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**TRANSPORTATION AND
INFRASTRUCTURE COMMITTEE**

SUBCOMMITTEES:
HIGHWAYS AND TRANSIT
RAILROADS
REGIONAL WHIP



**Congress of the United States
House of Representatives**

Washington, DC 20515

March 14, 2002

JERROLD NADLER

8TH DISTRICT, NEW YORK

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Christine Todd Whitman
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator Whitman:

It has been brought to my attention that on March 18, 2002, the City of New York is preparing to return hundreds of vehicles from the World Trade Center to their owners that are presently stored and/or disposed of at the Fresh Kills landfill in Staten Island, NY. A recent *New York Daily News* article, which I have enclosed for your review, documented that these vehicles are contaminated with dust from the World Trade Center, and that tests on some of the cars show dangerous levels of asbestos. Remediation of these vehicles will be incumbent on the owners and insurance companies, and the only guidance from the government is a "tip sheet" from New York City Department of Health (NYC DOH) telling people how to remove asbestos-laden dust.

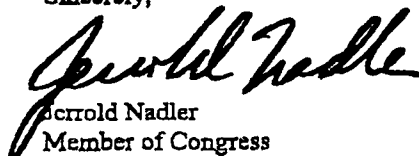
Requiring average citizens to clean their own cars of asbestos, and possibly other hazardous materials, is reckless and irresponsible, and presents a threat to public health. Therefore, I urge you to exercise your authority under the Resource Conservation and Recovery Act (RCRA) to prevent the return of these cars by New York City. As you know, 42 USC 6973(a) of the RCRA statute authorizes the EPA Administrator to take action necessary, including the issuance of administrative orders, or filing suit in the appropriate district court, when hazardous waste presents an "imminent and substantial endangerment to health."

Clearly, the burden should not be on the vehicle owners to make their cars safe, particularly when the remediation of hazardous materials and waste must be conducted by properly trained personnel and must follow all applicable government regulations. I respectfully request that you exercise your authority to:

1. File an emergency injunction, or follow the appropriate administrative procedures, to stop the return of these vehicles to their owners on March 18, 2002; and
2. Direct EPA's On-Scene Coordinators to remediate the cars for hazardous waste contamination before returning them to their owners; or
3. Request that the Federal Emergency Management Agency (FEMA) reimburse people for these vehicles if EPA determines it is unable to remediate them, or that these cars cannot be safely operated.

I understand this request is time-sensitive, but I believe this action by the City of New York presents an "imminent and substantial" threat to the health of owners, passengers, or any other individual who may encounter these contaminated cars, and requires an immediate response. Thank you for your prompt attention to this matter.

Sincerely,


Jerrold Nadler
Member of Congress

cc: Mayor Michael Bloomberg
Governor George Pataki
NYC Dept. of Health Commissioner Frieden
NYC Dept. of Sanitation Commissioner Doherty

Enclosure

Trade Center, please provide the date the decision was made to stop using OSCs, who made this decision, and why, and all documentation relevant to this decision.

- I assume the OSC's were working in New York City pursuant to the National Contingency Plan (NCP). If this is not the case, under what authority, other than the NCP, can OSCs operate? If other authority exists, please provide documentation to support the application of such authority to response efforts taken in New York City following September 11th, 2001.
- Has the EPA operated under the National Contingency Plan in any capacity in New York City following the attacks of September 11th, 2001? If not, why not? How does the Federal Response Plan function in relation to the National Contingency Plan? Does the Federal Response Plan trigger the National Contingency Plan? If not, what statutory or regulatory authority relieved the EPA of the obligation to implement the National Contingency Plan in New York following the attacks of September 11th, 2001, once the Federal Response Plan was activated and there had been a release of hazardous materials? To what extent has EPA made mission assignments related to removal of hazardous materials in lower Manhattan (indoor and outdoor) as it is required to do by Emergency Support Function #10 of the Federal Response Plan? How does this relate to your letter's statement that FEMA made mission assignments? If FEMA made the mission assignments related to the release of hazardous materials independent of EPA, does this not represent an abdication of EPA's responsibility under the NCP to protect the public health and environment?

In your letter of February 22, 2002, you responded to my concerns about the cleanup of federal buildings by stating that "EPA did not set a more stringent standard of cleanup for these federal buildings, and the lobby cleanup was consistent with the New York City Department of Health advisory." You included a document entitled "USEPA Air Analytical Results from 9/13/01 Sampling Event," which states that the methodology used on dust samples was PLM - EPA-600 R-93/116. However, in documents obtained in the aforementioned FOIA request, it appears that sampling was conducted at 290 Broadway on 9/14/01-9/28/01 as well, and that these dust were also analyzed using Transmission Electron Microscopy (TEM) methods (See Enclosure). I am pleased that TEM methods were used to analyze dust samples, as I have been advocating that the most sensitive detection methods be used in response to the collapse of the World Trade Center.

- Have all the dust samples collected in Lower Manhattan in response to the collapse of the World Trade Center been analyzed using TEM methods? If so, please provide all documentation and the results of such tests. If not, please explain why dust samples collected at 290 Broadway were analyzed using TEM, but the same testing methodology was not used to analyze samples collected in other parts of the city.
- Please explain the discrepancy in these documents, and why documents related to actions taken on 9/14/01-9/28/01 were not included in your response to my inquiry.

In response to my concerns that EPA guided residents to the NYC DOH recommendations for reoccupying their homes, which advised residents to clean asbestos-laden dust with a "wet rag or wet mop", you wrote "Our Agency also advised residents in frequent public appearances, press releases, and phone conversations on our 24-hour hotline, that if they had more than minimal dust they should hire a certified asbestos cleanup contractor. For those with only minimal dust, EPA also continued to recommend wet wiping, mopping, and HEPA vacuuming in these situations, consistent with the City's recommendations." However, in a communication included in documents obtained by the aforementioned FOIA request, EPA writes that "We have advised people that their homes or offices, it may be easiest for them to simply assume that it is 'asbestos containing material' (ACM), rather than paying to test each dusted area and the results before taking any further action" (See Enclosure).

WTC
Correspondence
file

- Please provide all documentation of EPA advising residents that they should hire a certified asbestos cleanup contractor.
- Please define what is meant by the term "minimal dust" and all documentation to support the definition. Please provide all documentation that residents and the public were notified of the definition of "minimal dust." Please explain why there is a delineation between less than, or more than, minimal dust when, according to OSHA, as well as EPA, all of the dust must be "assumed to be asbestos-containing material?"
- Your statement seems to suggest that the EPA condones allowing residents to assume the burden of testing and remediation. Is this correct? Does the EPA agree that the burden of testing and remediation should be placed on the residents, building managers, and/or property owners?
- Under what federal statute or regulation does EPA have authority to delegate its responsibilities to control or remediate releases of hazardous materials following the September 11th, 2001 attacks in New York? Under what federal statute or regulation is EPA relieved of its oversight responsibilities to ensure compliance with all public health and environmental statutes when it has delegated its responsibility to respond to the release of hazardous materials?

Thank you for your prompt response to these questions and requests for information. I also respectfully request that either you, or someone from the EPA who has sufficient knowledge to address these issues, participate in the second EPA National Ombudsman Investigative Hearing scheduled for 11:30am, Monday, March 11th, 2002 at the US Courthouse at 500 Pearl Street in New York City. A formal invitation has been issued by the Ombudsman's office to EPA Region II officials in New York. I believe these matters could be addressed in a much more comprehensive and timely manner with EPA's participation in this process.

I am dismayed that EPA Region II officials declined to attend the first EPA Ombudsman Investigative Hearing, and referred to it as "pure theater." I hope this is not the official position of the EPA. It is my understanding that, until now, it has been standard operating procedure for EPA officials to attend and provide information at all EPA National Ombudsman Investigative Hearings. In fact, this would seem to be part of the status quo the EPA is required to adhere to by the Temporary Restraining Order (TRO) issued by Judge Richard W. Roberts. I urge you to comply with your normal practice, and ensure that EPA treats the New York hearings in the same manner as it has treated hearings in all other regions of the country. Failure to do so would seem to be in violation of the court order. The people of New York have a right to this information, and to these proceedings. As you are well aware, this is an urgent matter for the people who live and work in Lower Manhattan and who must live with the threat of hazardous waste contamination produced by the collapse of the World Trade Center. Thank you, again, for your pledge to assist the people of New York. I look forward to your prompt response.

Sincerely,


Jerrold Nadler
Member of Congress

Enclosures