



THE CITY OF NEW YORK DEPARTMENT OF ENVIRONMENTAL PROTECTION
CHRISTOPHER O. WARD, Commissioner

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MARK D. HOFFER
General Counsel
Bureau of Legal Affairs

July 11, 2002

TO: Mark Hoffer
FROM: Russell Pecunies *RP*
Assistant Counsel
RE: Language for Commissioner's Orders Related to Lower
Manhattan Building Cleaning

As we discussed, the Asbestos Control Program wants to issue a Commissioner's Order to the owner of 10-12 Maiden Lane, Manhattan. This building is 1 1/2 blocks from the WTC site. It was vacant prior to and since 9/11 and pictures of the roof taken from adjoining buildings show it is extensively contaminated with WTC residue. All attempts to contact the listed owner have been unsuccessful.

This raises the following issues:

- 1- Since we have no access to the building, we have no positive samples.
- 2- We need to word the Order in a way which satisfies the requirements of the Spill Bill but is also consistent with the past positions we have taken regarding the hazard posed by WTC residue.
- 3- We need to decide what to do in the event the Order does not bring results (i.e., do we issue NOVs, do we clean the building and bring an action for costs, etc.).
- 4- Should we give the owner the option of enrolling in the Building Cleaning Program as a way of complying with the Order?

I have attached a copy of an Order I drafted back in March. Please comment regarding the language used, as well as the questions raised above.

cc: Avaltroni, Gilseman, Radhakrishnan, Schiano, Rogak,
Lutchmedial



THE CITY OF NEW YORK DEPARTMENT OF ENVIRONMENTAL PROTECTION
JOEL A. MIELE SR., P.E. Commissioner

TO:

ORDER

WHEREAS:

1. On or about _____, 2002, the New York City Department of Environmental Protection (DEP) conducted an inspection of _____, Manhattan (Block _____, Lot _____), and found the exterior of the building to be contaminated with residue from the collapse of the World Trade Center towers on September 11, 2001.
2. The analysis of samples taken during the inspection show that the residue is asbestos-containing material (ACM), a hazardous substance.
3. The continued presence of this residue on the exterior of the building constitutes a substantial threat of a release of a hazardous substance into the environment. This constitutes a violation of Title 24, Chapter 6 of the New York City Administrative Code and may present an immediate and substantial danger to the public health and welfare or to the environment.
4. Under Title 24, Chapter 6 of the New York City Administrative Code, you are a "responsible person" to whom an order to implement response measures or to cooperate with and assist DEP in implementing response measures may be addressed.

THEREFORE:

Pursuant to my authority under §§ 1403 and 1403(h) of the New York City Charter and §§ 24-608 and 24-610 of the New York City Administrative Code, I hereby order that you perform the work or render the cooperation or assistance specified in the attached Scope of Work.

Date

Joel A. Miele Sr., P.E.
Commissioner, New York City
Department of Environmental Protection

State and City of New York, County of Queens, ss:

On the _____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on this instrument the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public or Commissioner of Deeds

DRAFT