CONGRESSMAN JERROLD NADLER

8th Congressional District of New York

FOR IMMEDIATE RELEASE
September 9, 2003

CONTACT: JENNIE MCCUE
202-225-5635

Nadler: New Whistleblower Document Reveals Failure of EPA Indoor Cleanup Program

"Best Effort" Cleanup at 114 Liberty Street Left Behind Dangerous Toxins; Residents Still Displaced 2 Years Later

NEW YORK -- Declaring its findings "more damning evidence emblematic of the failed premise and execution of the Environmental Protection Agency's (EPA) so-called residential cleanup program post 9/11," Rep. Jerrold Nadler today released a new memo from 24-year EPA Hazardous Waste Identification Division veteran, Cate Jenkins, Ph.D., revealing that even the more rigorous type of EPA-led indoor cleanup has failed to rid apartments of World Trade Center (WTC) contamination. The memo finds that the building at 114 Liberty Street, which received the more rigorous of all EPA-led cleanups, still has visible WTC dust inside, containing high levels of asbestos and silica, and that the cleanup was not done to federal legal standards. The EPA has refused to take further action, even though the EPA program requires cleanup of all visible WTC dust. The report also states that the EPA made false scientific and other claims in defense of its decision not to re-clean. Residents of the building, who still cannot occupy their homes, and whose federal housing assistance has been cut off because the EPA declared the building "clean," joined Nadler at a press conference today.

"On the eve of the second anniversary of the worst ever attack on America's soil, I stand here with New Yorkers who are still, two years later, being victimized. Only this time, it is their own federal government that is victimizing them," Rep. Nadler said.

Rep. Nadler continued, "This latest example of EPA negligence is extremely damning because this building got arguably EPA's best effort post 9/11." He added, "Just think, very few apartments got this so-called stringent cleanup that we now confirm is deeply flawed. Maybe another 3900 apartments got the seriously shoddy, less-rigorous cleanup. What about the other 18,000 apartments downtown and those in Brooklyn, and the thousands of workspaces, schools, and firehouses that have never received a government cleanup?" asked Nadler.

114 Liberty Street is an eleven-story building facing "Ground Zero," which sustained extensive contamination from the WTC collapse. Some individual residents paid for their apartments to be cleaned professionally before negotiating a building-wide cleanup with EPA. EPA and the City's Department of Environmental Protection (DEP) began work in March 2003. EPA contractors cleaned the building two times, because their own testing after the first cleanup revealed remaining toxins. After the second cleanup, the EPA declared the building free of contaminants. Because the building still had visible dust, the residents hired their own professional testing firm, Ambient Group, Inc. Ambient Group found high levels of asbestos and silica in the remaining dust.

The EPA refused to clean again, and according to Jenkins' memo, its representatives defended their decision to take no further action "to the extent of misrepresenting test results in its reports and statements . . . " and ". . .dismissing resident testing of dusts for asbestos which proved that visible dust accumulations were still present, and at higher concentrations than background." The memo also states that the EPA did not clean to legally mandated, health-based standards and "knowingly expos[ed] residents to silica, a human carcinogen, at levels higher than EPA's criterion." Dr. Jenkins concludes that "It . . .appears that EPA does not want the trouble and added expense that would be entailed by additional abatements." According to Jenkins, to justify its refusal to re-clean, the EPA even argued erroneously that the asbestos found by Ambient in the dust was pre-existing, but states that "this could not be the case" because the WTC-type Chrysotile asbestos had not been present in any exposed building materials.

The EPA announced its "Indoor Residential Cleanup Program" in May of 2002, eight months after the 9/11 attacks. Two general types of cleaning were offered, one for occupied apartments, and another, more rigorous abatement, for those apartments in then unoccupied buildings. EPA was the "lead agency" for the entire cleanup program, though DEP served as on-site supervisors for the unoccupied buildings. Apartments at 114 Liberty were among only a handful of apartments that received this more extensive abatement. To date, only about 4,000 of the more than 22,000 downtown apartments have received any cleaning under the EPA program, and no workspaces or schools have been cleaned under the program. The program's request line closed in December 2002.

"The EPA went to great lengths in this case, and in its program in general to take the easy way out. It has consistently sought to do as little as it could get away with," said Nadler. "Remember, EPA officials have repeatedly denied that we had a problem in New York -- they still, today, say it's safe. The whole program was premised not on science, but on public relations. They said this was about 'allaying our concerns,' not cleaning our homes, offices and schools," Nadler added.

The EPA has repeatedly defended its program. When the program was criticized by New York officials last September, an EPA Region 2 Spokesperson stated to the *New York Daily News* that "Our cleanup methods will be effective in cleaning up not just asbestos, but also heavy metals and other contaminants."

The program was sharply criticized in the recently released EPA IG's report. The IG said this program "does not meet the minimum criteria for protecting human health the EPA established." The IG found the program flawed because it tested only for asbestos (and not for the multiple contaminants identified in WTC dust), used sub-par testing methods, was prone to cause re-contamination because it did not treat buildings as systems, and was geographically too limited because it didn't go everywhere the plume went. The report also states that the White House swayed EPA officials to downplay public health risks, due to political "competing considerations."

"In the wake of the bombshell IG report, I think the rest of America is becoming increasingly horrified to find out what has happened to people who live and work in New York. I know they will be shocked to learn that, in this case, the EPA would condemn the building's 16 children to playing on floors contaminated with life-threatening toxins. " said Rep. Nadler.

Nadler added, "I want to make it perfectly clear that this is not just one bad case. Tens of thousands of New York residents, workers and students were falsely lured back into their homes, offices and schools by unsubstantiated EPA assurances. They still don't know whether their indoor spaces are clean. But even more troubling is the fact that many New Yorkers were forced back into spaces that they knew were contaminated, because they had private tests commissioned, but they could no longer afford to stay out. EPA's pronouncements of 'safety' denied them insurance coverage and extended federal mortgage or rental assistance. Often they were forced to choose between their health or their home."

Rep. Nadler said, "The EPA must now provide proper testing and cleanup, up to federal Superfund standards, for New York. It must adopt the recommendations in the IG report, and make good on the promise Regional Administrator Jane Kenny made on the day she announced the cleanup program -- '. . .we will not consider our job complete until residents and the business community of Lower Manhattan have regained a sense of comfort in the place that they call home.'"

To obtain additional information on Congressman Nadler's response to the EPA's handling of post 9/11 clean-up, please visit his website at http://www.house.gov/nadler/EPA.htm.

###

114 LIBERTY AVENUE TEST RESULTS
CHEMICALS OF POTENTIAL CONCERN (EPA)

		Clearance Levels	Clearance Levels
Lead	# Taken	<25ug/ft^2	>25ug/ft^2
Pre Cleaning	30	30	
Post Cleaning	30	30	
Dioxin		<4 ng/m^2	
Pre Cleaning	30	30	
Post Cleaning	30	30	
PAH's		<300ug/m^2	
Pre Cleaning	30	30	
Post Cleaning	30	30	
Fibrous Glass 2nd Clearance Level		<0.01f/cc	>0.01f/cc
Post	65	65	
Silica		<1ug/m^3	>1ug/m^3
Post	11	7	4

DEP WTC FACT SHEET

WTC NOTICES AND REQUESTS FOR INFORMATION SENT	1073
WTC EXTERIOR INSPECTIONS PERFORMED	1073
NUMBER OF PREMISES CLEANED BY NYC DEP (Exterior)	221
NUMBER OF PREMISES CLEANED BY OWNERS (Exterior)	102
NUMBER OF EXTERIOR BUILDINGS FREE OF DEBRIS	750
NUMBER OF BUILDING OWNERS RESPONDING TO NOTICES	354

WTC INTERIOR RESULTS SUBMITTED BY PROPERTY MANAGER

Asbestos Sample Type	# Taken	# <0.01f/cc	# >0.01f/cc	% >0.01f/cc
Air (PCM)	79,524	78,490	1,034	1%
Air Sample Type	# Taken	<70 s/mm^2	>70 s/mm^2	% >70 s/mm^2
Air (TEM)	42,368	42,166	202	~~0.4~~% .04
Total Air Samples	Total Taken	Total Taken	Total	Total
	121,892	120,656	1,236	1%

114 LIBERTY AVENUE INTERIOR RESULTS

Asbestos Air Samples		<.0009	>.0009	Overload
Pre/during	88	80	4	4
After	71	53	10	8
Recleaned	25	25		
		5th,7th,8th,9th,10th Floors	5th,7th,8th,9th,10th Floors	

Summary of the Analytical Results for the Chemicals of Potential Concern

USEPA's review of the analytical data for samples collected from 114 Liberty Street indicate that the areas sampled meet the numeric criteria established in the workplan (Table 1). The values chosen were established in the draft "World Trade Center Indoor Air Assessment: Selecting Contaminants of Potential Concern and Setting Health-Based Benchmarks" report (i.e., COPC document). The COPC document was created by a committee with representation from federal, state, and city government and was designed to establish numeric criteria to be used in addressing potential contamination from dust and combustion by-products associated with the World Trade Center collapse and fire. This document is currently undergoing peer-review. The data which was evaluated consisted of air or wipe samples for six chemicals, asbestos, polycyclic aromatic hydrocarbons (PAHs), dioxin, lead, fibrous glass, and crystalline silica.

Table 1: Clearance Criteria used for 114 Liberty Street.

Parameter	*Clearance Level*	*Note*
Asbestos in air – PCMe	0.0009 s/cc	Primary clearance level
Lead in settled dust	<25 $\mu g/ft^2$	Primary clearance level
Dioxin in settled dust	<4 ng/m^2	Primary clearance level
PAHs in settled dust	<300 $\mu g/m^2$	Primary clearance level
Fibrous glass in air	<0.01 f/cc	Secondary clearance level
Crystalline silica in air	1$\mu g/m^3$	Secondary clearance level

Each area that was cleaned and sampled met the primary clearance levels identified in the work plan for asbestos, polycyclic aromatic hydrocarbons (PAHs), dioxin, and lead. The secondary clearance level for fibrous glass has also been met in the areas that were cleaned and tested. The secondary clearance level for crystalline silica was met in 64% of the areas tested. The remaining areas were similar to background values observed from a USEPA background study. This is discussed in detail below. Since all of the primary clearance values have been met, the building can be released back to the owner.

There is one item that needs to be identified in relation to releasing the building to the owner, the area that contains the pizza shop. NYCDEP staff has indicated that the area of the building which contains the pizza shop contains asbestos-containing material (ACM). The ACM was considered to be in poor condition and the NYCDEP has indicated that an asbestos abate will need to be undertaken in this area. Therefore, this space within the building is not considered to have met the primary clearance value for asbestos.

Below is a summary of the analytical results for each chemical.

Asbestos – Eighty-eight air samples were collected before and/or during cleaning events. Four samples exceeded 0.0009 s/cc and four samples could not be analyzed due to the filters being overloaded with particulate matter. The before/during cleaning samples were not used to evaluate if additional cleaning was needed.

Seventy-one air samples were collected after first-cleaning event. Ten samples exceeded 0.0009 s/cc and eight samples could not be analyzed due to the filters being overloaded with particulate matter. Based on these results, there were five areas that required additional cleaning and sampling for asbestos. These areas were the 5th, 7th, 8th, 9th, and 10th floors.

Twenty-five air samples were collected from the 5th, 7th, 8th, 9th, and 10th floors after the second-cleaning event. All samples were below the detection limit of 0.0004 s/cc and below the numeric criterion of

0.0009 s/cc. No additional cleaning is required for asbestos. **All of the areas met the primary clearance level for asbestos[1].**

Lead – Thirty pre-cleaning wipe samples were collected and analyzed for lead at a detection limit of 20 $\mu g/ft^2$. Thirteen samples were above 25 $\mu g/ft^2$ and represent apartments on the 10th floor (2 of 3 above 25 $\mu g/ft^2$), 9th floor (2 of 3 above 25 $\mu g/ft^2$), 7th floor (1 of 3 above 25 $\mu g/ft^2$), 5th floor (2 of 3 above 25 $\mu g/ft^2$), 4th floor (2 of 3 above 25 $\mu g/ft^2$), 3rd floor (1 of 3 above 25 $\mu g/ft^2$), and 11th floor (3 of 6 above 25 $\mu g/ft^2$).

Thirty post-first cleaning wipe samples were collected from each floor and analyzed for lead at a detection limit of 9 $\mu g/ft^2$. All of the sample results were below 25 $\mu g/ft^2$. Post-cleaning concentrations from areas that had pre-cleaning concentrations above 25 $\mu g/ft^2$ were all below the primary clearance value. No additional cleaning required for lead. **All of the areas met the primary clearance level for lead.**

Dioxin – Thirty pre-cleaning wipe samples collected and analyzed for dioxin. The maximum Toxicity Equivalents (TEQ) Estimated Maximum Potential Concentration (EMPC) with non-detects equal to ½ of the detection limit (ND=1/2) value was 0.951 ng/m^2. This sample and the remaining 29 samples were all below the primary clearance value of 4 ng/m^2. Based on the pre-cleaning samples, no additional cleaning required for dioxin.

Thirty post-cleaning wipe samples collected and analyzed for dioxin. The maximum TEQ EMPC (ND=1/2) value was 0.837 ng/m^2. This sample and the remaining 29 samples were all below the primary clearance value of 4 ng/m^2. Based on the post-cleaning samples, no additional cleaning required for dioxin. **All of the areas met the primary clearance level for dioxin.**

PAHs – Thirty pre-cleaning wipe samples collected and analyzed for PAHs at a detection limit of 1 μg. All or the results were below the detection limit and the calculated Toxicity Equivalent Factors (TEFs) for each sample was 116 $\mu g/m^2$, which is below the primary clearance level of 300 $\mu g/m^2$. Based on the pre-cleaning samples, no additional cleaning is required for PAHs.

Thirty post-cleaning wipe samples collected and analyzed for PAHs at a detection limit of 1 μg. All or the results were below the detection limit and the calculated TEFs for each sample was 116 $\mu g/m^2$, which is below the primary clearance level of 300 $\mu g/m^2$. Based on the pre-cleaning samples, no additional cleaning is required for PAHs. **All of the areas met the primary clearance level for PAHs.**

Fibrous glass – Sixty-five air samples were collected and analyzed for fibrous glass. All of the samples were below the secondary clearance level of 0.01 f/cc. In addition, all of the PCM analyses were below the 0.01 f/cc. PCM analysis results provide another data set that can be used to assess fibrous glass, with the assumption that all detected fibers are fibrous glass, and the PCM data set for 114 Liberty indicates that even if all the fibers from the PCM analysis were fibrous glass, all samples would be below the secondary clearance level of 0.01 f/cc. **All of the areas met the secondary clearance level for fibrous glass.**

Silica – Eleven air samples were collected and analyzed for crystalline silica at a detection limit of 11$\mu g/m^3$. Seven samples were below the detection limit and four samples were above the detection limit, with values of 17.2, 19.6, 22.1, and 22.1 $\mu g/m^3$. The numeric criterion that USEPA has proposed in the

[1] This conclusion does not include the area that contains the pizza shop. As discussed in the letter and the summary of the data, the pizza shop contains asbestos-containing material (ACM) that is in poor condition. The ACM will be addressed through an asbestos abatement project.

COPC document, which was adopted as a secondary clearance value for this project, is 1 $\mu g/m^3$. Although the value chosen for this project was 1 $\mu g/m^3$, the analytical detection limit available for analyzing crystalline silica in indoor air samples is higher than this value, therefore a result that is below the detection limit is considered to be protective of public health. Four out of eleven samples (36%) were above the detection limit of 11 $\mu g/m^3$, ranging from 17.2 to 22.1 $\mu g/m^3$. These values are also above the secondary clearance value.

Although these values are above the clearance value, they are similar to concentrations detected in a background study conducted by USEPA. In the USEPA background study, there was a frequency of detection of 25%, with a range of 4 to 259 $\mu g/m^3$. Further, the values from the background study without the maximum value of 259 $\mu g/m^3$, provide a range of 4 to 28 $\mu g/m^3$. This indicates that the range of values observed in 114 Liberty Street are similar to those observed in the background study. Based on this, it has been determined that the crystalline silica results are similar to background values and therefore additional cleaning is not necessary.