



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

Bob Avella

MAP - 6 2003

Honorable Tony Avella, Council Member
 Member of the Council of the City of New York
 38-50 Bell Boulevard, Suite C
 Bayside, NY 11361

Dear Councilman Avella:

I am writing in response to your letter of January 29, 2003 concerning the Environmental Protection Agency's (EPA) Indoor Air Residential Assistance Program that the EPA is jointly conducting with the City of New York's Department of Environmental Protection (DEP), using disaster funding provided by the Federal Emergency Management Agency (FEMA). In particular, you sought information about several aspects of the Program on behalf of the New York Committee for Occupational Safety and Health.

As you are aware our goal is to protect lower Manhattan residents from potential exposures to residual dust that may contain pollutants from the collapse of the World Trade Center (WTC) and to provide residents with information that will help them feel comfortable in their homes. EPA has received approximately 5,300 requests for cleaning and testing of apartments and an additional 1,241 requests for testing only. As you note in your letter, we have begun work on both categories of requests. To date, over 1,353 apartments have been cleaned and tested, and 392 have been tested. Testing of 1589 residences addressed either by testing alone or cleaning and testing have revealed results below the EPA clearance level (see Note 1, Enclosure 1). Seventeen residences had samples that exceeded the clearance level, and an additional fifty-five had results that could not be determined because of filter overload or other testing related problems (see Note 2, Enclosure 1).

One area of specific concern to you is personal protective equipment (PPE) for cleanup workers. I note that all work performed under the Program is being performed in compliance with applicable laws and regulations, including but not limited to regulations issued by EPA, the United States Department of Labor Occupational Safety and Health Administration (OSHA), the New York State Department of Labor (NYSDOL), and DEP. The contract entered into by DEP for cleaning requires that only a NYSDOL-licensed asbestos contractor and only DEP- and NYSDOL-certified workers would be allowed to perform any of the cleaning activities under this contract. This requirement also applies to any subcontractors involved in the cleaning. The contract entered into by DEP for the project monitors (who are responsible for, among other things, overseeing the cleaning work and insuring that that work is satisfactorily completed) requires the use of experienced project monitors certified by New York State. I also note that we have worked with OSHA to assure that contractors meet OSHA regulatory requirements. For instance, pursuant to our discussions with OSHA, we have implemented personal air monitoring for a specified number of the cleaning employees (see Note 3, Enclosure 1).

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Under the contracts for the Program, residences and common areas (including elevator shafts) of residential buildings which appear to have been minimally impacted by dust and debris from the collapse of the WTC are addressed using different procedures than those required in the event visual inspection indicates the presence of significant accumulations of WTC dust and debris. In the former instance, procedures referred to in the contracts as "Scope of Work A" apply; in areas of significant accumulation "Scope of Work B" is utilized. Under Scope of Work B, PPE is utilized. As you point out, the use of PPE by cleanup and monitoring workers is not required under Scope of Work A.

There were reasons for this. On June 14, 2002, Patricia K. Clark, the Regional Administrator of OSHA Region 2, issued a Negative Exposure Assessment (NEA), consistent with their regulations, based on sampling in the immediate vicinity of the WTC (Enclosure 2). Regional Administrator Clark indicated that her assessment included both the workers directly involved in WTC debris removal and those exposed to heavy settled dust accumulations in buildings immediately bordering Ground Zero.

On August 5, 2002, Christopher Ward, the DEP Commissioner, wrote to Regional Administrator Kenny concerning whether DEP and NYSDOL requirements apply to Scope A work (Enclosure 3). In his letter, Commissioner Ward said that Scope of Work A situations are not "asbestos projects" or "minor asbestos projects" under DEP's Asbestos Rules, and further, with regard to Article 30 of the New York State Labor Law, which DEP enforces in New York City, such cleanings are not "abatement projects." By its letter, DEP confirmed that it would not require PPE in the Scope A scenario (see Note 4, Enclosure 1). Of course, should the personal air monitoring of workers indicate risks to the workers, we would immediately consult with OSHA and revisit this decision.

You also request information concerning the focus of the Program solely on residential spaces. I note that EPA has been providing information and advice regarding educational spaces in lower Manhattan. The cleanup program in the New York City public schools has been implemented by the New York City Department of Education, which has taken primary responsibility for testing and cleaning the schools. FEMA is providing financial support for this effort. Some parents of students expressed great concern about the appropriateness of the cleanup being done. As part of our ongoing efforts, EPA agreed to organize and facilitate a meeting with appropriate agencies and interested and involved parents regarding details of the Department of Education's cleanup program. EPA also has reviewed the sampling results obtained through private contracting by the Department of Education for Stuyvesant High School. EPA's review found that the air sampling results at all locations in the school meet the clearance criteria set forth in the Asbestos Hazard Emergency Response Act (AHERA) for re-entry into schools following an asbestos abatement project.

The authorities under which the Program is operated and funded clearly state that the response actions undertaken/to be undertaken are discretionary functions. While the owners and occupants of commercial spaces have been able to rely on commercial insurance resources and on other governmental programs, tenants and residence owners have not had the same degree of resources available to address testing and cleanup (see Note 5, Enclosure 1). EPA remains

confident that the cleaning procedures recommended to the public for residential and commercial spaces following the collapse of the World Trade Center are effective. Our view has been confirmed by data from the Program. While the recommended cleanup methods may, in some cases, have to be applied more than once, they are effective. We are continuing to evaluate the monitoring results and how they may apply to cleanup efforts previously undertaken in non-residential buildings. Workers who have any concerns may contact OSHA directly at 1 800 321-OSHA. We will keep you informed of our progress.

There remains much to be accomplished; however, I believe that with the cooperation and assistance of all our partners and with input from the public we will achieve our goal, protecting the public from potential exposure to residual dust that may contain pollutants and providing them with information that will help them feel comfortable in their homes.

I look forward to continuing to work with you, as well as other members of the community, as we address the indoor air concerns of the residents of lower Manhattan. If you have any concerns please contact Peter Brandt, Chief, Intergovernmental Affairs Branch at 212 637-3654.

Sincerely,



Kathleen Callahan
Assistant Regional Administrator for New York City
Response and Recovery Operations

cc: P. Clark, OSHA Region 2
J. Picciano, FEMA Region 2
C. Ward, DEP

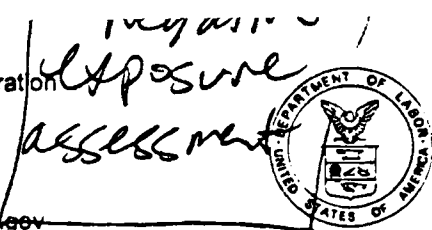
Enclosures

Enclosure 1 **Notes**

- Note 1:** We have developed the clearance level (that is, the risk-based cleanup goal) to determine when cleaning is effective in a residence participating in the Program. For the Program, there are not any directly applicable standards that have broad scientific support which correlate airborne exposure to dust containing hazardous substances. Accordingly, as is common practice in removal actions under the National Oil and Hazardous Substances Contingency Plan, 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 confirm that the chosen clearance level is a protective long-term risk guideline.
- Note 2:** Initial personal air monitoring was performed by the Cleaning Contractors, in accordance with OSHA requirements, at a minimum of one employee per shift per residence per quadrant for the first 10 weeks of cleaning operations. Currently samples are being taken at one sample per quadrant per day. Results of this sampling are being provided to both the EPA and OSHA and are also available to the employees or their designated representative in accordance with 29 CFR 1910.1020 and 29 CFR 1926.1101.
- Note 3:** In a residence not meeting the clearance level where only testing was conducted, EPA recommends that the home be cleaned and re-tested. In a residence where both cleaning and testing were done, EPA attempts to identify potential sources of pollutants and then re-clean and re-test the home to meet the clearance level.
- Note 4:** I am informed that under New York State law, the use of PPE in asbestos projects is addressed in the New York State Labor Law and its implementing regulations, and in the Rules of the City of New York. PPE is required only for workers involved in "asbestos projects" or "minor asbestos projects" under DEP's Asbestos Rules, and involved in "asbestos projects" under the New York State Labor Law.
- Note 5:** For instance, governmental financial assistance, including but not limited to grants and low interest loans for commercial property owners, was and still is available through the Small Business Administration, New York State Economic Development, New York City Economic Development Corporation, and FEMA. For further information on governmental funding for commercial and business properties, you may contact Joseph Picciano, Acting Regional Director, FEMA Region 2 at (212) 680-3609.

U.S. Department of Labor

Occupational Safety and Health Administration
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 New York, New York 10014
 Tel: (212) 337-2378
 Fax: (212) 337-2371
 OSHA Website Address: <http://www.osha.gov>



June 14, 2002

Kathleen C. Callahan
 U.S. Environmental Protection Agency
 Deputy Regional Administrator
 290 Broadway
 New York, NY

Dear Ms. Callahan:

This is in response to your latest electronic request addressed to David J. Ippolito, in which you sought a written description of OSHA's asbestos monitoring data for the assessment and selection of personal protective equipment for use by contractors who will be included in your residential clean-up program.

29 CFR 1926.1101 presumes worker exposure to asbestos in the construction workplace for specific work operations until this presumption is rebutted by air monitoring or until the employer has obtained a Negative Exposure Assessment as defined in this standard. As you know, OSHA activities at the WTC site have included assisting the New York City Department of Design and Construction and the New York City Fire Department (co-incident commanders) in characterizing exposures to many contaminants, including asbestos.

Results from that sampling activity indicate that worker exposures to airborne asbestos have been, and continue to be, very low relative to the applicable limits. As of June 10, OSHA has taken 1,398 airborne asbestos samples (both personal and area) on and around the WTC site. Those samples were analyzed by Phase Contrast Microscopy (PCM) for total fiber counts, which counts all fibers as defined in the OSHA standard, not just asbestos fibers. Of the 1,398 samples taken, only 157 revealed exposure in excess of OSHA's applicable Permissible Exposure Limit (PEL) of 0.1 fiber per cubic centimeter. However, when discriminating counting techniques and/or Transmission Electron Microscopy (TEM) analysis was performed on these samples, the asbestos fiber count was always less than half of OSHA's PEL.

In addition, OSHA's Manhattan Area Office has initiated an enforcement local emphasis program (LEP) to monitor cleanup activities in damaged buildings surrounding the WTC site, which we believe represent the heaviest of the settled dust accumulations. The boundaries of this LEP are: Chambers to the North, Broadway to the East, Rector to the South and Hudson River to the West. The air and bulk samples collected during those monitoring inspections contain no detectable levels of asbestos. In summary, as of June 11, 2002, twenty-five bulk samples of settled dust and debris taken from six of these surrounding buildings as part of this LEP/building debris removal all were found to be non-detected for asbestos. Twenty-five air samples, the majority being personal samples, taken in these same buildings to assess exposure on workers

who performed various construction tasks and building cleanup operations were found to be non-detected for asbestos. For more specific information of the results of this sampling and the buildings sampled please see the attached addendum.

The sum of these sample results constitutes a large pool of historical data representing employee exposure to airborne asbestos dust and constitutes a **Negative Exposure Assessment** as defined by Section 29 CFR 1926.1101, paragraph (a). That assessment includes both the workers directly involved in the debris removal at the WTC site, as well as those exposed to heavy settled dust accumulations in buildings immediately bordering ground zero. Therefore, while the settled dust originating from the WTC collapse may contain asbestos exceeding 1 percent, the dust poses a very low risk to the workers who disturb it.

Once a negative exposure assessment for asbestos has been obtained pursuant to 29 CFR 1926.1101, then workers would not be required to use any protective clothing or respiratory protection. Therefore, based on this historical asbestos sampling data obtained at Ground Zero and the surrounding affected buildings, OSHA's assessment for the EPA cleanup of residential apartments would not require workers to use any respiratory protection or protective clothing.

OSHA does not discourage the voluntary use of respiratory protection or other personal protective equipment that is provided to employees in the interest of worker safety and health. However, please remember that OSHA's respiratory protection standard 29 CFR 1910.134 requires that employers may provide respirators at the request of employees or permit employees to use their own respirators if the employer determines that such respirator will not in itself create a hazard. If the employer determines that any voluntary respirator use is permissible, the employer shall provide the respirator users with the information contained in 29 CFR 1910.134 Appendix D. Please also remember that 29 CFR 1910.134 (e) *medical evaluation* and (f) *fit-testing*, require that employees be medically evaluated and fit tested before using any respirator other than a "dust mask" (filtering face piece). Employees who voluntarily use only a "dust mask" or filtering face piece would not be required to be medically evaluated or fit-tested. Employers who voluntarily provide protective clothing for their workers should also be aware that protective clothing worn at elevated temperatures may create additional hazards such as heat stress / heat stroke. Workers using such clothing may need frequent breaks and plenty of fluids.

Should you require any additional information or need further clarifications, please feel free to contact me at (212) 337 - 2378.

Patricia K. Clark

Regional Administrator
Region II

ADDENDUM - A - MANHATTAN OSHA AREA OFFICE
LEP ASBESTOS SITE SPECIFIC INSPECTION DATA

90 West Street:Activity:

Samples taken:

4 bulks for asbestos: **All were ND for asbestos**
 2 bulks taken on 2nd fl ground & 2nd fl stairway debris
 2 bulks taken from overhead Thermal System Insulation

3 personal air for asbestos: **All were ND for asbestos**
 Total Fibers range from ND - .1800 f/cc

Activity: **Electricians working in the basement**

102 North end Avenue:

Samples taken:

3 asbestos (air) were taken: **All were ND for asbestos**
 Total fibers range from 0.0230-0.0620 f/cc

Activity: **3rd phase of cleaning area - cleaning hotel rooms using
 HEPA vac**

3 World Financial Center:

Samples taken:

6 bulks for asbestos were taken: **All were ND for asbestos**
 (4) 4th fl -NW side of building (WTC debris)
 (2) 6th fl - Area already cleaned -took samples as
 precaution

3 personal air samples for asbestos: **All were ND for asbestos**
 Total fibers range from .0960 - .270 f/cc

Activity: **2 samples employees bagging office material in
 area contaminated from WTC collapse
 1 sample employee cleaning HVAC system**

1 World Financial Center:

Samples Taken:

5 bulks for asbestos were taken: All were ND for asbestos

4 personal air samples for asbestos: All were ND for asbestos

Activity:

Carpet mastic removal

130 Liberty Street:

Sample Taken:

6 personal air samples conducted for asbestos All ND for asbestos

2 Area samples taken in the plaza area All ND for asbestos

Activity:

**Carpenters performing renovation
operation/clean up**

130 Cedar Street:

Samples Taken:

4 personal air samples conducted for asbestos All ND for asbestos

10 bulk samples taken on floors 2 through 11 for asbestos All ND for asbestos

Activity:

**Asbestos abatement contractor removing debris
subject to Governor's emergency order**



**Department of
Environmental
Protection**

55-17 Junction Boulevard
Flushing, New York
11373-5108

**Christopher O. Ward
Commissioner**

August 5, 2002

Hon. Jane Kenny
Regional Administrator
U.S. Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, NY 10007

**Re: World Trade Center Indoor Dust Cleaning
Program**

Dear Ms. Kenny:

I am writing to advise you that DEP's Bureau of Environmental Compliance (BEC) has reviewed the draft "Cleaning Contract Scope of Work" for the World Trade Center Indoor Dust Cleaning Program (Draft - 8/2/02) (copy attached).

With regard to "Scope of work A", which sets forth the procedures to be employed where minimal dust accumulations are present, BEC has determined that such cleaning work does not constitute an "asbestos project" or "minor asbestos project" as those terms are defined in the DEP Asbestos Rules, Title 15, Chapter 1, Rules of the City of New York §1-02.

Further, insofar as DEP is authorized pursuant to §24-146.2 of the New York City Administrative Code to enforce Article 30 of the New York State Labor Law and the regulations adopted thereunder, BEC has determined that cleaning work undertaken pursuant to "Scope of work A" does not constitute an "asbestos project" as defined in §901 of the New York State Labor Law and 12 NYCRR Part 56-1.4(o).

Sincerely,

A handwritten signature in cursive script, reading "C. Ward", written in dark ink.

Christopher O. Ward



TONY AVELLA
COUNCIL MEMBER, 19TH DISTRICT
QUEENS

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January 29, 2003

Ms. Kathleen Callahan
Assistant Regional Administrator
New York City Response and Recover Operations
Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007-1866

Dear Ms. Callahan:

I am writing to you on behalf of the New York Committee for Occupational Safety and Health (NYCOSH), whose mailing address is 275 Seventh Avenue, 8th Floor, New York, NY 10001.

Mr. Joel Schufro, Executive Director of NYCOSH, reports that workplaces have been excluded from the EPA's Lower Manhattan cleanup efforts. Additionally, he states that EPA fails to require adequate respiratory protection for its cleaning workers.

I am concerned that Mr. Schufro brought these matters to your attention in July 2002, and still has not received a response. I agree that these concerns are valid and should be addressed.

Please review these matters and advise me of your findings.

Thank you.

Sincerely,



Tony Avella
Council Member
District 19 – Northeast Queens

cc: Mr. Joel Schufro, Executive Director, NYCOSH
TA:km