

Gilsenan, Michael

From: Hoffer, Mark
Sent: Thursday, October 17, 2002 10:29 AM
To: Pecunies, Russ; Avaltroni, Robert; Gilsenan, Michael; Radhakrishnan, Krish; Rogak, Elizabeth
Cc: Schiano, Frank
Subject: RE: Commissioner's Orders - Lower Manhattan Building Cleaning

Frank and I briefly discussed this this AM.

1- I think the form of order is fine. You've done the best you can under par. 3 - we still need to meet the Spill Bill threshold.

2 - If we can't get access to a building, I think we can issue a Commissioner's Order to get access and conduct tests.

We have to read the Spill Bill broadly (which I'm inclined to do) - I'm looking specifically at 24-608(a), which requires property owners to cooperate with the Commissioner where he has reason to believe that a substantial threat of a release exists - you'd have to argue that

a - most bldgs having residue have ACM in that residue (based on our experience)

b - ACM, if not cleaned, could be released and could constitute a substantial danger to public health

c - to determine further appropriate response measures, it is necessary for the property owner to cooperate by allowing us to assess the threat and determine appropriate clean-up, if necessary.

d - There is secondary authority for the testing under the Air Code, which gives the Commissioner broad power to test and sample. See Air Code, 24-108(a) (Frank suggested that we may even be able to issue an NOV off of the Air Code if we're not granted access, but I recognize that the Air Code has historically been geared to devices, so I would prefer to move under the Spill Bill if possible). Let me know if you disagree with the above.

The draft form of order would obviously need to be modified to become an order to grant access to test.

3 - If an order to clean up or an order to grant access is not obeyed, we should issue an NOV. If the NOV is ignored, I assume we get an ECB order which we can then seek to enforce through the courts, if necessary? Or do we go straight to the courts?

4 - If the property owner is willing to grant a license, and if we have still have our contractors under contract and we are satisfied with their work, I think it would be better to get our contractor in, so the answer is "yes" in my view.

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

From: Pecunies, Russ
Sent: Wednesday, October 02, 2002 12:32 PM
To: Hoffer, Mark; Avaltroni, Robert; Gilsenan, Michael; Radhakrishnan, Krish; Rogak, Elizabeth
Subject: Commissioner's Orders - Lower Manhattan Building Cleaning

Since we are now approaching the end of the exterior cleaning program in lower Manhattan, it may soon be necessary to issue Commissioner's Orders to those buildings which have not submitted License Agreements and where positive asbestos samples are collected. So we are prepared to do this, I am attaching a draft Order for your review. Please review and comment with regard to the wording, particularly #3, keeping in mind that the Order must satisfy the requirements of the Spill Bill while remaining consistent with past positions we have taken regarding the hazard posed by WTC residue.

Other issues:

If we have no access to the building to collect samples, do we issue an Order?

If the Order is not complied with, do we issue NOVs?

Should we give the owner the option of submitting a License Agreement as a way of complying with the Order?

<< File: wtcorder.doc >>

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