

Ⓟ WORLD TRADE
CENTER - GONZALEZ

Hoffer, Mark

From: Michaels, Ian
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To: Lloyd, Emily; Public Affairs, Group; Shana Whitehead; Avaltroni, Robert; Campbell, Zoeann; Canty, Anne; Durig, Roy; Fennes, Carol; Friedman, Richard; Garcia, Kathryn; Greeley, Douglas; Hoffer, Mark; Kulikowski, Robert; Kurtz, Warren; Kusterbeck, William; Lanaghan, Mark; Lawitts, Steven; Levine, Robin; Licata, Angela; Lopez, Alfonso; McCoy, Gerould; McMaster, Cecil; Reed, Dana; Ritze, Mark; Roberts, James; Sapienza, Vincent; Singleton, Joseph; Sturcken, Charles; Warne, David; Welch, Edward
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NEWSDAY

Early on, dissent over air quality Public statements after 9/11 under scrutiny in wake of lawsuit, illnesses

BY GRAHAM RAYMAN
 Newsday Staff Writer

August 27, 2006

Even as the city and federal government were reassuring New Yorkers that the air at Ground Zero was safe in the weeks after Sept. 11, some officials were sounding the alarm within their agencies about air quality at the site.

A series of court documents and internal memos reveals, among other things, a City Hall divided over when to reopen downtown to workers and shoppers, and a failure to enforce regulations aimed at assuring that workers were protected in the sooty, dust-filled air.

Five years later, the cost now may be coming due in mysterious illnesses, shortened careers, even lost lives - and a class action lawsuit by 7,000 people.

On Oct. 6, 2001, while the city and the Environmental Protection Agency were repeatedly reassuring New Yorkers that the air at Ground Zero was safe, a top city Health Department official wrote a three-page memo raising "critical environmental issues" related to the disaster.

Associate Commissioner Kelly McKinney wrote that there were deep disagreements between the city's Office of Emergency Management and the Department of Environmental Protection over whether the air was safe enough to allow people back into the zone.

"The mayor's office is under pressure from building owners and business owners in the red zone to open more of the city to occupancy," McKinney wrote. "According to OEM, some city blocks north and south of Ground Zero are suitable for reoccupancy. DEP believes the air quality is not yet suitable for reoccupancy. I was told the mayor's office was directing OEM to open the target areas next week." McKinney, now with OEM, did not respond to a written request for comment.

'Strict standard'

In response to Newsday's questions, the city's law department issued a statement saying no area was reopened until testing had found it safe. "Areas were not reopened to the public until they were cleaned of dust and debris and testing demonstrated at least two consecutive days of asbestos levels below the strict standard for reoccupancy of schools," said Kenneth A. Becker, chief of the law department's World Trade Center unit.

Records reviewed by Newsday also indicate:

City, state and federal officials failed to enforce workplace safety laws - for example, fining or expelling workers who did not wear respirators. Use of respirators remained below 45 percent for most of the recovery project, records show.

The city's Department of Environmental Protection, which conducted tests for asbestos in the days immediately after Sept. 11 that showed dangerously high levels of the fibers, did not reveal those test results to the public. The results were later disclosed by the state in response to a Freedom of Information request.

Within a few weeks of the attacks, the city - aware that it probably would face massive litigation over the environmental hazards - had begun preparing itself. One official expressed concern that environmental claims might "bankrupt" the city.

Three weeks after the collapses, in a signal of brewing concern, Fire Department doctors urgently requested \$6 million to study health effects of Ground Zero work on firefighters.

Many are sickened

Public officials relied on a large volume of testing to conclude the air was safe, but the mounting number of ailing claimants has generated anger among people whose lives are intertwined with Ground Zero about those initial reassuring statements.

"If you are a leader, you should make sure your people are safe," said Thomas Barnett, a retired New York City police officer and former PBA delegate. "And all of a sudden because people are dying, you're going to make it an issue? You should have put money on the side for it from the beginning."

Barnett, now 44, played an important, but until now, unreported role in raising health concerns shortly after Sept. 11. Working at Ground Zero in the first week, he recalled being suspicious about air quality at the site. "I felt that if there was no problem, fine, but if there was a problem, it should be brought to the forefront," he said.

Barnett called Joel Kupferman, an environmental lawyer, and on Sept. 19, 2001, he quietly slipped Kupferman into Ground Zero where they spent two hours collecting dust samples. Kupferman sent the samples to two labs. The results showed high levels of fiberglass and pulverized asbestos that had been exposed to extraordinary heat.

The disclosure spurred Kupferman to mount an ongoing campaign to raise public awareness and pressure the government to act on health concerns.

Even as officials were dismissing concerns raised by independent analysts about the dust, McKinney indicates in his Oct. 6, 2001, memo that he took those concerns seriously.

McKinney refers to a U.S. Geological Survey study, which found that the dust was as caustic as drain cleaner. That study was not disclosed to the public until February 2002.

"EPA has been slow to make results available and to date has not sufficiently informed the public of air quality issues arising from this disaster," McKinney wrote.

He also noted that during a multi-agency meeting at Pier 92, a federal public health specialist called the EPA air quality assessment inadequate. "He indicated," McKinney wrote, "that the number of samples collected, the types of analysis performed, and the quality control procedures followed were resulting in an insufficient characterization of the air quality impacts arising from this disaster."

Lax safety compliance

And at a time when those overseeing the cleanup had declared that Ground Zero safety rules were being followed, McKinney noted an EPA memo indicated workers were "not complying" with the rules.

McKinney suggested that the health department should start issuing violations to enforce the safety rules. The idea went nowhere. It wasn't until February 2002 that the city's Department of Design and Construction began to issue fines to companies whose workers disregarded the safety rules, records show.

Neither McKinney, now with OEM, nor health department officials responded to a written request for comment.

Early on, the federal, state and local officials running the site decided that the federal Occupational Safety and Health Administration, which enforces workplace safety rules, would only act in an advisory capacity, records show.

Kenneth Holden, the city official in charge of Ground Zero until June 2002, believed that the guidelines in place were

sufficient. "We knew that the air quality was less than ideal, but I was also repeatedly and regularly informed that the protection those employees had was sufficient to protect their health," he said in a deposition in the pending class-action suit.

But Ground Zero workers routinely flouted rules requiring the use of respirators. An OSHA summary spanning Sept. 11 to March shows that respirator use among construction workers rarely exceeded 45 percent and was often much lower. The rate among police officers and firefighters was only slightly better.

Safety inspectors who roamed the site consistently reported the failure to use respirators. "We have observed very inconsistent compliance with our recommendations," the EPA's Bruce Sprague warned in an Oct. 5 memo.

On Oct. 15, Stew Burkhammer, an official with Bechtel, the firm initially in charge of safety, complained to city safety official Robert Adams: "They [contractors] are either refusing to take corrective action or are giving our team excuses as to why we have no authority to tell them anything. Our team members are not used to taking abuse like this and are getting very discouraged."

In January and February 2002, the failure to use respirators remained a serious problem. On Jan. 3, for example, DDC official Bruce Rottner wrote that just 20 percent of workers were wearing their respirators.

"Throughout the entire site tonight and last night use of respiratory protective equipment . . . was terrible," Rottner wrote.

There were several reasons for the problems. The masks were difficult to wear. It was hard to breathe and hard to talk in them. And it was a lot to ask workers, on exhausting 12-hour shifts, to wear them at all times, according to memos at the time.

Though OSHA said it had trained thousands of workers, some Ground Zero workers claimed that they either never received respirators or did not receive adequate training in using them.

Several officials have acknowledged in depositions that there was no one person in charge of enforcing the safety guidelines. In hindsight, Sam Benson, a city OEM official, testified: "I certainly would have had more of an overhead team ... and to have a more disciplined process."

Early signs of problems

From the first week, officials had statistics that raised questions about the air quality. From the day of the attack through Nov. 20, more than 100 Ground Zero workers per week were treated for lung injuries, records show. In all, between Sept. 11 and Nov. 18, 983 Ground Zero workers reported lung injury. Another 200 workers complained of throat irritation.

In late September 2001, the two top medical officials in the Fire Department, David Prezant and Kerry Kelly, submitted a \$6-million funding request to study and track firefighters and paramedics exposed to hazards at the site.

Fire Commissioner Thomas Von Essen backed the request, which was granted. He wrote: "Time is of the essence to ensure that these tests are completed quickly so that possible exposure to certain substances can still be measured."

In their proposal, Prezant and Kelly saw the study as urgent and necessary. "If this had been a private industrial accident, every worker on-site would be tested and evaluated," the doctors wrote.

The city DEP had test results taken between Sept. 12 and Sept. 29 that showed hazardous levels of asbestos up to seven blocks from Ground Zero in 17 of 87 tests, and readings that overloaded the sensors in 29 other cases because dust clogged the filters.

But not until Kupferman's Freedom of Information request in December 2001 to the state were those results made public, he said.

Separately, Cate Jenkins, an EPA scientist long critical of the 9/11 environmental testing, claimed that DEP altered or withheld the "overload" data when it posted the results on its Web site in 2002.

Asked about her claims, the city responded to Newsday Friday by noting the overload readings are a common occurrence in dusty conditions, making the test unusable but not indicating the presence of asbestos.

"The accumulated data from DEP, EPA, OSHA and other agencies showed no significant pattern of elevated asbestos levels," wrote Becker of the law department.

Very early on, city officials were concerned about the potential cost of 9/11-related environmental claims.

In September 2001, the city hired the accounting firm Ernst & Young to perform a risk assessment.

The firm estimated in an October report that the city faced a potential liability of more than \$450 million for environmental claims and needed \$2.8 billion in insurance coverage.

The long-term health concerns, in part, spurred the city to try to limit its liability starting relatively early on after the attacks.

On Oct. 15, a letter written by city lawyers and signed by Holden, the city official in charge of Ground Zero, asked the state to persuade the Federal Emergency Management Agency to pay for claims not covered by insurance.

"I am concerned that the construction management firms [CMs] and the city will be open to exposure years after the project based on hazardous materials claims," the letter said. "This type of exposure would bankrupt the CMs and perhaps the city."

In the five years since Sept. 11, more than 10,000 workers have filed World Trade Center-related workers' compensation claims, mostly for injuries but in some cases, deaths.

In response to Newsday's questions, the law department's Becker noted: "After 9/11, the city took reasonable steps to assess the potential for litigation against it and its contractors and to seek federal protection from the possibility of such litigation. In today's very litigious society, a city must recognize and prepare for the risks of possible litigation."

CONTRADICTIONS IN THE AIR

SEPT. 19, 2001

"I am glad to reassure the people of New York and Washington, D.C., that their air is safe to breathe and their water is safe to drink." - Christie Whitman, U.S. EPA administrator

OCT. 6, 2001

The Mayor's Office is under pressure from building owners and business owners in the red zone to open more of the city to occupancy. According to OEM, some city blocks north and south of ground zero are suitable for reoccupancy. DEP believes the air quality at those locations is not yet suitable for reoccupancy.

-Memo from Associate Commissioner Kelly McKinny

POUGHKEEPSIE JOURNAL EDITORIAL

Sunday, August 27, 2006

Resort plan needs changes

The state comptroller is the latest to lend credence to those opposing a massive resort project in the Catskills.

The future of the Belleayre ski resort area in Ulster County is far too important to ignore the findings. In fact, Comptroller Alan Hevesi has provided ample ammunition to those, including U.S. Rep. Maurice Hinchey, D-Hurley, who are pushing for a substantially scaled-back version of development.

Land owner Dean Gitter has broad plans for nearly 2,000 acres near the ski center. He wants to build two golf courses, five restaurants, a conference center, two spas, a large hotel and many other facilities.

The \$240 million development would essentially surround the northern Ulster ski facility, which is owned and operated by the state Department of Environmental Conservation.