

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

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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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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

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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.

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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.]

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- 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.

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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

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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.