust lingering in their environments since the disaster.

Medical Assessment

According to medical experts, assessing the health effects of the toxins requires physical examination and monitoring of patients over time. The study, instead, tested the amount of toxins in air and dust samples, weighing it against standard levels of acceptable risk. Given the nature of the World Trade Center collapse, the sheer volume and number of toxins released into the air are unprecedented, and seriously strain the value of standard toxicity risk levels. In fact, dioxin levels were the highest ever recorded by the EPA.

"These are theoretical computations based on uncertain results based on grab samples of air and dust," says Marc Wilkenfeld, M.D., board-certified occupational and environmental physician at Columbia University School of Medicine. "Medically speaking, the only way to assess the impact of the 9/11 toxins on people's health is to examine the patients themselves and set up a health monitoring system to track them over time."

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**Recommended Procedures for a Proper
 World Trade Center Indoor Cleanup Program
 (Includes Excerpts from the EPA IG Report)**

- Protect the health of people by ensuring that the new clean-up meets Superfund regulations and guidelines, as set forth in CERLA and the National Contingency Plan;
- Contaminated buildings must be treated as a system. The EPA's practice of selectively cleaning individual apartments did not ensure that cleaned apartments will not be re-contaminated by uncleaned apartments through the HVAC system;
- Test for all contaminants of concern that have been found in WTC dust, including, but not limited to: asbestos, dioxin, mercury, lead, PCB's, PAH's, fiberglass, silica, nickel, arsenic, cadmium and chromium;
- Conduct all tests by reputable licensed and certified technicians/laboratories that operate in compliance with OSHA standards and regulatory requirements regarding worker protection. Such entities must also comply with all EPA procedures at hazardous waste sites;
- Sample both air and dust. Wipe tests for dust and "aggressive" air tests and other procedures must be utilized. EPA used "passive" sampling in its Indoor Cleanup Program. Use the most sensitive testing and analytical equipment available. Filters and microscopes must be state-of-the-art and calibrated;
- Include workspaces and schools as well as residential buildings in the cleanup as mandated by Presidential Decision Directive 62, and confirmed to be applicable by the EPA Inspector General Report. Currently, EPA has refused to test any spaces other than residences, and;
- Include all geographic locations impacted by the WTC dust in the clean-up effort. EPA's decision to clean residences only south of Canal Street in Manhattan neglected the need for clean-up in locations that were under the dust cloud, including the Lower East Side, Chinatown, and parts of Brooklyn. As the EPA Inspector General's report noted, "the area of the cleanup should be determined by collecting and analyzing samples starting at Ground Zero and radiating outward in concentric circles until the boundary of WTC contamination [is] determined."



CONGRESSMAN JERROLD NADLER

8th Congressional District of New York

FOR IMMEDIATE RELEASE
September 9, 2003

CONTACT: JENNIE MCCUE
202-225-5635

Nadler: New Whistleblower Document Reveals Failure of EPA Indoor Cleanup Program

*"Best Effort" Cleanup at 114 Liberty Street Left Behind Dangerous Toxins;
Residents Still Displaced 2 Years Later*

NEW YORK -- Declaring its findings "more damning evidence emblematic of the failed premise and execution of the Environmental Protection Agency's (EPA) so-called residential cleanup program post 9/11," Rep. Jerrold Nadler today released a new memo from 24-year EPA Hazardous Waste Identification Division veteran, Cate Jenkins, Ph.D., revealing that even the more rigorous type of EPA-led indoor cleanup has failed to rid apartments of World Trade Center (WTC) contamination. The memo finds that the building at 114 Liberty Street, which received the more rigorous of all EPA-led cleanups, still has visible WTC dust inside, containing high levels of asbestos and silica, and that the cleanup was not done to federal legal standards. The EPA has refused to take further action, even though the EPA program requires cleanup of all visible WTC dust. The report also states that the EPA made false scientific and other claims in defense of its decision not to re-clean. Residents of the building, who still cannot occupy their homes, and whose federal housing assistance has been cut off because the EPA declared the building "clean," joined Nadler at a press conference today.

"On the eve of the second anniversary of the worst ever attack on America's soil, I stand here with New Yorkers who are still, two years later, being victimized. Only this time, it is their own federal government that is victimizing them," Rep. Nadler said.

Rep. Nadler continued, "This latest example of EPA negligence is extremely damning because this building got arguably EPA's best effort post 9/11." He added, "Just think, very few apartments got this so-called stringent cleanup that we now confirm is deeply flawed. Maybe another 3900 apartments got the seriously shoddy, less-rigorous cleanup. What about the other 18,000 apartments downtown and those in Brooklyn, and the thousands of workspaces, schools, and firehouses that have never received a government cleanup?" asked Nadler.

114 Liberty Street is an eleven-story building facing "Ground Zero," which sustained extensive contamination from the WTC collapse. Some individual residents paid for their apartments to be cleaned professionally before negotiating a building-wide cleanup with EPA. EPA and the City's Department of Environmental Protection (DEP) began work in March 2003. EPA contractors cleaned the building two times, because their own testing after the first cleanup revealed remaining toxins. After the second cleanup, the EPA declared the building free of contaminants. Because the building still had visible dust, the residents hired their own professional testing firm, Ambient Group, Inc. Ambient Group found high levels of asbestos and silica in the remaining dust.

The EPA refused to clean again, and according to Jenkins' memo, its representatives defended their decision to take no further action "to the extent of misrepresenting test results in its reports and statements . . ." and ". . . dismissing resident testing of dusts for asbestos which proved that visible dust accumulations were still present, and at higher concentrations than background." The memo also states that the EPA did not clean to legally mandated, health-based standards and "knowingly expos[ed] residents to silica, a human carcinogen, at levels higher than EPA's criterion." Dr. Jenkins concludes that "It . . . appears that EPA does not want the trouble and added expense that would be entailed by additional abatements." According to Jenkins, to justify its refusal to re-clean, the EPA even argued erroneously that the asbestos found by Ambient in the dust was pre-existing, but states that "this could not be the case" because the WTC-type Chrysotile asbestos had not been present in any exposed building materials.

Representative
Jerrold Nadler

FOR IMMEDIATE RELEASE
February 10, 2003

Press Releases
Contact: Eric Schmeltzer
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NYC WORKFORCE MAY FACE SERIOUS HEALTH RISK

***Rep. Nadler Exposes Bungling of World Trade Center
Contaminant Clean-up in Workspaces, Presents New Evidence
That EPA Illegally Delegated Authority and Then Lied about
Knowledge of the Law***

NEW YORK - Possibly hundreds of thousands of New Yorkers work for hours a day in workspaces that remain uncleaned, or insufficiently cleaned, of hazardous substances unleashed from the World Trade Center collapse -- and the Environmental Protection Agency (EPA) is to blame -- Rep. Jerrold Nadler (D-NY) said today at a City Hall press conference.

The Congressman was joined by the New York Committee for Occupational Safety and Health (NYCOSH), as well as victims of EPA inaction. Together, they presented new evidence that proves that there has been inadequate hazardous materials testing and remediation in downtown workspaces -- which is threatening the public health -- and that EPA has been lying to the public about its responsibility in the matter.

"This is an outrageous story of EPA inaction, buck-passing, cover-up, and, criminal negligence of its role in protecting the public health," Rep. Nadler said. "There is no rational or legal explanation for the EPA cleaning indoor residential spaces, but excluding workspaces."

The Congressman today released three new findings:

DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP) MISHANDLED MATTER

The City DEP was illegally placed in charge of remediation of workspaces by the EPA. DEP, in turn, left the burden of common space cleanup to building

owners and managers, and of private workspaces to tenants. DEP sent an official request for environmental quality information from building owners and managers in February 2002.

However, Rep. Nadler announced that the results of a Freedom of Information Law (FOIL) request submitted by Joel Kupferman of the New York Environmental Law & Justice Project show that as of last month, DEP only possesses data from 218 downtown buildings. That is out of a total of approximately 1900 buildings -- little more than 11%. They are all below Canal, Pike and Allen Streets -- the same arbitrary boundary used by EPA for its residential cleanup plan. Many of these responses are incomplete or inadequate. For building owners or managers that did not respond, DEP has not issued a single citation.

EPA LIED ABOUT KNOWING "WHO IS IN CHARGE"

For more than a year, the EPA has maintained that the City Department of Environmental Protection (DEP) is in charge when it comes to cleaning up indoor workspaces. But, in sworn testimony given last month, the Assistant Administrator of EPA, Marianne Horinko, admitted that Presidential Decision Directive (PDD) 62, which dictates how the federal agencies are to respond to an act of terrorism, mandates that EPA must clean up inside buildings. The transcript from that deposition (*Hugh B. Kaufman v. US EPA, Jan. 6 2003*) is as follows:

Question: Who in EPA, who is the individual who has the ultimate lead for the cleanup of interiors? Is it you?

Answer: Ultimately I suppose it would be Governor Whitman as the administrator. Since I do report to her, I am certainly the lead on emergency response.

Question: Is cleaning up the interiors an emergency response?

Answer: Yes, it is.

Ms. Horinko's testimony is a stark departure from previous statements made by Administrator Whitman, who said on PBS's Newshour back in April, "If there is an area where there is a 'hole,' this is where it is, in response, because it's just a little murky here as to who has the responsibility, who is responsible for the cleanup."

TEST RESULTS AND HEALTH AND ECONOMIC IMPACT ARE SERIOUS

The EPA has maintained since days after the collapse of the World Trade Center, that the area is safe. Yet, today, Rep. Nadler introduced victims to discuss test results, health and financial impacts, and other issues related to EPA's false safety assurances and lack of action. For example:

The employees of the Securities and Exchange Commission (SEC), who work in the Woolworth Building: A representative provided evidences of samples that were taken in three areas of the building, and showed asbestos readings of above 74,000 structures per square centimeters and as high as 850,000 structures (although no amount of asbestos is considered safe, 100,000 structures and above is considered an 'asbestos emergency'). All samples were taken by Detail Associates and sent to International Asbestos Testing Labs.

A woman who lives outside lower Manhattan, but works at the Municipal Building: She said that she had no health problems prior to September 11th. However after returning to her workplace, she has experienced significant respiratory disease.

The owners of Steamers Landing Restaurant in Battery Park City: They stated that although they undertook a major hazardous materials remediation of their restaurant at their own expense, they were unable to collect insurance to pay for it, because the EPA consistently and falsely maintained that the area was safe.

“Beyond this being a matter of life and death, if workspaces are not properly tested and remediated for hazardous materials, the City and State of New York stands to face tremendous future financial costs in terms of contingent liability as well as untold productivity impacts due to a potentially massive rise in occupational disease,” said Rep. Nadler. “The EPA must end its stonewalling, and finally carry out its legal and moral responsibility to clean up all buildings contaminated in the terrorist attack.”

Rep. Nadler has served in Congress since 1992. He represents the 8th Congressional District of New York, which includes parts of Manhattan and Brooklyn, including the areas surrounding the site of World Trade Center.

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FEB-10-2003 15:34

EPA 290 BROADWAY

1212 637 4445

JUDICIARY COMMITTEE

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 MARITIME, WHIP

BOB AMATO
 See me



Congress of the United States

House of Representatives

Washington, DC 20515

JERROLD NADLER

9TH DISTRICT, NEW YORK

APR 17/03

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U.S. REPRESENTATIVE JERROLD NADLER (D-NY)
 STATEMENT ON EPA NEGLECT OF WORKSPACES POST 9/11
 FEBRUARY 10, 2003

The last time we held a press conference on the EPA's response to 9/11, we were at the apartment of Nona Kloupte. Nona's apartment was contaminated with hazardous WTC debris, but the EPA refused to clean up her apartment properly. If you can imagine anything worse, it is what EPA is doing for commercial spaces...absolutely nothing. In May 2002, eight months after the September 11th attack, EPA had finally agreed to take responsibility for indoor spaces, but much to my dismay announced plans to clean up only residential spaces. To this day, the EPA has completely ignored commercial spaces, despite the fact the agency is responsible for cleaning up ALL indoor spaces. Today, I will present dramatic new evidence that shows there is still a presence of hazardous substances inside downtown buildings, that New York City DEP did virtually nothing about it, and irrefutable evidence that EPA is, and has always been, ultimately responsible for cleaning up interiors.

Over the last year and a half, the EPA has given a number of reasons for why they have done nothing to clean up workspaces. When we first called on EPA to clean up buildings after 9/11, the agency said that the City was in charge and even issued a written statement that said "the city of New York has taken the lead regarding the re-occupancy of buildings." Indeed, the City issued notices to building owners that they should have the common spaces of their buildings cleaned, and submit a summary of clean up activities to NYC DEP. I am here to announce today that we have new horrifying information, obtained through a Freedom of Information Law (FOIL) request submitted by Joel Kupferman of the New York Environmental Law & Justice Project. It shows that as of last month, DEP only possesses data from 218 downtown buildings (out of a total of 1900 buildings -- little more than 11% -- all below Canal, Pike and Allen Streets, the same arbitrary boundary used by EPA for its residential cleanup plan). Many of these responses are incomplete, inadequate or simply ridiculous. Let me read you an example from 146 Chamber Street:

"All of the windows in the building were closed. Consequently there was a minimum of penetration and infiltration of dust into the buildings which was quickly removed from the common areas."

Or how about this one

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages 3

To	Charles Storken	From	Mary Ann
Dept./Agency		Phone #	
Fax	718 595-3477	Fax #	
NSN 7540-01-317-7388		5098-101	
GENERAL SERVICES ADMINISTRATION			

FEB-10-2003 16:15

1212 637 4445

P.01

"Residents in our area did not relocate and took no debris or ash in after 9/11. As a result we've taken no action."

As shameful as this is, we have no information about the offices and stores where people actually work because DEP's request only asked about common spaces

It is outrageous that the government placed the burden on building owners and tenants to remediate WTC debris in the first place. That the government did virtually nothing to ensure the safety of the places where people work is unconscionable.

We also have critical new information that confirms that the EPA, and not the City, is irrefutably responsible for cleaning up all areas of these buildings. In sworn testimony given last month, the Assistant Administrator of EPA, Marianne Horinko, admitted that Presidential Decision Directive (PDD) 62, which was signed by President Clinton in 1998 and dictates how the federal agencies are to respond to an act of terrorism, mandates that EPA must clean up inside buildings. A copy of this transcript is in your press packet. Ms. Horinko's testimony is the first time any top level official at EPA has admitted that the buck stops with them. It is also a stark departure from previous statements made by, for example, Administrator Whitman, who said on PBS's Newshour back in April, "If there is an area where there is a 'hole,' this is where it is, in response, because it's just a little murky here as to who has the responsibility, who is responsible for the cleanup." Now compare that with EPA Assistant Administrator Horinko's sworn testimony:

"Question: Who in EPA, who is the individual who has the ultimate lead for the cleanup of interiors? Is it you?

Answer: Ultimately I suppose it would be Governor Whitman as the administrator. Since I do report to her, I am certainly the lead on emergency response "

"Question: Is cleaning up the interiors an emergency response?

Answer: Yes, it is."

Clearly, the EPA is responsible for ensuring the safety of buildings contaminated by WTC debris. I have been insisting on this for over a year, while the EPA has continually denied it. This testimony, combined with the FOIL documents that show the City has done virtually nothing, prove that the EPA can no longer pass the buck or point fingers at other government agencies.

If pressed on this, the EPA may say there is no problem. That everything is safe. You will soon hear from downtown workers who will show otherwise. But until the EPA takes action by properly testing and remediating all downtown workspaces, using the best possible scientific methods and in compliance with the strictest safety standards to ensure there is no contamination, the agency has no basis for saying otherwise and walking away from the victims of the terrorist attack. The EPA agreed to clean residential spaces. Although they act like it is merely a courtesy, there is no rational or legal explanation for the EPA cleaning indoor residential spaces, but excluding workspaces. Hundreds of thousands of lower Manhattan workers, many who spend the majority of their waking lives at work, may be at serious health risk

We cannot again bury our heads in the sand. Just because we cannot necessarily see most of the contaminants of concern, does not mean they aren't still there and does not mean we should go back to "business as usual." Because the EPA improperly delegated its authority on indoor air to an admittedly incapable and irresponsible NYC DEP, which in turn inappropriately left the burden to the victims of the 9/11 attack, environmental officials know very little about the state of indoor air in any downtown buildings' common spaces, including in commercial and public buildings. Due to this fact, and because the responsibility for offices and stores were, *de facto*, left to individual tenants (who got improper advice and no governmental assistance), there can be little doubt that there has been improper hazardous materials testing and remediation in workspaces in lower Manhattan.

Some people wonder why I continuously get up and yell about this issue. First, this is a life and death issue. And furthermore, if workspaces are not properly tested and remediated for hazardous materials, the City and State of New York stand to face tremendous future financial costs in terms of contingent liability as well as untold productivity impacts due to a potentially massive rise in occupational disease. We have been asking the EPA to do its job to protect the health and safety of these people since 9/11. The EPA has failed to respond.

Inside your press packets is a timeline that details an outrageous story of EPA inaction, buck-passing, cover-up and criminal negligence in its role in protecting the public health. The EPA must stop stonewalling, and finally carry out its legal and moral responsibility to clean up all buildings contaminated in the terrorist attack.

JUL-29-2002 17:51 FROM US EPA REGION 2 ORC

TO

917185954544 P.02/08



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUL 29 2002

The Honorable Jerrold Nadler
U.S. House of Representatives
Washington, DC 20515

Dear Representative Nadler:

I am writing to update you on the progress the U.S. Environmental Protection Agency (EPA) has made since my letter to you of April 25 concerning post-9/11 environmental issues in lower Manhattan. I also want to respond to questions that you and others have raised about the extent to which EPA's indoor air response activities will be consistent with the National Oil and Hazardous Substance Pollution Contingency Plan, 40 C.F.R. Part 300 (the NCP). I know these issues are vitally important to you, as they are to me.

EPA continues to work supporting federal, state, and New York City efforts to recover from the federally declared disaster resulting from the September 11 attack on the World Trade Center. We do this under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) and in accordance with the applicable procedures and policies of the NCP. Our current focus is to address indoor air concerns through an indoor dust cleanup and air sampling program for residential spaces in lower Manhattan. I want to reassure you that EPA will implement a comprehensive program to ensure that lower Manhattan residents are protected from potential exposures to harmful dust and debris residuals. EPA will run this program in cooperation with the Federal Emergency Management Agency (FEMA), New York State, and New York City. We will use all the tools available, including appropriate aspects of the NCP, to achieve this goal as expeditiously as possible.

EPA is in the process of implementing three programs related to indoor air in lower Manhattan residences. These programs will be funded by FEMA under the Stafford Act, specifically Sections 403 (Essential Assistance) and 407 (Debris Removal).

Components of the Indoor Air Residential Assistance Program

First, EPA is directing a Confirmation Cleaning Building Study by collecting samples in a building that had only minimal cleaning since the attack, employing and evaluating various cleaning techniques. This project is under way, and field work should be completed in the next several weeks. Second, EPA is directing a Background Study to provide monitoring data on

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JUL-29-2002 17:52 FROM US EPA REGION 2 ORC

TO

917185954544 P.03/08

2

indoor air contaminants in residences north of 59th Street, which were not affected by the collapse of the WTC, so that such data may be compared with data obtained in residences in lower Manhattan. The contractor is in place for this study, and access has been granted for some of the sampling locations. Third, EPA, along with the New York City Department of Environmental Protection (NYCDEP), is providing for the monitoring and cleaning of lower Manhattan residences through the Indoor Air Residential Assistance Program - World Trade Center (WTC) Dust Cleanup. Pursuant to interagency agreements under the Stafford Act, FEMA is providing or will provide funds to the city, which used its emergency contracting authority to enter into contracts for a hotline contractor to register residents for the indoor dust cleaning program, and will be contracting with certified asbestos cleanup contractors to professionally clean apartments, as well as with Project Monitors to oversee the cleaning contractors. The actual cleaning and monitoring will be carried out by NYCDEP contractors, under the direction and oversight of EPA, in coordination with the city. FEMA and EPA are in the process of entering into an interagency agreement to support EPA's activities in this program.

We will evaluate the information and data that we gather in the Confirmation Study and the Background Study, as well as the results of a peer review of a draft technical document on World Trade Center Contaminants of Potential Concern, as the cleaning and monitoring activities proceed. We will use these data to determine whether any program adjustments or modifications are needed. As we have discussed, this approach of conducting studies and cleanups in parallel is necessary because of the scientific complexities of dealing with indoor environments and the need for timely response to the potential threat to public health and welfare. We have limited indoor sampling protocols, health benchmarks, background data for urban areas (especially Manhattan), correlations of dust to air exposures, etc. We are using cleanup methods effective for asbestos and fibrous materials and expect that these will be effective for any other particulate matter that may pose health concerns. We will do sampling for airborne asbestos in every residence we are asked to clean or test, but we will also do sampling for metals and dioxin in a subset of spaces. This will give us information on additional substances of potential concern. If the study work we are doing indicates that we need to modify our cleanup approach, we will do so. But at this time we feel it is appropriate to begin to clean residential spaces.

As you are aware, under the Indoor Air Residential Assistance Program -WTC Dust Cleanup, lower Manhattan residents will be given the option of requesting either cleaning followed by sampling, or sampling alone. To date, more than 3,500 residents have requested one or the other option.

Relationship of the Indoor Air Residential Assistance Program to the National Contingency Plan

You have asked whether the Indoor Air Residential Assistance Program - WTC Dust Cleanup will be conducted in a manner consistent with the NCP. As I noted in my April 25

letter, the NCP applies and is in effect when the Federal Response Plan – the document providing the structure for a coordinated response under the Stafford Act – and some or all of its Emergency Support Functions (ESFs) are activated. [See 40 C.F.R. § 300.3 (d).] As also noted in my letter, ESF-10 (the Hazardous Material Annex) of the Federal Response Plan is applicable to this disaster response. ESF-10 states, “The NCP serves as the basis for planning and utilization of federal resources...” ESF-10 anticipates the potential for unique situations, in that it contemplates response “...to actual or threatened releases of hazardous materials not typically responded to under the NCP but that, as a result of the disaster or emergency, pose a threat to public health or welfare or to the environment.” [See ESF-10, section I.B.4.] In such situations, “[a]pplicable policies and procedures in the NCP will be adhered to...” (emphasis added). [See ESF-10, section IV.B.1.f.] In this instance state and local government entities have asked EPA to provide technical lead and oversight of actions to address potential indoor air/dust cleanups for residential dwellings. This activity is consistent with Stafford Act Sections 403 and 407 and is coordinated by FEMA’s Federal Coordinating Officer.

In developing the Indoor Air Residential Assistance Program - WTC Dust Cleanup, EPA has relied on the existing data, the intergovernmental collaboration process, and discussions with scientific, technical, and medical professionals and concerned community members. We believe this is appropriate given the urgency and scope of the actions needed to help restore lower Manhattan to pre-9/11 conditions.

The Indoor Air Residential Assistance Program -WTC Dust Cleanup responds to a disaster involving a release that is most certainly not typical, not only because of the terrorist act that led to the release but also because of the unique challenges posed by the presence and potential presence of WTC dust in thousands of lower Manhattan apartments. When the WTC collapse occurred, there was a release of asbestos, a hazardous substance, to the environment. The debris and pulverized dust from the collapse affected many structures in lower Manhattan to varying degrees. This release was documented by bulk dust sampling done by EPA; approximately 35% of bulk dust outdoors contained greater than 1% asbestos, which is a regulatory definition of asbestos-containing material (ACM) under federal, state and local statutes. The ACM was deposited in a very variable manner, that is, samples of bulk dust/debris, taken virtually adjacent to each other, had differing levels of asbestos. We believe that the dust materials that reached the interiors of structures was likewise variable in its deposition. In addition, some of the material may have contained asbestos at levels of concern for long-term risk, even though it may not have exceeded 1% ACM. Given that there are over 20,000+ residential units in lower Manhattan, specifically identifying which of them were affected by amounts of dust potentially causing long-term health effects would be time- and resource-intensive. In addition, as I stated earlier, making risk exposure assessments in indoor environments is very complex. The variability of the WTC debris/dust material and the manner in which it affected building interiors adds another layer of complication.

In deciding upon a cleanup program for lower Manhattan residences we considered the following:

- the complexity of sampling dust material for quantities of hazardous substances and the lack of scientific consensus on how to do so;
- the absence of standards that have broad scientific support which correlate airborne exposure routes to dust containing hazardous substances; and
- the absence of health- or risk-based standards for dust.

In addition, we had to consider how we could gauge the residual impacts of cleanups already undertaken by residents who returned to their homes. All of the above have substantial uncertainty or controversy surrounding them.

Federal, state, and city health and medical professionals supported a program that addressed the need for cleanup assurances without the time, expense, and uncertainties associated with a location-specific sampling and risk assessment approach. EPA also consulted with environmental health and science experts in the academic and research sector on this basic approach. Though there were many questions and a desire for more data collection, they generally acknowledged that a broad-based cleanup program was an appropriate response.

For these reasons, and in consultation with FEMA, New York City, and New York State, EPA has determined that rather than taking a risk-based approach to each residential unit or building, we will instead clean any lower Manhattan apartment based on residents' request.

The NCP, pursuant to CERCLA, authorizes EPA to undertake or direct cleanups in response to releases or threatened releases of hazardous substances into the environment. [See Attachment, Note 1.] As background, you should be aware that sections of the NCP, for example, those dealing with long-term response, are simply not applicable here – for instance, 40 C.F.R. Sections 300.430 and 300.435, addressing remedial investigations and feasibility studies, selection of remedy, remedial design and remedial action, operation and maintenance, and attainment of 10^{-4} to 10^{-6} cancer risk levels. [See Attachment, Note 2.]

Consistent with the atypical aspects of the release and the response work that we face in lower Manhattan, to the extent practicable and appropriate we are proceeding with this program in a manner consistent with the NCP. Let me give several examples.

- Our efforts are consistent with the NCP provisions regarding the respective roles of different federal agencies and organizational elements, such as the National and Regional Response Teams and the On-Scene Coordinator. [See 40 C.F.R. Part 300 Subpart B.]

- We are responding to residents' concerns in a manner consistent with the NCP. [See, for example, Section 300.415(n) of the NCP, 40 C.F.R. § 300.415(n) ("Community relations in removal actions").] In brief:

(a) we have designated spokespersons for our programs related to the attack on the WTC, who respond to inquiries and keep the community informed regarding our actions. They will make available data related to indoor air concerns in lower Manhattan, providing such data in a manner that does not divulge the address of a given residence or the name of a given resident;

(b) we have been meeting and will continue to meet with public interest groups or other interested or affected parties, as appropriate, to solicit their concerns and information needs, and find out how or when citizens would like to be involved in the process;

(c) we are preparing a communications strategy which will address many of the concerns raised in the meetings with community members and other relevant information and will specify the community relations activities that we expect to undertake during the Indoor Air Residential Assistance Program -WTC Indoor Dust Cleanup; and

(d) we have established at least one local information repository in lower Manhattan (290 Broadway) which is accessible to the public. At that location we will make available documents which have formed the basis for our actions.

- Working with the city we have made changes to the scope of work which will form the basis of the city's contractor solicitation for the cleanup and testing program based on concerns raised by interested members of the public.
- We have developed the clearance level (that is, the risk-based clean up goal) to determine when cleaning can cease at a residence under the Indoor Air Residential Assistance Program -WTC Dust Cleanup. The development of this level has been consistent with the NCP. For example, under the NCP, removals performed either by EPA with Superfund monies or by responsible parties need to attain applicable or relevant and appropriate requirements (ARARs) "to the extent practicable considering the exigencies of the situation." [Section 300.415(j) of the NCP, 40 C.F.R. § 300.415(j).] For the Indoor Air Residential Assistance Program -WTC Dust Cleanup, it was determined that there were no directly applicable standards. So, as is a common practice in removal actions under the NCP, we have developed a risk-based clearance number for asbestos in air, taking into consideration other standards. We have consulted with peers in the scientific community to assure that this level represents an extremely protective long-term risk guideline.

JUL-29-2002 17:56 FROM US EPA REGION 2 ORC

TO

917185954544 P.07/08

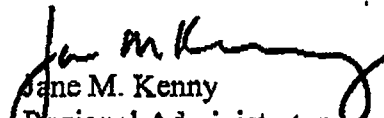
6

The attack on and collapse of the World Trade Center was a truly unprecedented event, far different from every other federally declared disaster. As such, it warrants a unique response that is consistent with federal disaster plan guidelines but also adopts a bias toward immediate action to protect the health and safety of the residents of lower Manhattan. I believe very strongly – as does the Administrator – that we must act swiftly to address the real and immediate concerns of residents while adhering to the applicable and appropriate provisions of the NCP. The goals of the NCP - protecting the public from environmental releases of dangerous substances – will be fully served through the decisive and comprehensive approach we are taking.

As I close, I want to assure you that the EPA personnel involved in the World Trade Center Indoor Dust Cleanup Program have significant experience in overseeing contractors and cleanups, making judgments about risk, and properly communicating about such matters with the public. We are taking this program very seriously and are devoting a huge amount of our staff resources to ensuring that it is carried out in a safe, protective, and responsive manner.

If you have any questions regarding this matter, please contact me at (212) 637-5000, or Kathy Callahan, Assistant Regional Administrator for NYC Response and Recovery Operations, at (212) 637- 3116.

Sincerely,


Jane M. Kenny
Regional Administrator

Enclosure

JUL-29-2002 17:57 FROM US EPA REGION 2 ORC

TO

917185954544 P.08/08

Notes

1. As I noted in my April 25 letter, while the NCP authorizes EPA to take actions to address the release and threatened release of a hazardous substance into the environment, Section 300.400(i)(3) of the NCP states, "Activities by the federal and state governments in implementing this subpart are discretionary governmental functions. This subpart does not create in any private party a right to federal response or enforcement action. This subpart does not create any duty of the federal government to take any response action at any particular time."

2. Many have commented that this risk range, used for remedial sites under CERCLA, is the one that should apply to the Indoor Air Residential Assistance Program - World Trade Center Dust Cleanup Program. As discussed elsewhere in this letter, EPA has developed a particularly stringent clearance level for asbestos in lower Manhattan residences. Nonetheless, for the following reasons, even if this were a remedial site, the 10^{-6} cancer risk - which is a "point of departure" referenced in the NCP - would not be used because it is impracticable to achieve. All protocols chosen for the Indoor Air Residential Assistance Program - World Trade Center Dust Cleanup Program are designed to reach the lowest level of detection that is reasonable with established methods. For asbestos, the sampling and analytical protocols chosen are designed to attain risk estimates of 1×10^{-4} . To reach estimates of 1×10^{-6} , extraordinary modifications would have to be employed to either significantly increase the volume of air being sampled or to go to extraordinary expense to analyze many more grids on each sample filter. An increase in the sample volume, through an increase in flow rates from 10 to 15 liters/minute to 500 to 1,000 liters/minute would lower the detection level. However, the only equipment available to operate at these rates are large units that are impractical to bring into a residence. Achieving flow rates this high has not been tested using the sampling protocols, and there would be a high likelihood of compromising the sampling filters. To achieve detection levels consistent with 1×10^{-6} risk values by running the equipment for longer periods of time would require increasing the period of sampling from 8 hours to 33 days. These two issues make it impractical to achieve a 1×10^{-6} detection level.

Congressman Jerrold L. Nadler (NY-08)
Meeting Attendance Sheet

Date: _____ Time: _____ Subject: _____

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DAVID NEWMAN	NYCOSH	275 TH AVE - PM floor NYC 10001	212-627-3900x16	212-627-9812	DAVE@NYCOSH.ORG
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Carrie Loewenherz	NYCOSH	275 TH AVE 5TH FL NYC 10020	212 627 3900 x18	212 627 9812	carrie1@nycosh.org
AMIE GROSS AIA	AMIE GROSS ARCHITECTS	22 E. 49TH ST. NYC 10017	212.755.4010	212.755.4017	aga@agarchitect.com
DAN HADLEY	EPA	2890 WOOD AVE ELKONING	732-321-6614		Hadley.Dan@EPA.gov
Krish Radhakrishnan	DEP	59-17 Junction Blvd Flushing, NY 11373	718-595-3718	718-595-3744	Krishna@NYC.DEP.gov
Robert Avaltroni	"	"	718-595-4418	718 595-4544	
Michael Gilson	"	"	718-595-4543	" " "	
Christopher O. Ward	"	"	718-595-6565		
Linda Rosenthal	Cong. Nadler	201 Varuck St, 5th floor	212-367-7350	212-367-7356	linda.rosenthal@mail.house.gov
MARK MADDALONI	US EPA	290 Broadway NY NY	(212) 637-3265	212 637-3771	MADDALONI.MARK@EPA.GOV
Bonnie Bellow	US EPA	290 Broadway 10007	(212) 637-3660	(212) 637-3561	bellow.bonnie@epa.gov
Raymond Basso	USEPA	290 Broadway, NY, NY 10007	(212) 637-4105		basso.ray@epa.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**REGION II
290 BROADWAY
NEW YORK, NEW YORK 10007-1868**



March 15, 2002

Honorable John Doherty
Commissioner
Department of Sanitation
City of New York
125 Worth Street
New York, N.Y. 10013

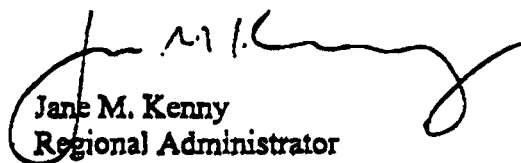
www.epa.gov/ezhire

Dear Commissioner Doherty:

This letter is to request that you suspend the planned release from the Fresh Kills Landfill of motor vehicles that were affected by dust from the collapse of the World Trade Center (WTC), and which have been stored at the landfill since shortly after September 11.

We request that you suspend release of any such vehicles until we can discuss their appropriate disposition. We will be available to initiate such discussions early next week.

Sincerely yours,


Jane M. Kenny
Regional Administrator

MAY-20-2002 21:43

U.S. EPA/DEPP

212 6373772 P.01/09

Morton, Lisette

From: Rutkin, Amy
Sent: Friday, May 17, 2002 2:30 PM
To: Morton, Lisette
Subject: FW: EPA proposal

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

From: Ellen Gesmer [mailto:egesmer@gulges.com]
Sent: Friday, May 17, 2002 12:57 PM
To: Rutkin, Amy
Subject: EPA proposal

Dear Amy,

After reading Kathleen Moore's comments, I would like to add one more. Residential and commercial spaces in this neighborhood are connected not only because they are next door to each other or across the street but in the same building. 125 Cedar has a commercial space on the ground floor as do many (if not most) residential buildings downtown. Therefore, if the EPA is not cleaning commercial spaces, then there will be a large uncleaned space within most residential buildings. Given that the residential and commercial spaces often share elevators and HVAC systems, recontamination is unavoidable.

Thanks for taking the lead on all of this.

Regards,

Ellen Gesmer, Esq.
Guilmetti & Gesmer, P.C.
401 Broadway, Suite 1901
New York, New York 10013-3005
phone: 212-219-2114
fax 212-986 2152
www.gulges.com

The information in this email is intended for the named recipients only. It may contain privileged and confidential information. If you have received this email in error, please notify us immediately by a collect telephone call to (212) 219-2114 or by email to EGesmer@Gulges.com and return the original to the sender by return email. Please also delete the message from your computer. Do not copy or disclose the contents to anyone. Thank you.

Morton, Lisette

Importance: High

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

From: Rutkin, Amy
Sent: Friday, May 17, 2002 12:23 PM
To: Morton, Lisette
Subject: FW: Comments re: Asbestos Project Monitor and Air Sampling Contract
Importance: High

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

From: dianedav [mailto:diane@Specialr.com]
Sent: Friday, May 17, 2002 3:17 PM
To: Rutkin, Amy
Cc: MaureenSi@aol.com; JohnL; Virginia; Marie; Paul; Dorothy; Neil; John; Lynn; Kathryn; Howard; CynthiaS; Pearl; Louise&Fred; AlanS; Felicia; Aida; AlanC2; "lynn@osbbusiness.com"@unknown.house.gov; MaryJoe; Hope; Ron; Robert; Terry; Glen; Susan; Chris; Michelle; AlanC; Elizabeth; Annette; Lisa; Lonnie; Jacquie; Jean; Jan; James; Bonnie; Elizabeth; Emily; Diana; Alan Gerson
Subject: Comments re: Asbestos Project Monitor and Air Sampling Contract
Importance: High

Dear Amy:

The technical terms of the document are a bit beyond our expertise, but seem pretty thorough; although as we all know, 8 months have gone by and people have already disturbed most of the debris/dust in their apartments.

"Visible dust" is the same dust that will come back over and over again - unless the person never returned to their apartment over these 8 months. Therefore, thorough cleaning of this "visible dust" is great - but not permanent.

In any case, once again it is our firm stand that without the cleaning of common areas: elevators/hallways/lobby/stairwells/ terraces and rooftops, we believe the cleaning of all apartments are just a partial measure. There was an unacceptable level of asbestos found on the 31st floor of 310 Greenwich Street during a random testing done by our management company. Also, when we recently had a professional come by to visually inspect IPN, he said that he can see that Kathryn Freed's terrace at 40 Harrison Street most definitely showed debris and pulverized dust - which he knows without even testing must contain asbestos as well as many other contaminants. (Like most tenants here, she has not gone out to her terrace for fear of breathing in whatever is accumulated there - some visible - some not.)

We also feel strongly that again, without the NCP put back into active procedure, other efforts are less effective than a band-aid; and we fear greatly rebuilding on possibly contaminated ground. The construction that will begin - first on 7 World Trade Center will further serve to disperse toxic debris into the air, thus recontaminating offices, stores and homes within the ground zero vicinity..... and since the wind blows from West to East, who knows how far these dangerous particles will travel through lower Manhattan?

THEREFORE: Our utmost desire is that the NCP is put into immediate effect, thereby securing all of the above and more. We support Congressman Nadler's desire for the NCP to be put immediately back into action and request that we be informed as to whatever we can do - along with our tenants - to help speed up this necessary measure.

Our recommendations relating to this document now, are :

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5/17/2002

MAY-20-2002 21:44

U.S. EPA/DEPP

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Page 2 of 2

all systems. (As revealed during the Clinton/Lieberman hearings, the air systems at Stuyvesant were never done - only the outside of the ducts were cleaned - but a thorough cleaning of all pipes leading from and to air system were left infected.)

4. Clean up of outside of buildings (roofs, walls, terraces) simultaneously with the start of indoor cleanup. WINDOWS AND WINDOW SILLS MUST BE INCLUDED IN THE INDOOR AND OUTDOOR CLEANUP. (the proposal mentions air conditioners - the windows and window sills also have buildup which will come in the minute the windows are open.)

5. Clean up of all common areas in all buildings.

6. Clean up of streets and construction sites - beyond the "watering down" methods. The streets/parks/trees/grass must be cleaned... the sand removed from park playgrounds - and not replaced until the area is safe. The top soil removed so topical toxins are taken away. The grass somehow should be dealt with - before people begin lounging all over the grass in warm weather.

Sincerely,

Diana Lapson VP IPNTA

John Scott VP IPNTA

Independence Plaza Tenant Association

9/17/2002

MAY-20-2002 21:45

U.S. EPA/DEPP

212 6373772 P.04/09
Page 1 of 1

Draft. Thank you so much for your help.

Morton, Lisette

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Sent: Friday, May 17, 2002 11:55 AM
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From: Rutkin, Amy
To: hbader1@nyc.rr.com
Sent: Thursday, May 16, 2002 5:47 PM
Subject: Draft. Thank you so much for your help.

<<EPA Scope of Work Comments draft1.doc>>

AMY RUTKIN

Chief of Staff

U.S. Congressman Jerrold Nadler (NY-08)

201 Varick St., Suite 660 2334 Rayburn Building

New York, NY 10014 Washington, DC 20515

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5/17/2002

ASBESTOS PROJECT MONITOR AND AIR SAMPLING CONTRACT**Asbestos recommendations**

Joel R Kupferman, Esq., Executive Director of the New York Environmental Law & Justice Project

This outline was done at last minute. Various points probably have been left out.

1. All federal regulations should apply for the debris removal disposal
2. All debris must be tested with Transmission Electron Microscopy (TEM)
3. EPA must completely accept responsibility and culpability for the environmental disaster that occurred due to the coverup and inaction.
4. Remediation zone must include areas that have been exposed (north of Canal, Brooklyn, NJ, etc)
5. All violations should be referred to the Assistant Chief of the Environmental Enforcement Section at DOJ
6. What the EPA must do
 - a. EPA should be doing the cleanup not NYC DEP
 - i. EPA has ultimate jurisdiction, enforcement, and authority on this matter
 - ii. Although some NYC & State agencies have administrative penalties, the authority, many times actions were taken without assessment of any penalties.
 - iii. NYC DEP has a long history of non-compliance
 - (1) NYC in general and NYC DEP has proven to be more than "lax" in enforcing asbestos and other environmental regulations
 - (2) They have continuously made false, inaccurate or incomplete statements
 - (a) It is in their best interest to cover-up their inaction by claiming that abatement is not necessary
 - (3) NYC DEP admitted that it only issued one Asbestos violation since 9/11.
 - (4) Scaffolding Fatal accident: A contractor who had an impersonator take a safety test was fined only \$350 and served no jail time.
 - (5) City agencies have been notorious in their failure to recuse themselves in instances including conflict of interest issues, complacency, lack of enforcement, sweetheart deals, and other behavior that puts the public at risk.
 - (a) One example, includes Department of Sanitation hiring of Rapid Demolition/Hi-Tech Environmental/

D.S.A. Services to preform dangerous asbestos abatement at the Gansevoort Street Plant despite the fact the owner of D.S.A. having been disbarred by the NYS DOL for committing willful violations.

- (b) NYC DOH was ready to rehire Clarke Mosquito Control despite the \$1 million OSHA fine and contract provision that forbade re-contract in face of such labor violations
- (6) They abrogated their right to have any role due to the fact their reliance completely on landlord self-certification
- 7. Entire buildings/neighborhoods are to be cleaned completely in a systematic way to prevent cross-contamination/re-contamination.
 - a. The abatement is to be done street by street.
 - b. The entire building has to be done at one time.
 - i. Allowing people to be exposed flies in the face of reason. The abatement workers will be abating in full protective gear and the proposal given to us says that there require that the occupants be in the room while cleanup is done and will be thus exposed.
 - (1) Occupants will be relocated for the duration of the abatement procedure on building
 - c. This needs to be done
 - i. HVAC/Ventilation systems must be completely cleaned
 - (1) The building ventilation system will be set to negative pressure as per EPA regulations regarding asbestos abatements.
 - ii. Common areas/stairwells/etc.
 - iii. Elevator shafts
 - iv. Windows casing
 - v. Wallpaper & Carpets that cannot be properly abated must be removed and disposed of properly
 - vi. Rugs should be sent for proper cleaning
- 8. All buildings and spaces inside the zone must be abated including parks, schools, commercial spaces/offices, religious institutions, hospitals, city-owned buildings, etc.
- 9. Testing should be done in real-time & reported via a publicly accessible web site done by EPA that is publically accessible
 - a. All data should be permanently available for public perusal and easily accessible without the need for FOIA.
- 10. The most stringent safety/health regulations should be applied.
- 11. Observation by video; independent authorized observers must be allowed access to abatement sites, videos must be sent to review teams for analysis.
- 12. Contractors
 - a. Must ensure that the friable asbestos material remains wet until collected for disposal, in accordance 40 C.F.R. Section 61.147(e) and Section 112(c) and (e) of the Clean Air Act, 42 U.S.C. 7412 and (e).
 - b. If contractors discharge visible emissions to the outside air during the

collection, any processing, packaging, transporting, or deposition of asbestos containing waste material generated at the facility, they must use one of the disposal methods specified in 40 C.F.R. Section 152(b) (1), (2), or (3), thereby violating 40 C.F.R. Section 152(b) and Section 112(c) and (e) of the Act, 42 U.S.C. Section 7412(c) and (e).

c. Those contractors unfit to hold a permit and who have been denied a permit in any state must not be allowed

i. Full disclosure of contractor's prior violations, enforcement history, and should be accompanied by a copy of the inspection report and any other documentation of violations.

ii. 40 C.F.R. Section 61.146 requires each owner or operator of a demolition operation where there is the regulated amount of asbestos to provide the Administrator of EPA with written notification of intention to demolish or renovate, setting forth specified information, at least 10 days prior to the commencement of the operation. Timely, complete, and accurate notices of demolition operations permit EPA to conduct efficient, unannounced inspections to ensure that work practice standards to prevent emission of asbestos are being met. Such notices are particularly important due to the short duration of most demolition operations. In the WTC cleanup - better and more timely notice should be given

d. Strict monitoring, recordkeeping and reporting requirements must be adopted to with the applicable If only the minimum requirements provided under applicable regulations are imposed compliance of all relevant actors will not be assured will not assure compliance of a bad actor.

e. The following information must be made public"

i. The name and position of the person responsible for supervising all work involving asbestos-containing material (ACM).

ii. The name, address, telephone number and contact person of the firm(s) which will transport any asbestos-containing waste from the site.

iii. A description of the procedures and equipment to be used to prevent visible emissions of asbestos-containing material, and to decontaminate workers.

iv. A description of the location and amount of asbestos containing material in the facility which will undergo renovation or demolition.

v. The name of the person who determined whether asbestos-containing material was located at the site and the basis on which such determination was made.

vi. Decontamination facilities must be made available, equipped, and used at each jobsite which involves removal of asbestos containing material.

f. Each contract should include penalty/ liquidated damages clause

i. www.eaainfo.com/eaain/enforcement/caad144.html

Consent decree model Dept of Justice & Asbestos violator

13. Federal whistleblower laws and protections should apply to all involved actors
14. Compliance history of contractors published and reviewed.
- Similar to NYSDEC bad actor policy see NYS Dept. of Environmental Conservation "Record of Compliance Enforcement Guidance Memorandum (Feb. 1993) should be used as a model.
 - Whichever ever has been consulted for Historical information - e.g., CDS, national contractor registry, interna. Regional tracking system must be kept public via the website
 - History must include everything that is found on National Asbestos Registry System (<http://cfpub.epa.gov/nars/>) an example is shown as follows:
 -

Contractor Name : A.A.C. ENVIRONMENTAL CORP.

Street Address : 65 WAVERLY AVENUE

City : BROOKLYN

Zip Code : 11205-

State : NY

NARS ID : N44919

Q#	YEAR	LOC AGENCY	TYPE	CONTRACT #	NOV#	—Deficient Notif.—				Work Fracts.		
						NOV#	Warn	Order	Insp	NOV#	Order	Dis
4	1999	02NY	S	113443691	1	0	0	0	0	0	0	0
4	1999	02R2	E	2797	1	0	0	0	0	0	0	0
1	2000	02R2	E	2797	10	1	0	0	0	0	0	0
1	2000	02NY	S	113443691	6	1	0	0	1	0	0	0
2	2000	02R2	E	2797	2	0	0	0	0	0	0	0
3	2000	02R2	E	2797	3	0	0	0	0	0	0	0
1	2001	02NY	S	113443691	1	0	0	0	2	0	0	0
2	2001	02NY	S	113443691	2	1	0	0	1	0	0	0
2	2001	02R2	E	2797	1	0	0	0	0	0	0	0
3	2001	02NY	S	113443691	1	0	0	0	0	0	0	0
3	2001	02R2	E	2797	2	0	0	0	0	0	0	0
4	2001	02NY	S	113443691	1	0	0	0	0	0	0	0
4	2001	02R2	E	2797	1	1	0	0	0	0	0	0

15. Complaint(response to):
- Automatic ceasing of work- A STOP WORK ORDER must be issued immediately
 - Establishment of 24 hour monitored complaint line
 - The complaint line must be Multi-lingual (including Cantonese, Mandarin, Fujianese, & Spanish among others)
 - Immediate response teams available to physically inspect. Locations of which complaints have been made

16. **Transport and Removal**
 - a. NYSDEC must supervise
 - b. Assignment of certain number of enforcers
 - c. Determination of "acceptable" disposal site
 - i. Siting
17. **Protection of asbestos workers**
 - a. Monitoring - medical test baselines - There must be a medical baseline of all cleanup workers involved in WTC cleanup
 - b. Designation and funding for occupation clinic - the CBNS/NYCOSH van must be used as a model
 - c. Any and all workers comp. Issues must be on a 'fast-track' in ensuring proper and expedited medical treatment - The treatment - his should be guaranteed at the federal level in conjunction with a trust fund which should be used in case of later illness/debilitation/death.
18. **Removal of Waste Product**
 - a. All federal regulations should apply for debris removal disposal
 - b. DEC
 - i. Must monitor at all stages of disposal
19. **PRE-CLEANUP-**
 - a. Full testing of apartments
 - b. Samples should be archived for further testing/examination
 - i. Including but not limited to disposed carpet samples

NEW YORK ENVIRONMENTAL LAW & JUSTICE PROJECT

member of the Clean Water Network, National Coalition against the Misuse of Pesticides

315 Broadway, Suite 200

New York, NY 10007-1121

Tel : 212-768-9910

Fax: 212-202-6366

e-mail: nycelp@justice.com

Joel R. Kupferman, Esq.; Executive Director

Kimberly Flynn: Policy Analyst

Dan Halper: Intern

Web: www.nyenvironlaw.org

MAY-20-2002 21:43

U.S. EPA/DEPP

212 6373772 F.01/09

Morton, Lisette

From: Rutkin, Amy
Sent: Friday, May 17, 2002 2:30 PM
To: Morton, Lisette
Subject: FW: EPA proposal

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

From: Ellen Gesmer [mailto:egesmer@gulges.com]
Sent: Friday, May 17, 2002 12:57 PM
To: Rutkin, Amy
Subject: EPA proposal

Dear A

After reading Kathleen Moore's comments, I would like to add one more. Residential and commercial spaces in this neighborhood are connected not only because they are next door to each other or across the street but in the same building. 125 Cedar has a commercial space on the ground floor as do many (if not most) residential buildings downtown. Therefore, if the EPA is not cleaning commercial spaces, then there will be a large uncleaned space within most residential buildings. Given that the residential and commercial spaces often share elevators and HVAC systems, recontamination is unavoidable.

Thanks for taking the lead on all of this.

Regards,

Ellen Gesmer Esq.
Gulielmett Esq., P.C.
401 Broadway Suite 1901
New York, New York 10013-3005
phone 212-219-2114
fax 212-966-2152
www.gulges.com

The information in this email is intended for the named recipients only. It may contain privileged and confidential information. If you have received this email in error, please notify us immediately by a collect telephone call to (212) 219-2114 or by email to EGesmer@Gulges.com and return the original to the sender by return email. Please also delete the message from your computer. Do not copy or disclose the contents to anyone. Thank you.

MAY-20-2002 21:44

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212 6373772 P.02/09

Morton, Lisette

Importance: High

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

From: Rutkin, Amy**Sent:** Friday, May 17, 2002 12:23 PM**To:** Morton, Lisette**Subject:** FW: Comments re: Asbestos Project Monitor and Air Sampling Contract**Importance:** High

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

From: dianedav [mailto:diane@Specialr.com]**Sent:** Friday, May 17, 2002 3:17 PM**To:** Rutkin, Amy**Cc:** MaureenS@aol.com; JohnL; Virginia; Marie; Paul; Dorothy; Neil; John; Lynn; Kathryn; Howard; CynthiaS; Pearl; Louise&Fred; AlanS; Fejicia; Aida; Alanc2, "lynn@osbbusiness.com"@unknown.house.gov; MaryJoe; Hope; Ron; Robert; Terry; Glen; Susan; Chris; Michelle; AlanC; Elizabeth; Annette; Lisa; Lonnie; Jacquie; Jean; Jan; James; Bonnie; Elizabeth; Emily; Diana; Alan Gerson**Subject:** Comments re: Asbestos Project Monitor and Air Sampling Contract**Importance:** High

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Diane Lapson VP IPNTA

John Scott VP IPNTA

Independence Plaza Tenant Association

6/17/2002

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U.S. EPA/DEPP

212 6373772 P.04/09
Page 1 of 1

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AMY RUTKIN

Chief of Staff

U.S. Congressman Jerrold Nadler (NY-08)

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New York, NY 10014 Washington, DC 20515

Phone (212) 367-7350 Phone (202) 225-6635

Fax (212) 367-7356 Fax (202) 225-6923

amy.rutkin@mail.house.gov

5/17/2002

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Joel R Kupferman, Esq., Executive Director of the New York Environmental Law & Justice Project

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- c. Those contractors unfit to hold a permit and who have been denied a permit in any state must not be allowed
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Consent decree model Dept of Justice & Asbestos violator

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 - c. History must include everything that is found on **National Asbestos Registry System** (<http://cfpub.epa.gov/nars/>) an example is shown as follows:
 - d.

Contractor Name : A.A.C ENVIRONMENTAL CORP.

Street Address : 65 WAVERLY AVENUE

City : BROOKLYN

State : NY

Zip Code : 11205-

NARS ID : N44919

On	Year	Loc Agency	Type	Contract #	—Deficient Notif.—					Work Pract.		
					Notif	NOVs	Warn	Order	Isdn	NOVs	Order	Dis
4	1999	02NY	S	113443691	1	0	0	0	0	0	0	0
4	1999	02R2	E	2797	1	0	0	0	0	0	0	0
1	2000	02R2	E	2797	10	1	0	0	0	0	0	0
1	2000	02NY	S	113443691	0	1	0	0	1	0	0	0
2	2000	02R2	E	2797	2	0	0	0	0	0	0	0
2	2000	02R2	E	2797	5	0	0	0	0	0	0	0
1	2001	02NY	S	113443691	1	0	0	0	2	0	0	0
2	2001	02NY	S	113443691	2	1	0	0	1	0	0	0
2	2001	02R2	E	2797	1	0	0	0	0	0	0	0
3	2001	02NY	S	113443691	1	0	0	0	0	0	0	0
3	2001	02R2	E	2797	2	0	0	0	0	0	0	0
4	2001	02NY	S	113443691	1	0	0	0	0	0	0	0
4	2001	02R2	E	2797	1	1	0	0	0	0	0	0

15. Complaint(response to):
 - a. Automatic ceasing of work- A STOP WORK ORDER must be issued immediately
 - b. Establishment of 24 hour monitored complaint line
 - c. The complaint line must be Multi-lingual (including Cantonese, Mandarin, Fujianese, & Spanish among others)
 - d. Immediate response teams available to physically inspect. Locations of which complaints have been made

16. **Transport and Removal**
 - a. **NYSDEC must supervise**
 - b. **Assignment of certain number of enforcers**
 - c. **Determination of "acceptable" disposal site**
 - i. **Siting**
17. **Protection of asbestos workers**
 - a. **Monitoring - medical test baselines - There must be a medical baseline of all cleanup workers involved in WTC cleanup**
 - b. **Designation and funding for occupation clinic - the CBNS/NYCOSH van must be used as a model**
 - c. **Any and all workers comp. Issues must be on a 'fast-track' in ensuring proper and expedited medical treatment - The treatment -his should be guaranteed at the federal level in conjunction with a trust fund which should be used in case of later illness/debilitation/death.**
18. **Removal of Waste Product**
 - a. **All federal regulations should apply for debris removal disposal**
 - b. **DEC**
 - i. **Must monitor at all stages of disposal**
19. **PRE-CLEANUP-**
 - a. **Full testing of apartments**
 - b. **Samples should be archived for further testing/examination**
 - i. **Including but not limited to disposed carpet samples**

NEW YORK ENVIRONMENTAL LAW & JUSTICE PROJECT

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MAY-20-2002 21:43

U.S. EPA/DEPP

212 6373772 F.01/09

Morton, Lisette

From: Rutkin, Amy
Sent: Friday, May 17, 2002 2:30 PM
To: Morton, Lisette
Subject: FW: EPA proposal

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

From: Ellen Gesmer [mailto:egesmer@gulges.com]
Sent: Friday, May 17, 2002 12:57 PM
To: Rutkin, Amy
Subject: EPA proposal

Dear Amy,

After reading Kathlisen Moore's comments, I would like to add one more. Residential and commercial spaces in this neighborhood are connected not only because they are next door to each other or across the street but in the same building. 125 Cedar has a commercial space on the ground floor as do many (if not most) residential buildings downtown. Therefore, if the EPA is not cleaning commercial spaces, then there will be a large uncleaned space within most residential buildings. Given that the residential and commercial spaces often share elevators and HVAC systems, recontamination is unavoidable.

Thanks for taking the lead on all of this.

Regards,

Ellen Gesmer, Esq.
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Morton, Lisette

Importance: High

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

From: Rutkin, Amy

Sent: Friday, May 17, 2002 12:23 PM

To: Morton, Lisette

Subject: FW: Comments re: Asbestos Project Monitor and Air Sampling Contract

Importance: High

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

From: dianedav [mailto:diane@Specialr.com]

Sent: Friday, May 17, 2002 3:17 PM

To: Rutkin, Amy

Cc: MaureenS@aol.com; JohnL; Virginia; Marie; Paul; Dorothy; Neil; John; Lynn; Kathryn; Howard; CynthiaS; Pearl; Louise&Fred; AlanS; Felicia; Aida; AlanC2; "lynn@osbbusiness.com"@unknown.house.gov; MaryJoe; Hope; Ron; Robert; Terry; Glen; Susan; Chris; Michelle; AlanC; Elizabeth; Annette; Lisa; Lonnie; Jackie; Jean; Jan; James; Bonnie; Elizabeth; Emily; Diana; Alan Gerson

Subject: Comments re: Asbestos Project Monitor and Air Sampling Contract

Importance: High

Dear Amy:

The technical terms of the document are a bit beyond our expertise, but seem pretty thorough; although as we all know, 8 months have gone by and people have already disturbed most of the debris/dust in their apartments.

"Visible dust" is the same dust that will come back over and over again - unless the person never returned to their apartment over these 8 months. Therefore, thorough cleaning of this "visible dust" is great - but not permanent.

In any case, once again it is our firm stand that without the cleaning of common areas: elevators/hallways/lobby/stairwells/ terraces and rooftops, we believe the cleaning of all apartments are just a partial measure. There was an unacceptable level of asbestos found on the 31st floor of 310 Greenwich Street during a random testing done by our management company. Also, when we recently had a professional come by to visually inspect IFN, he said that he can see that Kathryn Freed's terrace at 40 Harrison Street most definitely showed debris and pulverized dust - which he knows without even testing must contain asbestos as well as many other contaminants. (Like most tenants here, she has not gone out to her terrace for fear of breathing in whatever is accumulated there - some visible - some not.)

We also feel strongly that again, without the NCP put back into active procedure, other efforts are less effective than a band-aid; and we fear greatly rebuilding on possibly contaminated ground. The construction that will begin - first on 7 World Trade Center will further serve to disperse toxic debris into the air, thus recontaminating offices, stores and homes within the ground zero vicinity..... and since the wind blows from West to East, who knows how far these dangerous particles will travel through lower Manhattan?

:

THEREFORE: Our utmost desire is that the NCP is put into immediate effect, thereby securing all of the above and more. We support Congressman Nadler's desire for the NCP to be put immediately back into action and request that we be informed as to whatever we can do - along with our tenants - to help speed up this necessary measure.

Our recommendations relating to this document now, are :

1. The proposal should make clear that we need the cleaning of all buildings; should include not only residences but schools, offices, stores, residential buildings. Each one of those will in themselves require specific different type of cleanups.
3. Cleanup of all air ducts and conduits - all air systems (not just air conditioner units) - all intakes and outtakes of

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all systems. (As revealed during the Clinton/Lieberman hearings, the air systems at Stuyvesant were never done - only the outside of the ducts were cleaned - but a thorough cleaning of all pipes leading from and to air system were left infected.)

4. Clean up of outside of buildings (roofs, walls, terraces) simultaneously with the start of indoor cleanup. WINDOWS AND WINDOW SILLS MUST BE INCLUDED IN THE INDOOR AND OUTDOOR CLEANUP. (the proposal mentions air conditioners - the windows and window sills also have buildup which will come in the minute the windows are open.)

5. Clean up of all common areas in all buildings.

6. Clean up of streets and construction sites - beyond the "watering down" methods. The streets/parks/trees/grass must be cleaned... the sand removed from park playgrounds - and not replaced until the area is safe. The top soil removed so topical toxins are taken away. The grass somehow should be dealt with - before people begin lounging all over the grass in warm weather.

Sincerely,

Diane Lapson VP IPNTA

John Scott VP IPNTA

Independence Plaza Tenant Association

5/17/2002

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U.S. EPA/DEPP

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Page 1 of 1

Draft. Thank you so much for your help.

Morton, Lisette

From: Rutkin, Amy
Sent: Friday, May 17, 2002 11:55 AM
To: Morton, Lisette
Subject: FW: Draft. Thank you so much for your

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

From: Howard Bader [mailto:hbader1@nyc.rr.com]
Sent: Thursday, May 16, 2002 10:25 PM
To: Rutkin, Amy
Subject: Re: Draft. Thank you so much for your help.

Amy, I have to prepare for court testimony tomorrow (9am - 12 pm) so I was a little rushed reviewing this. I think you did a good job covering the key points. A few comments:

Similar to the asbestos microvac samples, it should be emphasized that testing for dioxin, lead, mercury and fibrous material is surface not air testing. Sample quantities should be similar to asbestos air (except maybe dioxin which is around \$750 per sample). I don't think the ultra fine particulate testing is very relevant anymore, similar to benzene it was an airborne issue which doesn't appear to exist anymore. Howard Bader.

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

From: Rutkin, Amy
To: 'hbader1@nyc.rr.com'
Sent: Thursday, May 16, 2002 5:47 PM
Subject: Draft. Thank you so much for your help.

<<EPA Scope of Work Comments draft1.doc>>

AMY RUTKIN

Chief of Staff

U.S. Congressman Jerrold Nadler (NY-08)

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amy.rutkin@mail.house.gov

5/17/2002

ASBESTOS PROJECT MONITOR AND AIR SAMPLING CONTRACT

Asbestos recommendations

Joel R Kupferman, Esq., Executive Director of the New York Environmental Law & Justice Project

This outline was done at last minute. Various points probably have been left out.

1. All federal regulations should apply for the debris removal disposal
2. All debris must be tested with Transmission Electron Microscopy (TEM)
3. EPA must completely accept responsibility and culpability for the environmental disaster that occurred due to the coverup and inaction.
4. Remediation zone must include areas that have been exposed (north of Canal, Brooklyn, NJ, etc)
5. All violations should be referred to the Assistant Chief of the Environmental Enforcement Section at DOJ
6. What the EPA must do
 - a. EPA should be doing the cleanup not NYC DEP
 - i. EPA has ultimate jurisdiction, enforcement, and authority on this matter
 - ii. Although some NYC & State agencies have administrative penalties, the authority, many times actions were taken without assessment of any penalties.
 - iii. NYC DEP has a long history of non-compliance
 - (1) NYC In general and NYC DEP has proven to be more than "lax" in enforcing asbestos and other environmental regulations
 - (2) They have continuously made false, inaccurate or incomplete statements
 - (a) It is in their best interest to cover-up their inaction by claiming that abatement is not necessary
 - (3) NYC DEP admitted that it only issued one Asbestos violation since 9/11.
 - (4) Scaffolding Fatal accident: A contractor who had an impersonator take a safety test was fined only \$350 and served no jail time.
 - (5) City agencies have been notorious in their failure to recuse themselves in instances including conflict of interest issues, complacency, lack of enforcement, sweetheart deals, and other behavior that puts the public at risk.
 - (a) One example, includes Department of Sanitation hiring of Rapid Demolition/Hi-Tech Environmental/

- D.S.A. Services to preform dangerous asbestos abatement at the Gansevoort Street Plant despite the fact the owner of D.S.A. having been disbarred by the NYS DOL for committing willful violations.
- (b) NYC DOH was ready to rehire Clarke Mosquito Control despite the \$1 million OSHA fine and contract provision that forbade re-contract in face of such labor violations
- (6) They abrogated their right to have any role due to the fact their reliance completely on landlord self-certification
7. Entire buildings/neighborhoods are to be cleaned completely in a systematic way to prevent cross-contamination/re-contamination.
- a. The abatement is to be done street by street.
- b. The entire building has to be done at one time.
- i. Allowing people to be exposed flies in the face of reason. The abatement workers will be abating in full protective gear and the proposal given to us says that there require that the occupants be in the room while cleanup is done and will be thus exposed.
- (1) Occupants will be relocated for the duration of the abatement procedure on building
- c. This needs to be done
- i. HVAC/Ventilation systems must be completely cleaned
- (1) The building ventilation system will be set to negative pressure as per EPA regulations regarding asbestos abatements.
- ii. Common areas/stairwells/etc.
- iii. Elevator shafts
- iv. Windows casing
- v. Wallpaper & Carpets that cannot be properly abated must be removed and disposed of properly
- vi. Rugs should be sent for proper cleaning
8. All buildings and spaces inside the zone must be abated including parks, schools, commercial spaces/offices, religious institutions, hospitals, city-owned buildings, etc.
9. Testing should be done in real-time & reported via a publicly accessible web site done by EPA that is publically accessible
- a. All data should be permanently available for public perusal and easily accessible without the need for FOIA.
10. The most stringent safety/health regulations should be applied.
11. Observation by video; independent authorized observers must be allowed access to abatement sites, videos must be sent to review teams for analysis.
12. Contractors
- a. Must ensure that the friable asbestos material remains wet until collected for disposal, in accordance 40 C.F.R. Section 61.147(e) and Section 112(c) and (e) of the Clean Air Act, 42 U.S.C. 7412 and (e).
- b. If contractors discharge visible emissions to the outside air during the

collection, any processing, packaging, transporting, or deposition of asbestos containing waste material generated at the facility, they must use one of the disposal methods specified in 40 C.F.R. Section 152(b) (1), (2), or (3), thereby violating 40 C.F.R Section 152(b) and Section 112(c) and (e) of the Act, 42 U.S.C. Section 7412(c) and (e).

- c. Those contractors unfit to hold a permit and who have been denied a permit in any state must not be allowed
 - i. Full disclosure of contractor's prior violations, enforcement history, and should be accompanied by a copy of the inspection report and any other documentation of violations.
 - ii. 40 C.F.R. Section 61.146 requires each owner or operator of a demolition operation where there is the regulated amount of asbestos to provide the Administrator of EPA with written notification of intention to demolish or renovate, setting forth specified information, at least 10 days prior to the commencement of the operation. Timely, complete, and accurate notices of demolition operations permit EPA to conduct efficient, unannounced inspections to ensure that work practice standards to prevent emission of asbestos are being met. Such notices are particularly important due to the short duration of most demolition operations. In the WTC cleanup - better and more timely notice should be given
- d. Strict monitoring, recordkeeping and reporting requirements must be adopted to with the applicable If only the minimum requirements provided under applicable regulations are imposed compliance of all relevant actors will not be assured will not assure compliance of a bad actor.
- e. The following information must be made public"
 - i. The name and position of the person responsible for supervising all work involving asbestos-containing material (ACM).
 - ii. The name, address, telephone number and contact person of the firm(s) which will transport any asbestos-containing waste from the site.
 - iii. A description of the procedures and equipment to be used to prevent visible emissions of asbestos-containing material, and to decontaminate workers.
 - iv. A description of the location and amount of asbestos containing material in the facility which will undergo renovation or demolition.
 - v. The name of the person who determined whether asbestos-containing material was located at the site and the basis on which such determination was made.
 - vi. Decontamination facilities must be made available, equipped, and used at each jobsite which involves removal of asbestos containing material.
- f. Each contract should include penalty/ liquidated damages clause
 - i. www.enrinfo.com/canin/enforcement/cand144.html

Consent decree model Dept of Justice & Asbestos violator

13. Federal whistleblower laws and protections should apply to all involved actors
14. Compliance history of contractors published and reviewed.
 - a. Similar to NYSDEC bad actor policy see NYS Dept. of Environmental Conservation "Record of Compliance Enforcement Guidance Memorandum (Feb. 1993) should be used as a model.
 - b. Whichever ever has been consulted for Historical information - e.g., CDS, national contractor registry, interna. Regional tracking system must be kept public via the website
 - c. History must include everything that is found on National Asbestos Registry System (<http://cfpub.epa.gov/nars/>) an example is shown as follows:
 - d.

Contractor Name : A.A.C. ENVIRONMENTAL CORP.

Street Address : 65 WAVERLY AVENUE

City : BROOKLYN

Zip Code : 11205-

State : NY

NARS ID : N44919

On	Year	Loc	ASBESTY	Type	Contract #	—Deficient Notif.—					Work Practis.	
						Notif	NOV	Warn	Order	Inst	NOV	Order
4	1999	02NY		S	113443691	1	0	0	0	0	0	0
4	1999	02R2		E	2797	1	0	0	0	0	0	0
1	2000	02R2		E	2797	10	1	0	0	0	0	0
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2	2000	02R2		E	2797	2	0	0	0	0	0	0
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1	2001	02NY		S	113443691	1	0	0	0	2	0	0
2	2001	02NY		S	113443691	2	1	0	0	1	0	0
2	2001	02R2		E	2797	1	0	0	0	0	0	0
3	2001	02NY		S	113443691	1	0	0	0	0	0	0
3	2001	02R2		E	2797	2	0	0	0	0	0	0
4	2001	02NY		S	113443691	1	0	0	0	0	0	0
4	2001	02R2		E	2797	1	1	0	0	0	0	0

15. Complaint(response to):
 - a. Automatic ceasing of work- A STOP WORK ORDER must be issued immediately
 - b. Establishment of 24 hour monitored complaint line
 - c. The complaint line must be Multi-lingual (including Cantonese, Mandarin, Fujianese, & Spanish among others)
 - d. Immediate response teams available to physically inspect. Locations of which complaints have been made

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 - c. Determination of "acceptable" disposal site
 - i. Siting
17. Protection of asbestos workers
 - a. Monitoring - medical test baselines - There must be a medical baseline of all cleanup workers involved in WTC cleanup
 - b. Designation and funding for occupation clinic - the CBNS/NYCOSH van must be used as a model
 - c. Any and all workers comp. Issues must be on a 'fast-track' in ensuring proper and expedited medical treatment - The treatment -his should be guaranteed at the federal level in conjunction with a trust fund which should be used in case of later illness/debilitation/death.
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 - a. All federal regulations should apply for debris removal disposal
 - b. DEC
 - i. Must monitor at all stages of disposal
19. PRE-CLEANUP-
 - a. Full testing of apartments
 - b. Samples should be archived for further testing/examination
 - i. Including but not limited to disposed carpet samples

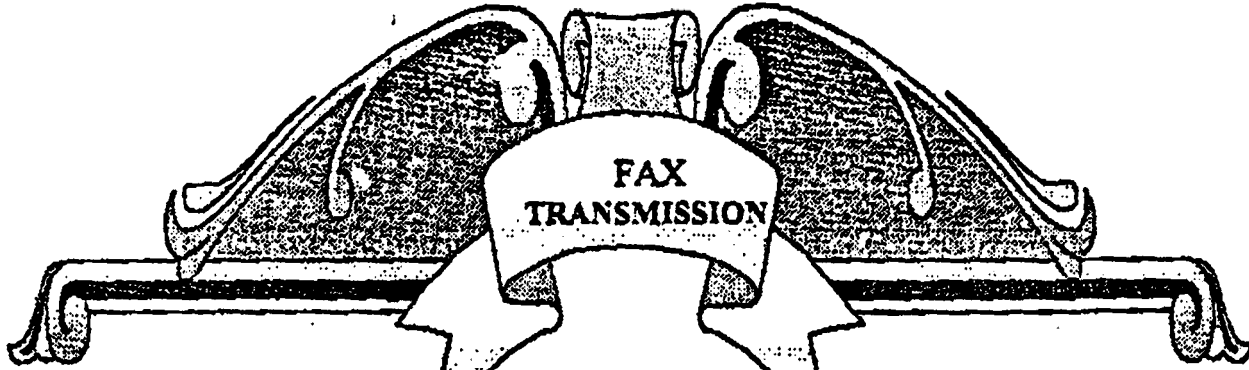
NEW YORK ENVIRONMENTAL LAW & JUSTICE PROJECT

member of the Clean Water Network, National Coalition against the Misuse of Pesticides

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FROM: Kathy Callahan

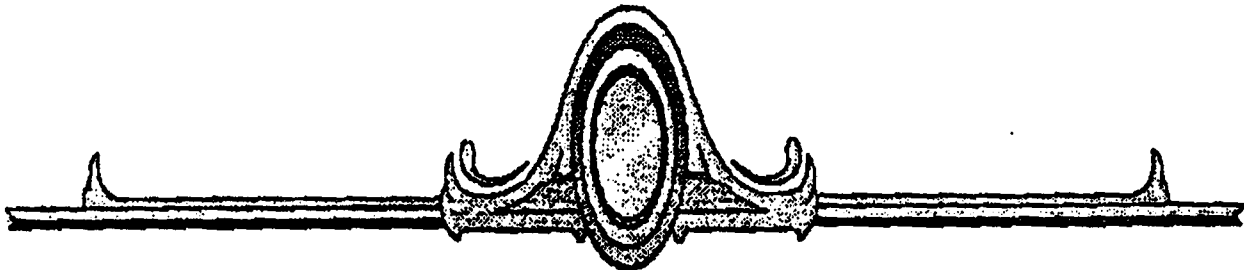
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SUBJECT:

DATE: 5/20/02

Number of Pages (including cover sheet): 20

COMMENTS:



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212 6373772 P.02/11

TRANSPORTATION AND
INFRASTRUCTURE COMMITTEE

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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 _____
Brett 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 202-225-5635 FAX 202-225-6923

MAY-20-2002 21:37

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212 6373772 P.03/11

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 HIGHWAYS AND TRANSIT
 AIRPORTS
 REGIONAL WWF



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

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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, CAO].
- 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:

If EPA wants to commit more people.

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.

What's OSHA say about this?

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.

EPA call

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.

why wipe samples?

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.

OK?

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.

That is what it means

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.

fixed?

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 ~~Lead~~ 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.

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.

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.

Morton, Lisette

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

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

From: Kathleen Moore [mailto:moore@amnh.org]
Sent: Friday, May 17, 2002 11:54 AM
To: Rutkin, Amy
Cc: egesmar@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 Gasmer 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 cleanup, it

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.

Kathleen Moore
Displaced Resident
125 Cedar Street

Morton, Lisette

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. 11. 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.

6/17/2002

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,

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4/17/2002

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