

DEPARTMENT OF ENVIRONMENTAL PROTECTION
59-17 Junction Boulevard
Corona, New York 11368-5107

Full
cc
TO
(F) World
TRADE
CENTER-Corona
TO: Russ P

LOG NO. _____

RETURN BY _____

- ☐ For Immediate Action/Urgent
- ☐ For Appropriate Action
- ☐ Draft response for my signature
- ☐ Draft response for Commissioner's signature and return to me
- ☐ Discuss with me
- ☐ For your comments
- ☐ For your information
- ☐ File under _____

Remarks: _____

Here are my edits, which you
are free to disagree with. Add
any thoughts you have + convey
our comments to Mike (or if
you disagree with anything here +
want to discuss - let me know)

Mark D. Hoffer
General Counsel

DATE SENT: 10/14/04

Gilsenan, Michael

From: Maldonado, Jane
Sent: Friday, October 08, 2004 3:00 PM
To: Gilsenan, Michael
Subject: 130 Liberty Street Letter

October , 2004

ADDRESSEE

Dear :

This letter reiterates the New York City Department of Environmental Protection's (NYC DEP) position regarding dust clean-up issues related to 130 Liberty Street. The Department has stated numerous times to interested parties that USEPA's WTC Clean-up Program protocols be used for remediation purposes in this case. Our position is based on the following: **Should**

As part of EPA's WTC Clean-up Program, DEP was responsible for the project management of interior clean-up activities at un-cleaned, unoccupied buildings impacted by the collapse of the World Trade Center. The Scope of Work for this project was developed by the EPA and its Federal, State and City partners. The cleaning contractor was required to be in compliance with all applicable laws and regulations including, but not limited to, regulations issued by the USEPA, the United States Department of Labor Occupational Safety and Health Administration (OSHA), the New York State Department of Labor (NYS DOL), and the NYCDEP. **certain**

NYS DOL licensed asbestos contractors performed the cleaning activities and an independent monitoring contractor monitored the work, performed final visual inspections, and performed asbestos air sampling when the cleaning was completed, on all NYCDEP clean-up activities.

Also, as part of EPA's WTC Clean-up Program, the NYC DEP contracted and oversaw an exterior clean up program at buildings impacted by the collapse. The Department performed visual inspections at the buildings and targeted areas that required clean up. In the absence of homogeneous debris and a discernable distribution pattern, the Department determined that all WTC debris would be treated as asbestos-containing material (ACM).

The NYC DEP Asbestos Control Program (ACP) provided guidance to building owners within a few days of the collapse. The document was based on the ACP Rules and Regulations for assessment and clean-up activities and the interpretation thereof, and was distributed by mail and through site visits. This document remains in effect and summarizes the Department's position regarding compliance. **WTC**

The City's Asbestos Control Program Rules (15 RCNY Chapter 1)
 In addition to the background information regarding the WTC clean-up activities, the Asbestos Rules require that asbestos-containing materials be removed prior to the demolition of any structure. Demolition activities cannot in any way compromise ACM abatement. The abatement procedures prior to a demolition project require the installation of decontamination enclosure systems, installation of isolation barriers, pre-cleaning, etc. by certified asbestos workers. Debris within the work area, whether ACM or not, must be cleaned up. Objects that can be pre-cleaned must be cleaned using HEPA-filtered vacuum equipment and/or wet cleaning. **and regulations**

Based on our experience at buildings impacted by the collapse of the WTC and the requirements set forth in the asbestos rules, the Department recommends the cleaning of WTC debris from all surfaces as part of the

abatement activities necessary at the building.

Sincerely,

MEMORANDUM OF AGREEMENT BETWEEN THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 2
AND
UNITED STATES DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION
STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION
STATE OF NEW YORK DEPARTMENT OF LABOR
CITY OF NEW YORK DEPARTMENT OF ENVIRONMENTAL PROTECTION
CITY OF NEW YORK DEPARTMENT OF BUILDINGS

I. GENERAL

This Memorandum of Agreement ("Agreement") sets forth the roles and responsibilities of the United States Environmental Protection Agency, Region 2 ("EPA"), the United States Department of Labor, Occupational Safety and Health Administration ("OSHA"), State of New York Department of Environmental Conservation ("NYSDEC"), State of New York Department of Labor ("DOL"), City of New York Department of Environmental Protection ("DEP"), and City of New York Department of Buildings (collectively the "Parties") joining in this Agreement to facilitate compliance by the Lower Manhattan Development Corporation ("LMDC"), its contractors and agents, with the letter and the spirit of the law related to the deconstruction of the building located at 130 Liberty Street, in New York City, New York State ("130 Liberty").

This Agreement also sets forth principles by which the Parties will review and comment on proposed deconstruction plans and specifications, coordinate their activities and provide oversight of the deconstruction and environmental monitoring related to 130 Liberty.

II. POLICY STATEMENT

In the spirit of cooperation and collaboration, and with the mutual understanding that this is a flexible working Agreement, the Parties commit to undertake the following actions related to the deconstruction of 130 Liberty Street:

Support concerted, cooperative, effective, and collaborative work to ensure protection of public health, safety and the environment.

Participate in the review of technical information, plans and specifications, monitoring data and identification of impacts.

Comment on proposed plans and specifications and monitoring data for 130 Liberty to ensure compliance with applicable laws and regulations.

Provide timely review and comment to identify additional requests for information that are needed to reach an informed decision.

~~Ensure that LMDC and its contractors implement plans and procedures to minimize any releases into the environment during the deconstruction process.~~

~~Ensure proper disposition of all waste materials generated as a result of the deconstruction.~~

> EPA/
DEC'S
Job

Identify solutions to reduce delays by using concurrent review of plans and data.

Participate in meetings, as necessary, to discuss issues related to 130 Liberty.

Share information among Federal, State and City agencies in order to minimize duplication of effort.

Maximize public outreach in coordination with involved agencies.

To the greatest extent possible, speak with one voice.

~~Conduct outreach and information sessions for the public.~~ LMDC'S Job.

NYSDEC and EPA agree that with regard to RCRA, their roles pursuant to the Memorandum of Agreement for the State of New York's Hazardous Waste Program apply to this Agreement.

Nothing in this Agreement shall be construed as a waiver of any Party's enforcement authority under applicable law.

III. ROLES AND RESPONSIBILITIES

U.S. Environmental Protection Agency

Take the lead for convening the Parties and cooperating with them to facilitate the goals of protecting public health, safety and the environment.

Review and comment on LMDC's proposed plans and deconstruction specifications ("Specifications"), any reports, documents and monitoring data and the use of best management practices ("BMPs") related to 130 Liberty.

Assist NYSDEC in implementing its review and comment, oversight and inspection obligations under RCRA.

Assist DOL, DEP and OSHA in providing comments to LMDC to facilitate compliance with all legal requirements for an asbestos demolition project.

Assist NYSDEC and New York State Department of Health ("NYSDOH") in developing standards and reviewing LMDC's monitoring plan for ambient air.

Work with the other Parties to minimize the release or threat of release into the air from the deconstruction.

Assist NYSDEC with oversight of ambient air monitoring related to 130 Liberty.

New York State Department of Environmental Conservation

Take the lead as an authorized state under RCRA to provide guidance to LMDC and to review the draft Specifications and any reports, documents and monitoring data related to the work at 130 Liberty.

Require LMDC to implement written procedures setting forth BMP's to contain any dust generated, characterize all waste streams using all data related to 130 Liberty.

Provide guidance to LMDC and review plans and procedures to ensure proper containerization and transportation of wastes, use of manifests and land ban notices, as necessary, and delivery of wastes to proper permitted facilities.

Assist NYSDOH and EPA to formulate criteria for ambient air monitoring.

Provide guidance to LMDC to ensure that a protective monitoring plan for ambient air is implemented and followed.

Review and comment on ambient air monitoring data along with NYSDOH and EPA.

Work with the other Parties to minimize the release or threat of release into the air from the deconstruction.

Perform oversight and inspections of the deconstruction activities, with EPA assistance.

New York State Department of Labor

Take the lead to provide guidance on the draft Specifications and any reports and documents in support of the Specifications to protect worker safety and health.

Review and provide comments to LMDC on the draft Specifications and any reports and documents in support of the Specifications to facilitate compliance with all legal requirements for an asbestos demolition project.

Require written procedures from LMDC for its contractors, agents and employees on BMP's to ensure worker safety, health and environmental protection related to asbestos containment, demolition and disposal activities at 130 Liberty.

Inspect 130 Liberty and perform oversight of asbestos demolition activities.

Meet with EPA and other Parties to share comments and concerns in a timely manner prior to meetings with LMDC, its contractors, agents or employees.

Ensure that LMDC, its contractors and agents, minimize the release or threat of release of asbestos or asbestos containing materials into the environment at and from 130 Liberty.

U.S. Department of Labor, Occupational Safety and Health Administration

Use best efforts to enter into a partnership agreement with Gilbane Building Company to facilitate compliance with the requirements for protection of worker safety, health and the environment by Gilbane, its subcontractors, employees and agents.

Inspect 130 Liberty and perform oversight of the deconstruction activities to ensure protection of worker safety and health.

Cooperate with EPA, DOL and DEP and share comments and concerns related to 130 Liberty in a timely manner.

New York City Department of Environmental Protection

Cooperate with EPA, OSHA and DOL to share comments and concerns in a timely manner related to BMPs for an asbestos demolition project.

New York City Building Department

Provide guidance and information to the Parties to facilitate their understanding of the legal requirements and BMPs for a demolition project under the New York City Building Code, and applicable City law.

IV. BENEFICIARIES OF THIS AGREEMENT

This document is intended solely to memorialize the roles and responsibilities of the signatories providing oversight of the deconstruction plans and activities for 130 Liberty. Nothing herein is intended to create any rights substantive or procedural, enforceable or accruing to third parties.

V. AMENDMENT OF AGREEMENT

This Agreement may be amended in writing by agreement of the Parties hereto. It is effective upon signature, and will remain in effect until the deconstruction of 130 Liberty is completed.

VI. SIGNATURE

This Agreement shall be signed by the Regional Administrators of EPA and OSHA and the Commissioners of DOL, DEP and the Building Department, or their designees.

[Insert Signature Pages for all Parties. Please provide the names and format for the signatures.]