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OFFICE OF CONGRESSMAN JERROLD NADLER

Date: 5/24/02 Time: _____
To: Bob Alvertrone
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From: Rep. Jerrold Nadler X Amy Rutkin X
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Number of Pages (including cover sheet): 4

Comments: Ltr from OSHA to Lowell Peterson

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FROM: MEYER, SUOZZI, ENGLISH & KLEIN

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U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

JAN 27 2002

Mr. Lowell Peterson
Meyer, Suozzi, English and Klein, P.C.
Counselors at Law
1350 Broadway, Suite 501
New York, New York, 10018

Dear Mr. Peterson:

Thank you for your October 16 letter to the Occupational Safety and Health Administration (OSHA). This letter constitutes OSHA's position only on the requirements discussed and may not be applicable to any issue not delineated within your original correspondence. You presented steps that Local 78 of the Asbestos, Lead, and Hazardous Waste Laborers union thinks are imperative to protect the workers and residents in the area of the World Trade Center from the settled dust produced by the collapse of the twin towers. The steps the union recommends and our replies are provided below.

Step 1: All of the dust must be tested for asbestos using the Transmission Electron Microscopy method.

Reply: In that the materials containing asbestos were used in the construction of the Twin Towers, the settled dust from their collapse must be presumed to contain asbestos. Therefore, the use of Transmission Electron Microscopy (TEM) is not necessary in order to establish that the applicable provisions of the Construction Asbestos standard, 29 CFR 1926.1101 apply during the demolition or salvage of the affected structures.

Step 2: All dust which tests positive must be removed by licensed contractors using certified asbestos handlers.

Reply: As you may know, contractor licensing and asbestos handler certification are city and state programs. Your concern, however, is directed toward ensuring the appropriate handling of asbestos hazards. OSHA's requirements, per 29 CFR 1926.1101(a)(1), address the need for a "competent person" and state that this individual must be on the worksite. The competent person must have the qualifications and authorities for ensuring worker safety and health as required by Subpart C, General Safety and Health Provisions for Construction (29 CFR 1926.20 through 1926.32).

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The general definition of a "competent person" is presented at 29 CFR 1926.32(f). According to the standard, a "competent person" is, *"one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them."* Paragraph 1926.1101(b) further defines a "competent person" as, *"in addition to the definition in 29 CFR 1926.32(f), one who is capable of identifying existing asbestos hazards in the workplace and selecting the appropriate control strategy for asbestos exposure, who has the authority to take prompt corrective measures to eliminate them, as specified in 29 CFR 1926.32(f)."* The Construction Asbestos standard further incorporates the provisions of 29 CFR 1926.20(b)(2) which requires frequent and regular inspections of job sites, materials, and equipment to be made by the competent person. These requirements are geared toward ensuring maximum safety and health for employees on worksites where asbestos is present.

Step 3: HEPA filters must be evaluated

Reply: The National Institute for Occupational Safety and Health (NIOSH) is the Federal agency assigned the responsibility for approving respirators and filters. All respirators and filters required by OSHA standards must be NIOSH certified. OSHA's Respiratory Protection Standard, 29 CFR 1910.134, governs the workplace use of respirators.

A NIOSH-certified HEPA filter is, *"a filter that is at least 99.97% efficient in removing mono-disperse particles of 0.3 micrometers in diameter."* Equivalent particulate filters certified by NIOSH are the N100, R100, and P100 filters.

The 0.3 micrometers (microns - μm) diameter particle used in the certification testing of the HEPA (and 100-series) respirator filters is approximately the most penetrating for particulate filters. Although it seems contrary to expectation, smaller particles do not penetrate as readily as 0.3 μm particles. That is to say, these filters eliminate other particle sizes at least as well as the certified efficiency value of 99.97%.

Step 4: The remaining debris must be taken out properly.

Reply: Asbestos-containing waste must be presumed to be intermixed with the remaining debris at the World Trade Center site because materials containing asbestos were used in the construction of the Twin Towers. Therefore, in accordance with 1926.1101(g)(1)(ii), wet methods must and are being used to control employee asbestos exposures while removing the remaining Twin Towers debris except where employers

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demonstrate that the use of wet methods is infeasible. The debris must be kept wet at all times until it has been loaded and transported away from the site.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statutes, standards, regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretations of the requirements discussed. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>. If you have any further questions, please feel free to contact the Office of Health Compliance Assistance at 202-693-2190.

Sincerely,



John L. Henshaw