

Hoffer, Mark

From: Hoffer, Mark
Sent: Friday, June 27, 2003 6:28 PM
To: 'jcohen@law.nyc.gov'
Subject: FW: EPA - WTC - EPA OIG Report

As promised (see below).

I've cell-phoned and e-mailed Mike Gilsenan, and our Chief of Staff will fast track travel approvals on Monday. When Mike calls back, I'll give him the details.

-----Original Message-----

From: Hoffer, Mark
Sent: Tuesday, June 24, 2003 2:19 PM
To: Avaltroni, Robert; Gilsenan, Michael
Cc: Schiano, Frank
Subject: EPA - WTC - EPA OIG Report

As requested, I've looked at the excerpts EPA has given us from the draft report and discussed it with Frank.

Since most of my knowledge about EPA/DEP dealings is second-hand, I'm probably not the best source of information about this, but I do have some reactions to the draft:

1 - In the excerpts from Chapter 3 "Initial Actions Taken by New York City and EPA",

a - 1st par., 2nd-4th sentences - The gist of this appears to be "EPA offered to help on indoor and outdoor clean-up, but the City turned us away, and we didn't want to raise a fuss with the City so we walked away."

Obviously, someone is trying to shift criticism from EPA to us.

The existing language is not what I understood to have happened. What I understood was that EPA immediately asserted that "it was in charge" and then subsequently discovered that it needed us to get the job done. We volunteered, fairly early on, to do the outside clean-up program (which we completed successfully). EPA then basically sat on its hands on the indoor issue until the community (and Congressman Nadler) forced them to move, and then they turned to us and said "we can't do it; we need your help in getting contractors and managing their work." And we did help.

I suggest something more accurate, replacing the entire 1st par. after the first sentence: "At an early stage, EPA and DEP discussed an exterior clean-up program, aimed at roofs and certain other outdoor surfaces of downtown buildings, where potential contamination was visible. DEP developed such a program with EPA input, and successfully completed same by approximately _____. A total of _____ buildings received outdoor cleaning under this program. EPA, in turn, developed an indoor residential testing and clean-up program, and successfully completed same by approximately _____, utilizing assistance from DEP in procuring contractors. A total of _____ residential apartments were cleaned under this program. "

b - 2nd par, captioned "New York City's Initial Response to Indoor Contamination"

The 1st sentence suggests that the City was somehow "wrong" or "sloppy" in deciding that it was the responsibility of individual property owners to clean their buildings. That is absolute nonsense. Property owners are responsible for the safety of their buildings generally, had the access to perform clean-up, and had insurance proceeds (at least in many cases) to perform the clean-up themselves. Conversely, the City had and has no obligation to clean up private property.

As far as I know, EPA had no objection to putting the initial obligation where it belonged: with the property owners.

I suggest replacing the first sentence with something like: "New York City advised building owners that, consistent with their ongoing legal obligation to ensure the safety of their respective properties, the owners were responsible for cleaning their buildings in accordance with applicable laws, rules and regulations, including exteriors and interiors. As previously noted, the City extended assistance to building owners by implementing a City-managed building exterior clean-up program."

If you would like to discuss the above, Frank and I are available at your convenience. If you agree with the above and want me to pass it along to the Law Department, let me know.