

DRAFT EXCERPTS FROM SECTION 3:
FOR REVIEW & DISCUSSION PURPOSES ONLY

During the first several weeks of the response, New York City publicly exercised a lead role in responding to indoor environmental concerns through the issuance of guidance and notices to building owners and residents concerning indoor air issues. According to New York City officials, this approach was developed in consultation with FEMA, and with EPA's approval. After the City was criticized for its response, EPA began to assume a lead role in February 2002, when the Agency initiated a multi-agency task force to address concerns about the indoor environment. This multi-Agency effort resulted in an indoor residential testing and cleaning program in which cleaning of residences began in August 2002. Prior to initiation of the EPA-led cleanup, many WTC area residents returned, and a November 2001 NYCDOH study concluded that most residents did not follow recommended cleaning practices. The full extent of public exposure to indoor contaminants resulting from the WTC collapse is unknown.

Indoor Contamination Response

The public and elected officials began raising concerns about the extent that indoor spaces were contaminated with asbestos and other contaminants shortly after the WTC collapse. New York City, which initially took lead responsibility for addressing indoor air, was criticized for:

- i. Delegating testing and remediation efforts to building owners and residents.
- ii. Not enforcing proper procedures for cleaning asbestos.
- iii. Giving improper advice to the public on testing and cleaning procedures.

EPA was criticized for not initially taking a greater role in indoor testing and cleaning. U.S. Congressman Jerrold Nadler (D-NY), whose district includes Lower Manhattan, contended that EPA violated the law by allowing New York City to handle indoor air quality and not exercising oversight authority pursuant to the National Contingency Plan (NCP). EPA maintained that the NCP does not create a right to a Federal response and its approach to indoor air was a "proper and legal exercise of our discretion" under the NCP.

Details on the actions taken by New York City and EPA regarding the WTC indoor environment, as well as applicable statutes and regulations pertaining to EPA authorities and responsibilities regarding indoor air, follow.

Initial Actions Taken by New York City and EPA

In the immediate aftermath of the disaster, EPA undertook several activities to address various issues related to indoor air. However, according to EPA documentation, New York City officials stated on September 30, 2001, that the City would not be requesting assistance from EPA regarding residential sampling or reoccupation issues, or roof debris

*From US EPA to NYCDOH
not requesting state or fed
assistance*

DRAFT EXCERPTS - FOR REVIEW & DISCUSSION PURPOSES ONLY

cleanup. According to EPA Region 2 officials, since the City declined EPA's offer of assistance on cleaning issues, EPA did not want to force itself into a lead agency role. Further, EPA Region 2 officials told us that a more assertive stance from EPA would have caused a level of confrontation that might have been counterproductive to the overall effort.

New York City officials did not agree with EPA's characterization of how indoor air responsibilities were decided. These officials did not recall discussing residential sampling and re-occupation issues with EPA during September 2001. These officials recalled discussing indoor cleaning of residences with EPA at some time after September 30, 2001, and that EPA responded that they would conduct a study and provide information to the City in 6 to 9 months. New York City officials also maintained that a more assertive stance from EPA would not have been counterproductive since the City recognized EPA's lead role for responding to hazardous substances releases under the FRP's Emergency Support Function # 10.

New York City's Initial Response

New York City officials held building owners responsible for cleaning up their own buildings, including interiors and exteriors. According to New York City officials, this position was developed in consultation with FEMA, and with EPA's agreement. Further, this position was based on the understanding that pursuant to the Stafford Act (the implementing statute for the FRP), New York City would not be reimbursed for such cleaning. In general, landlords of rental units were responsible for cleaning apartment walls, ceilings, and floors; common areas, such as hallways and lobbies; and heating, ventilation, and air conditioning (HVAC) systems. Renters were responsible for cleaning their personal belongings. In the case of resident-owned condominiums, residents were responsible for cleaning their units, while building owners were responsible for cleaning common areas and HVAC systems.

Table 3-1 notes key instructions New York City provided to building owners and residents regarding the potential for indoor contamination resulting from the collapse of the WTC towers and steps for cleaning the indoor contamination:

DRAFT EXCERPTS - FOR REVIEW & DISCUSSION PURPOSES ONLY

DRAFT EXCERPTS - FOR REVIEW & DISCUSSION PURPOSES ONLY

Table 3-1: Actions by New York City

Date	Key Statement
09-14-01	The New York City Department of Environmental Protection (NYCDEP) provided a notice to building owners entitled "Clean-up of Asbestos Containing Material." For "minimal dust accumulations (light coating)" the notice recommended using wet methods and/or vacuums equipped with HEPA filters. For "accumulations of dust that included pieces of debris" the procedures provided for two options. Building owners could assume that the material was asbestos containing material (ACM) and have it cleaned in accordance with NYCDEP Asbestos Abatement Program removal procedures, or have the material sampled by a NYC-DEP certified investigator or NYS-DOL inspector to determine whether the material was ACM and subject to New York City's Asbestos Abatement Program removal procedures. ACM was identified as any material containing more than one percent asbestos. (See Appendix M for a copy of the notice) .
09-16-01	The NYCDEP issued a "Public Notice" flyer to building owners that discussed building maintenance issues. The notice stated that building owners/managers should have possible contamination problems reviewed by competent professionals. (see Appendix N for a copy of the notice).
09-17-01	NYCDOH issued a press release that recommended that individuals reentering their residences and places of work remove dust by using a wet rag or wet mop, and vacuum with a HEPA (high efficiency particulate air) filtration vacuum. If a HEPA vacuum was not available, the press release recommended using HEPA bags or dust allergen bags with a regular vacuum cleaner. EPA's web site also linked to these instructions.(see Appendix O for a copy of the press release).
09-26-01	NYCDEP issued a notice to building owners entitled "Clean-up of Debris inside Buildings" which was identical to the notice issued on 9-14-01 except for three items. First, the notice did not say "accumulations of dust that include pieces of debris . . . may be assumed to be ACM." Second, the notice stated that such accumulations "can be sampled" [rather than "must be sampled"] by a NYC-DEP certified investigator or NYS-DOL inspector. Third, the notice stated that EPA had studied the situation and reported "that the potential presence of ACM in dust and debris is minimal." (see Appendix P for a copy of the instructions).

10-25-01 NYCDEP described benchmarks and guidelines used to evaluate environmental conditions in a letter to Lower Manhattan residents dated October 25. In regard to cleaning indoor spaces the letter stated: "If more than 1 percent asbestos was found and testing and cleaning was necessary, it had to be performed by certified personnel." In addition, the statement indicated landlords should not reopen any building until a competent professional had properly inspected their building. The City's Asbestos Abatement Program requires that building owners file a written notification with the NYCDEP for asbestos abatement projects that do not require plan or permit approval from the City's Buildings Department. NYCDEP officials told us this notification applied to buildings owners who found more than 1 percent asbestos in bulk dust in their buildings (see Appendix Q for a copy of the instructions).

NYCDEP officials told us they did not conduct a certification program, nor did they have authority to conduct such a program, to determine the level of compliance with their instructions regarding the testing and cleaning of asbestos inside buildings, unless a complaint was made or an asbestos notification was filed with the City. Beginning in September 2001, they said they began visually inspecting the exteriors of over 1,000 buildings and identified 323 buildings with visible dust. NYCDEP documentation indicated that 101 of these 323 building exteriors were subsequently cleaned by the building owners. NYCDEP officials told us that the remaining owners stated they could not afford to clean their buildings, and these buildings were cleaned by NYCDEP with funding provided by FEMA. *Provided documentation!*

To determine the extent of indoor contamination in Lower Manhattan residences, the NYCDOH and ATSDR initiated an indoor air study in November 2001. The sampling phase was completed in December 2001, preliminary results were released to the public in February 2002, and the final report was issued by ATSDR in September 2002. *what were results.*

EPA's Initial Response

An EPA Situation Report for September 27-29, 2001, noted that a projected future action was to "finalize sampling plan for residential buildings." However, EPA's Situation Report for September 30 contained the following entry regarding indoor contamination:

Residential sampling/reoccupation: On 9/30/01, EPA spoke to US Public Health Service and NYSDOH (New York State Department of Health) who have been discussing issue with NYCDOH. NYC will not be requesting State or Federal assistance

DRAFT EXCERPTS - FOR REVIEW & DISCUSSION PURPOSES ONLY

DRAFT EXCERPTS - FOR REVIEW & DISCUSSION PURPOSES ONLY

for residential sampling or reoccupation issues. The Federal Response Plan assigns responsibility to the U.S. Public Health Service under ESF-8, Health and Medical Services, when state and local resources request Federal assistance for medical and public health assistance.

In addition, correspondence from the Region 2 Regional Administrator indicated that in an October 9, 2001, meeting between FEMA, EPA, and New York City officials, City officials stated that they would not be requesting EPA's assistance for residential sampling or reoccupation issues. The September 30 report also indicated that New York City would not be requesting Federal assistance for cleaning roof debris. Except for a few notations in early October, EPA Situation Reports did not address indoor air monitoring activity again until April 2002, when planning to implement an indoor cleaning program was discussed.

Multi-Agency Residential Cleanup Undertaken

In February 2002, EPA initiated a multi-agency task force on indoor contamination. The Former EPA Chief of Staff told us that EPA initiated this effort because "Over time, we saw that New York City was not prepared to handle all the issues related to indoor air and offered to support them." Under this task force, a plan was developed in which EPA assumed the lead role for overseeing a FEMA-funded cleanup of residences in Lower Manhattan. EPA, New York City, and FEMA officials announced this plan to the public on May 8, 2002. Under this plan, residents of Lower Manhattan living south of Canal Street could request testing and cleaning of their residences, or just testing. Public registration for the indoor testing and cleaning program ended December 28, 2002.

EPA Role on Indoor Environment

New York City initially took the lead role in addressing the indoor environment. This is consistent with the NCP, which allows for State or local agencies to take the lead in conducting removal or remedial actions in response to a hazardous substance release. Generally, this arrangement is outlined in a memorandum of agreement between the local agency and EPA, and includes EPA's oversight role if the local agency is designated as the lead agency.

DRAFT EXCERPTS - FOR REVIEW & DISCUSSION PURPOSES ONLY

Cleaning Instructions

No evidence of asbestos

Initially, EPA deferred to New York City to provide guidance for cleaning indoor spaces. EPA was prepared to include recommendations in its press releases that residents obtain professional cleaning of their residences. The absence of instructions recommending that residents obtain professional cleaning in the initial weeks following the disaster may have increased the long-term health risks for those persons who cleaned WTC dust contaminated indoor spaces without using respirators and other professional cleaning equipment.

EPA's web site and press releases deferred to the NYCDOH guidance even though EPA's position on indoor cleaning was different than the City's. EPA's basis for deferring to New York City was summarized by the testimony of the Region 2 Administrator before the U.S. Senate Committee on Environment and Public Works on February 11, 2002. The Administrator was asked if the NYCDOH provided adequate cleanup directions to residents. The EPA Region 2 Administrator answered as follows:

Consistent with their responsibility for the indoor environment, the City DOH, working with ATSDR and the Centers for Disease Control and Prevention (CDC) took the lead on the development and dissemination of public health recommendations related to building cleanups. DOH statements emphasizing wet wiping, mopping and use of HEPA vacuums were reasonable. EPA's advice has been more conservative and suggested that people encountering more than minimal amounts of dust should consider this as a "worst case" and likely to be contaminated with asbestos. Under these circumstances, they should hire a certified asbestos cleanup contractor. . . "

What were levels?

Asbestos medical experts we consulted agreed that professional cleaning was preferred for the asbestos contamination levels found, but at a minimum if the public was to clean residences themselves, they should have been instructed to wear respirators. However, a study by NYCDOH found that most residents did not follow the City's recommended cleaning practices. Although not specifically mentioned in the study, this conclusion would suggest that these residents did not obtain professional asbestos abatement contractors to clean their residences. The increased risk that residents placed themselves in by cleaning residences themselves is not known.

