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Cc: Becker, Kenneth; Cohen, Jay; Maiorana, Matthew
Subject: RE: EPA Draft Recommendations



Revised Draft SB
Comments.doc

Attached are my quick comments on Jay's draft.

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Thank you for the opportunity to respond to the revised excerpts from the Draft Evaluation Report: EPA's Response to the World Trade Center Collapse: Lessons Learned, Assignment No. 2002-0000702. This response is on behalf of New York City ("the City") to the Draft Evaluation Report. Also, the City requests that you consider the comments forwarded to the Environmental Protection Agency (EPA) by letter dated July 8, 2003 concerning the initial excerpts that the EPA forwarded to the City, which are attached hereto, in addition to the comments contained herein.

Before commenting on the excerpts, which were forwarded to the City, the City must note that although it has requested that it be provided the entire draft report, so that it would be better able to address the comments in the draft report concerning the City, only excerpts were provided to the City. Without access to the entire draft report to place comments concerning the City into context, the City is disadvantaged in providing comments to the excerpts. However, comments in the excerpts concerning the City compel a response by the City and the City hereby responds to the best of its ability. The following comments are submitted on behalf of the City.

1. The City believes that the third sentence in the first paragraph on page 1 of the revised draft report is misleading. The sentence implies that the EPA assumed a lead role in responding to indoor environmental concerns because of criticism of the City. It implies furthermore that criticism of the City was warranted. The evidence does not support a conclusion that the EPA took a lead role with respect to this issue solely because of criticism of the City. There were a number of factors present at this time which probably influenced any EPA decision to take a lead role in addressing environmental concerns, including criticism of the EPA and the initial availability of federal funds at that time to address this issue. More importantly there is no evidence available to support that any criticism of the City with respect to indoor environmental concerns was warranted. Also, the sentence, refers to EPA initiating a multi-agency task force at that time. This implies that this was the first time that federal, state and City agencies worked together to address this issue. The documents supplied by the City show that federal, state and City agencies worked together from September 12, 2001 to address the environmental issues, including indoor environmental concerns. We recommend that the sentence be revised to read, "EPA began to assume a lead role in February 2002, when the Agency chaired a multi-agency task force to continue to address concerns about the indoor environment."

2. The City has similar comments with respect to the paragraph labeled "**Indoor Contamination Response**" on page 1. This comment refers to concerns raised by public and elected officials and specific criticism of the City. Again including this criticism appears to imply that the criticism was warranted, particularly since the City's position is not presented. The City notes that in the same paragraph, where criticism of the EPA is set forth, the EPA's position is presented in rebuttal to the criticism. The City believes that the evidence does not support the criticism. For example, criticism concerning delegating testing and remediation efforts to building owners and residents is unwarranted. The City did not delegate this responsibility to owners and residents. The owners and residents always have had this responsibility, it was never the City's responsibility to do this and consequently the City could not delegate what it did not have. Similarly, there is no evidence to support that the City did not enforce proper procedures for cleaning asbestos where it had the enforcement authority and that the City gave improper advice to the public on testing and cleaning procedures. As noted before, the EPA adopted the City's advice to its citizens. Moreover, including these criticisms implies

that there was asbestos in these buildings. There is no evidence to support a claim that any significant number of buildings wasere contaminated with asbestos. Both the sampling conducted by many agencies and New York City's response to complaints concerning asbestos, where out of over 300 responses to complaints there was 1 finding of asbestos at above the threshold level. This section also is not appropriate for this substantive section of the EPA report. The City does not dispute that there was criticism, but the criticism is irrelevant to whether the City and EPA followed the appropriate statutes, regulations and procedures. While the criticism may provide a basis for the reason for conducting the EPA Report, it does not provide any basis for the findings in the report. To include the criticism in the substantive portion of the report in the manner in which it is included is unduly prejudicial to the City. Accordingly, the City recommends that this section be deleted.

3. Concerning the second sentence in the paragraph labeled **"Initial Actions Taken by New York City and EPA"** on page 1, although the City was not provided with the documentation, the City does not dispute that there is EPA documentation concerning the alleged statement by the City. The documentation which appears to be quoted on page 4 and 5 of the revised report, refers to a conversation between the EPA and the U.S. Public Health Service and the New York State Department of Health, where these agencies allegedly relayed to EPA the alleged statement by the City. This is not the type of reliable evidence that should be required to support findings in an Inspector General report. The City cannot confirm or deny the statement given the vagueness of the statement. The City, however, can state that it welcomed any authorized federal assistance at that point in time. To include this statement is unfair to the City. The City therefore recommends that the statement be deleted.

4. Concerning the last sentence in the first full paragraph on page 2, the City believes that EPA Region 2's comment that it did not want to take a more assertive stance because it would create a confrontation is not valid for more reasons than just that EPA was the lead agency for Emergency Support Function #10. [NOTE: operationally, the City utilized the EPA as support for the City's overall health and medical response, which coordinated both the environmental health and the worker safety issues. Thus, the EPA operated more as a support to ESF #8(Health & Medical) rather than as the lead for ESF #10 (Hazardous Materials).-This is demonstrated by the fact that the EPA was assigned to the Health & Medical Functional Group in the City's EOC.]

From September 12, 2001 to the end of the Response Effort, the EPA was thoroughly involved in the effort. EPA had a "seat at the table" as demonstrated by the documents submitted by the City. Moreover, there was a cooperative relationship with the City. In fact, when at a point in time during the Response Effort, EPA suggested that its functions be turned over to a contractor, the City urged the EPA not to do this and to continues to be part of the team.

[NOTE: FEMA initially provided 90 days of funding to federal agencies to support the response to the WTC Event. As the deadline approached, FEMA and the EPA wished to transition to the use of contractors at the site, a standard practice in federal disaster response. However, give the unique scope of the event, the City urged FEMA to extend the mission assignment to EPA in order that the it be able to maintain an on-site presence.] To suggest that EPA could not become more assertive or involved is inconsistent with the evidence.

5. The first paragraph in the section labeled “**New York City’s Initial Response**” on page 2 is somewhat misleading. It fails to mention that the City’s ~~procedure in the past~~ policy was to hold buildings owners responsible for maintaining a safe environment and, when necessary, cleaning up their buildings. ~~and that in previous~~ other disasters, the federal government did not provide for federal funding to municipalities to clean privately owned buildings or property. The City consequently had no authority to request reimbursement for this activity and no authority to enter privately owned buildings, without the owner’s consent to effect such a cleanup or the finding of an imminent hazard. Thus, the second sentence is also somewhat inaccurate. We recommend that the first three sentences be modified as follows: “Consistent with past practices and federal law, building owners were initially held responsible for assessing and cleaning of their own buildings. According to New York City officials, the issue of funding cleaning privately owned buildings was discussed with FEMA and the EPA. Initially, the federal position was that the Stafford Act, the statute which provides authority for federal disaster response, did not provide direct funding to the City for cleanup of privately owned buildings. Instead, building owners who needed help were directed to the Disaster Assistance Service Center (DASC) where they could apply for financial assistance from FEMA. During this discussion, the federal agencies were informed that owners of privately owned buildings would be responsible for funding the clean up of their buildings and agreed with this course of action.”

6. Concerning the first full paragraph on page 4, which begins, “NYCDEP officials told us...”, the paragraph is somewhat inaccurate in that there never ~~was~~ has been a certification program to determine the level of compliance with NYCDEP instructions concerning cleaning of privately owned buildings. Also, the paragraph does not reflect the proactive efforts of the NYCDEP and the fact that NYCDEP not only told EPA it cleaned all of the rest of the buildings, but provided documentation. The City suggests that the first sentence be revised to read, “NYCDEP officials told us they have never had ~~did not create~~ a certification program, nor did they have authority to create such a program, to determine the level of compliance with their instructions regarding the testing and cleaning of asbestos inside buildings, unless a complaint was made or an asbestos abatement notification was filed with the City.” The City suggests that an additional sentence be added that states, “However, NYCDEP made significant efforts, including establishing an additional “hotline” to ensure that residents could obtain information concerning asbestos cleanup and could report any asbestos related problems.” We suggest that the last sentence of the paragraph be revised to read, “NYCDEP officials provided documentation that the remaining buildings were cleaned by NYCDEP with FEMA funding.”

7. With respect to the first full paragraph on p.5, which alleges that New York City officials told EPA that the City would be requesting EPA assistance with respect to sampling and reoccupation issues, without further information such as: who the New York City officials were, or even what New York City agency they represented it is impossible for the City to confirm or deny the allegation. Again, the City at that time was willing to accept all authorized federal assistance. Moreover, as shown in the documents submitted by the City, the City had accepted U.S. Public Health Service and the Agency for Toxic Substances and Disease Registry (ATSDR) assistance in conducting indoor air sampling. Thus, it would be inconsistent for the City to refuse EPA, another federal agency, assistance in this matter. [NOTE: EPA was part of the discussion with ATSDR on the protocol for the indoor air study] The City has already

commented concerning the alleged statement made on September 30, 2001, which is referenced in this paragraph and will not reiterate its comments. The City recommends that the two sentences that refer to the statements allegedly made on October 9, 2001 and September 30, 2001 be deleted.

8. The City believes that the paragraph labeled **"Multi-Agency Residential Cleanup Undertaken"** on page 5 is somewhat misleading. The second sentence suggests that the sole basis for EPA's involvement in indoor air in February 2002 was that it believed that the City could not handle all of the issues involved in this matter. This is not completely accurate. First, EPA did not just become involved in indoor issues in February 2002. As shown by the documents submitted by the City, EPA was involved in indoor air issues as early as September 29, 2001. Second, there were a number of events that coalesced around February 2002 that brought about more involvement in indoor issues by the EPA, including, perhaps most importantly, federal funding for indoor cleaning for private residences. Therefore, the City recommends that the second sentence be deleted.

9. The first paragraph in the section labeled **"EPA Role on In Indoor Environment"** is misleading: as it—refers to the portion of the NCP which allows a state or local agency to take the lead role in the case of a hazardous substance release. However, in this case, there was no hazardous substance release. We recommend that a footnote be added to this sentence noting that there was no hazardous substance release. [NOTE: do we need to be more careful with the language here? To state "there was no hazardous substance release" when we did find some hazardous substances may be misconstrued. I think that the issue is that while there were hazardous materials released, the site itself was never declared to be a "hazardous materials site" (I would check with DOH, DDC, or DEP as to the proper terminology).

10. In the first paragraph of the sub-section labeled **"Cleaning Instructions"**, the report opines that as a result of failure of the City to recommend that residents obtain professional cleaning, long term health risks may have been increased for individuals, who cleaned their residences without using respirators and other professional cleaning equipment. This is speculation that is not supported by the evidence. As mentioned previously, the indoor sampling conducted by a number of entities, including the U.S. Public Health Service and the Agency for Toxic Substances and Disease Registry (ATSDR) and the City in responding to asbestos complaints, indicates that asbestos contamination was virtually non-existent. Consequently, asbestos abatement procedures were not required and the methods recommended by the City were perfectly appropriate. Accordingly, we recommend that this paragraph be deleted.

11. The last paragraph in this section is also inaccurate. The City strongly contests the current opinion of asbestos medical experts contained in the first sentence of this paragraph. First, asbestos contamination was virtually non-existent. Thus, not only is it misleading to state that there were asbestos contamination levels found, but the absence of levels of contamination does not support the conclusion of the experts. Also, the conclusion of the experts completely ignores the practicality of the situation, in that for respiratory protection to be effective, the user must be fit tested first and also that it is medically dangerous for an individual to wear a respirator without being medically cleared. Finally the last two sentences of the paragraph are sheer speculation, which should not be in an inspector general report. There is no evidence as to how the individuals cleaned their residences. More importantly, as noted previously, there is no

evidence of asbestos contamination to support requirement to use abatement procedures and to support speculation that if abatement procedures were not used, health risks would be increased. Accordingly, this paragraph should be deleted.

12. The City notes that page 7 provided to the City is blank.

13. As a technical correction, the City notes that in the first paragraph on the page, the New York State Department of Labor, not the Department of Environmental Conservation is delegated the responsibility for implementing federal regulations under the NESHAP program.

The assumption of this entire section is that NESHAP standards applied and that, therefore, there were violations of NESHAP. Instead, the City took the position that, while the WTC site was not an asbestos site (again, the technical experts in the other agencies may have a more proper term), it would institute many similar work practices, e.g. wash stations, respirators, dust control, etc.

14. Concerning the first full paragraph on page 9 of the draft report, the City believes that given the prominent mention of the NESHAP notification requirement, this paragraph should include a sentence indicating that the EPA because of its involvement had functional notice of the demolition and everything concerning the demolition and that as a practical matter, notification would not have changed the manner in which demolition was conducted. ~~actions would have been conducted.~~ We recommend that the following sentence be added at the beginning of the paragraph, “While the EPA and other agencies were not provided formal written notice of the WTC demolition activities, the EPA and other regulatory agencies had notice, in advance, of the demolition activities and the manner in which they were being conducted as a result of the EPA’s involvement in the Response Effort. EPA did not object to these activities and even if formal written notification was provided, the activities would not have been conducted in any different manner.”

15. As the only discrete asbestos containing material encountered at the WTC site was below grade, the City recommends that the first sentence of the first paragraph on page 10 be revised to read, “Both NYCDDC and EPA officials told us that asbestos containing material (e.g., pipe wrapping, steel insulation) was only encountered below grade, and when it was encountered during removal, it was tested and treated in accordance with asbestos abatement procedures.”

16. The City recommends that the last sentence of the footnote on page 11 be modified to provide a more complete explanation. The sentence should read, “Furthermore, they stated that the vehicles did not require decontamination since this was not a hazardous material situation and while decontamination procedures were not required, wash down procedures were mandated.

17. The first paragraph in the section labeled “**Transfer of Debris to Barges**” on page 12 is misleading and unfairly prejudicial to the City. This section is not based on substantial evidence. The testimony of people complaining must be evaluated very carefully. This has not been done in this report. The report, without any critical evaluation at all, seems to accept all of these complaints as true. The other evidence available, however, suggests that the complaints

are unfounded. There is testimony that is true: ~~t~~The trucks transporting WTC debris were not marked as carrying hazardous waste. However, tThey were not marked in this manner because they were not carrying hazardous waste. This is just one example where testimony should have been critically evaluated before including it in the report. Of more concern is the uncritical acceptance of testimony of trucks not being wetted down properly and trucks not being covered properly, both resulting in the release of dust. The area around Stuyvesant High School was among the most thoroughly monitored in the City. There is no data to show that this area was contaminated by the operation of the transfer station from trucks to barges in the vicinity of the High School. Thus, if there was a release of dust, it was so insignificant as to present no risk at all to health and safety and should not be highlighted in this report. EPA itself, represents that air sampling concerning barge operations indicated that 99.83% of the samples were below the screening levels. The City consequently recommends that this paragraph be deleted.

18. The paragraph that begins at the bottom of page 12 should be modified. The last sentence reports that there was lead found in the ventilation system of Stuyvesant High School. The sentence also reports that it was not determined whether this lead was from WTC fallout. Given the dearth of air samples that were positive for lead and the fact that lead is unlikely to travel far as an airborne particulate, it is very unlikely that the lead found in the ventilation system was from WTC fallout. Even if it was, this has nothing to do with the City's EPA's [NOTE: this is the IG's report on the EPA's response and we should keep the focus on the EPA] response to the terrorist attacks on the World Trade Center. While this may be of some academic interest, it has no place in this part of the report. The City recommends that this sentence be deleted.

19. The first paragraph in the section labeled **"Asbestos Levels During Demolition and Debris Removal"** is misleading. It unduly emphasizes that after September 2001 there were 7 air monitoring samples which exceeded the AHERA standard. It does not mention that there were approximately 40,000 samples taken during this period. Considered in this context, the fact that there were only seven exceedances demonstrates that the danger from asbestos was, in essence, non-existent. The report not only does not draw this conclusion, which is warranted, but it mischaracterizes the seven exceedances as showing the sporadic presence of asbestos in the ambient air. Given the extensive monitoring, less than one exceedance per month can hardly even be characterized as "sporadic." We recommend that the paragraph be revised to delete the table showing the exceedances and any reference to the table be deleted. And, also reference that two of the exceedances were near Stuyvesant High School. Reference to Stuyvesant implies that this location should be given preference over other locations near the site. The fourth sentence of the paragraph should be revised to read, "Out of approximately 40,000 samples taken from October 2001 through May 2002 there were only seven exceedances of the AHERA standard." The seventh sentence should be revised to read, "The above information shows the virtual non-existence of asbestos in the ambient air in publicly accessible locations at levels of concern established by EPA for the WTC response (i.e., the AHERA standard) from October 2001 to May 2002."

20. The second full paragraph on page 20 beginning, "The indoor residential cleanup program" is inaccurate. The second sentence states that the Governor of New York did not declare a public health emergency. Although the Governor did not declare a public health emergency, he declared a "general emergency", which is construed to include a public health

emergency. Also, the fourth sentence states that the City indicated that an indoor cleanup was not necessary. This is not correct. At no time did the City indicate that an indoor cleanup was not necessary. The City, with the agreement of the EPA, held owners responsible for assessing their property and taking appropriate action (cleaning in accordance with the guidelines that were issued or, when indicated, professionally assessing and then either cleaning or abating, depending on the results). In fact, early in the "Response Effort", the City inquired concerning the availability of federal funds to pay for such a cleanup and it was determined that property owners would be financially responsible but would have access to assistance through the DASC. The City accordingly recommends that the second sentence be modified to delete the phrase, "and the Governor of New York did not declare a public health emergency for this incident." We recommend that the fourth sentence of the paragraph be deleted. [NOTE: you should know that Sec'y Thompson of DHHS did declare a "public health emergency" early on 9/11. I have a copy of the document that states: ***"Determination that a Public Health Emergency Exists—As a consequence of the acts of terrorism committed against the United States of America on this date and after consultation with the Acting Secretary of Health, I, Tommy G. Thompson, Secretary of the U.S. Department of Health and Human Services, pursuant to the authority vested in me under section 319 of the Public Health Service Act, do hereby determine that a public health emergency exists."*** Date—Sep 11 2001" and signed by the Secretary Thompson. This was issued so that DHHS, specifically PHS (and thus the National Disaster Medical System (NDMS) and CDC, could start an immediate response.

We had discussed at our meeting the fact that the FEMA does not have any special authority under the Stafford act for responding to a "public health emergency."

Thank you for the opportunity to comment concerning the revised draft report. If you have any questions, please do not hesitate to contact me or my staff.

I did not see a comment regarding p.15, the section titled "Unprotected Workers Cleaned Contaminated Offices and Residences". First, worker protection is primarily, but not exclusively, an OSHA issue and, therefore, this section should be deleted unless it is part of a larger discussion of EPA's response to all worker protections issues. If this section is not deleted, than it should change the title. The title, as it stands currently, implies that all workers were unprotected and that is unsupported by the facts. Lastly, the statement that "these workers reported health symptoms that first appeared or worsened after September 11, 2001" is, on the face of it, questionable because there was no response to WTC prior to September 11th.