

Hoffer, Mark

From: Lieberman, Brian [BLieberm@law.nyc.gov]
Sent: Thursday, December 01, 2005 5:15 PM
To: 'mhoffer@dep.nyc.gov'; 'fschiano@dep.nyc.gov'
Cc: 'ravaltroni@dep.nyc.gov'; 'mgilsenan@dep.nyc.gov'
Subject: WTC Evidence Collection Project/Formal Close Out Letter

Attachments: 179125_1.DOC



179125_1.DOC
 (111 KB)

<<179125_1.DOC>>

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 ATTORNEY-CLIENT COMMUNICATION
 ATTORNEY WORK PRODUCT

Mark:

Attached is a copy of the official close out letter for the WTC Evidence Collection we conducted at DEP. Although we effectively completed the collection in May 2005, I held off on sending the official letter until we had finished the phased collection of Dennis White's substantial asbestos certification and training files. I will be sending a hard copy of the letter to you as well, along with the two exhibits referenced in the letter. I will also cc: the hard copy of the letter to Commissioner Lloyd and to Bob.

As always, I appreciate all the courtesy and cooperation everyone in the Office of Legal Affairs, the Bureau of Environmental Compliance and the rest of DEP showed us.

Sincerely,

Brian Lieberman

Ⓐ WORLD TRADE
 CENTER -
~~DISASTER SITE~~
 DISASTER SITE
 LITIGATION

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Brian Lieberman



THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

MICHAEL A. CARDOZO
Corporation Counsel

BRIAN D. LIEBERMAN
Senior Counsel, WTC Unit
Phone: 212-788-1678

December 2, 2005

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VIA E-MAIL AND HAND DELIVERY

General Counsel Mark Hoffer
Office of Legal Affairs
New York City Department of
Environmental Protection
59-17 Junction Boulevard
Flushing, NY 11373

Re: Completion of WTC Evidence Collection Project At DEP

Dear Mr. Hoffer:

On behalf of the Law Department's World Trade Center Unit, I would like to thank you and all of your colleagues who helped us to complete the WTC Evidence Collection Project (the "Project") at the Department of Environmental Protection (DEP). As you know, we are conducting this Project at DEP and other City agencies to ensure that the Law Department has ready access to any materials required for the City's legal defense in pending and potential future litigation concerning its response to the September 11, 2001 terrorist attacks. The paper documents, electronic data and other information and materials we have collected from DEP constitute a significant part of this ongoing effort.

The Law Department congratulates and extends its thanks to you and all those working at DEP whose assistance was integral to completing this Project for the role you have played in preserving and protecting the City's interests. It was truly a pleasure, as always, to work with the excellent staff of DEP.

**PRIVILEGED AND CONFIDENTIAL
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WTC Evidence Collection Project

It is important, however, for us to note that, while DEP has contributed much material and been extremely cooperative with this Project, ongoing legal due diligence and disclosure requirements make it necessary that we never consider our collection efforts fully completed (at any agency). It remains possible that issues may arise at some future date in litigation or other matters arising from the WTC terrorist attacks that require your agency's assistance and we may from time to time need to collect additional or subsequently generated WTC-related materials from DEP.

For example, we collected materials from certain ongoing projects relating to 9/11. We understand that some files are "live" and, therefore, material may or will be added to them. In particular, we had to collect the Asbestos Control Unit's asbestos training and certification files, which are both exceptionally substantial in volume and under constant use, in phases so as to minimize any inconvenience to the unit. Indeed, we greatly appreciate the courtesy and cooperation Asbestos Control extended to us during this "mini-project" that, of necessity, continued for months beyond the rest of the collection project at DEP. We also understand that some agency personnel continue to generate material that may be potentially relevant to WTC matters. As such, we may need to review/recollect these files and other materials in order to ensure that we have all WTC-related materials.

There are a few additional follow up matters that we would ask the Office of Legal Affairs to bear in mind. In order to ensure that the integrity of the evidence we collected is preserved and remains accessible, you need to emphasize to those from whom we have collected, as well as their supervisors, the importance of retaining the materials, paper and electronic, that the WTC Unit collected. To that end, I am attaching as Exhibit A to this letter a list of the DEP personnel from whom we collected materials and a general description of the materials collected. Whenever we returned materials to any DEP custodian, we provided the custodian with a copy of the retention letter attached as Exhibit B. The letter advised the custodian that he or she must contact the Law Department rather than dispose of any of the materials.

We would greatly appreciate your sending a brief notice to the senior officials of each DEP department informing them of the retention policy for WTC materials. Please feel free to contact us if you would like us to draft an explanatory memo for your convenience.

The Law Department has collected a series of back up tapes for archived email. We are cataloguing and copying these back up tapes and will return them to DEP's IT Director as quickly as possible.

The work conducted by DEP and the Law Department on this Project, not to mention the level of cooperation involved, has been monumental. Many DEP officials, including Bureau of Environmental Compliance Deputy Commissioner Robert Avaltroni and Assistant Deputy Commissioner Michael Gilson, Asbestos Control Unit Director Krish Radhakrishnan, Director of Intergovernmental Affairs Charles Sturcken, Executive Assistant to the First Deputy Commissioner Michael Egan and HAZMAT Unit Director Mustafa Fawzy, have provided the WTC Unit with invaluable assistance. Assistant General Counsel Frank Schiano of your office always made time to answer our questions and assisted us with a broad variety of matters. The consideration extended to us by so many DEP officials and staff, and the pride they showed in

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Letter to General Counsel Mark Hoffer
WTC Evidence Collection Project

their WTC-related work, deepened my already substantial appreciation of and respect for the agency.

If any additional WTC-related materials should come to your attention, or if you have any questions, please contact me via e-mail at blieberm@law.nyc.gov, or by telephone at (212) 788-1678.

Sincerely yours,

Brian D. Lieberman

cc: Commissioner Emily Lloyd
Deputy Commissioner Robert Avaltroni