U.S. ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE TO AIR QUALITY ISSUES ARISING FROM THE TERRORIST ATTACKS ON SEPTEMBER 11, 2001: WERE THERE SUBSTANTIVE DUE PROCESS VIOLATIONS?

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

JUNE 25, 2007

Serial No. 110–54

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OFFICIAL HEARING RECORD

MATERIAL SUBMITTED BUT NOT PRINTED

The information that follows is material that was submitted for the official hearing record. The material is not printed in this printed hearing record but is on file with the Subcommittee and is also available at the specified links.

EPA's Response to the World Trade Center Collapse: Challenges, Successes, and Areas for Improvement, by the Office of the EPA Inspector General at:

http://www.epa.gov/oig/reports/2003/WTC__report__20030821.pdf.

This August 21, 2003 report by EPA's Office of the Inspector General surveys EPA's response to the attacks on 9/11 and the Agency's failure to comply with its established regulations and responsibilities, particularly with regard to indoor air.

Pollution and Deception at Ground Zero, by Suzanne Mattei at:

http://web.archive.org/web/20041106175554/www.sierraclub.org/groundzero/report.pdf.

This report, by the former New York City Executive of the Sierra Club, analyzes the response of Federal and local authorities in the wake of 9/11. It provides important insight into falsely reassuring statements that EPA made to the public.

EPA Ombudsman Hearings Transcripts at:

http://www.nyenvirolaw.org/PDF/Transcript-EPA-OmbudsmanHearing-2-23-2002.pdf, and

http://www.nyenvirolaw.org/PDF/Transcript-EPA-OmbudsmanHearing-3-11-2002.pdf.

The EPA Ombudsman held two investigative hearings in 2002 at the request of Congressman Nadler to explore the accounts of people who were directly affected by the environmental consequences of 9/11. Transcripts of both hearings are provided.

The Honorable Jerrold Nadler's Actions Regarding World Trade Center Air Quality on Testing and Clean-up of WTC Contamination at:

http://www.house.gov/nadler/wtc/cleanup.shtml.

This site provides information on Congressman Jerrold Nadler's actions on testing and clean-up of contamination that resulted from the collapse of the World Trade Center. It provides a link to Congressman Nadler's April 12, 2002 report on Lower Manhattan air quality, which documents significant evidence that EPA misled the public about the safety of air quality and made virtually no effort to ensure that City agencies complied with Federal laws designed to protect the public from hazardous materials.

U.S. ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE TO AIR QUALITY ISSUES ARISING FROM THE TERRORIST ATTACKS ON SEPTEMBER 11, 2001: WERE THERE SUBSTANTIVE DUE PROCESS VIOLATIONS?

MONDAY, JUNE 25, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS, AND CIVIL LIBERTIES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 1:02 p.m., in Room 2141, Rayburn House Office Building, the Honorable Jerrold Nadler (Chairman of the Subcommittee) presiding.

Present: Representatives Nadler, Wasserman Schultz, Ellison, Conyers, Scott, Cohen, Franks and King.

Also present: Representatives Pascrell and Weiner.

Staff Present: David Lachman, Subcommittee Staff Director; Kanya Bennett, Majority Counsel; Perry Apelbaum, Staff Director and Chief Counsel; Ted Kalo, General Counsel/Deputy Staff Director; Paul Taylor, Minority Counsel; Crystal Jezierski, Minority Counsel; and Susana Gutierrez, Professional Staff Member.

Mr. NADLER. Good afternoon. This hearing of the Subcommittee on Constitution, Civil Rights, and Civil Liberties will come to order. Today's hearing will examine the question of possible substantive due process violations arising from the EPA's handling of air quality issues following the terrorist attacks of September 11, 2001.

Before we begin, and mindful of the very strong emotions necessarily associated with the issues we will be looking at today, I would remind all those in attendance that the Rules of the House of Representatives do not permit demonstrations of any kind by the spectators. That includes holding up posters of any kind. The work we are doing today is very important. We have the opportunity to get answers to questions many people have been asking for nearly 6 years. The Chair is determined to see that the work of the Committee will go forward and not be disrupted. I know that those of you have traveled so far to be here will agree with that goal.

Before we begin, I'd like to extend a special welcome to a number of people who are here: to first responders John Sferazo, Marvin Bethea, Richard Volpe, Jim McGowan, Deputy Chief Jim Riches, and Michael Arcari; to family members, the family of Felicia Dunn-Jones, Rebecca Jones, Joseph Jones, Sharon Alvarez, Rose Foti and Diane Horning; and to people who have been very active in the

community surrounding the World Trade Center in the last 5½ years, Kimberly Flynn, Jo Polett, Catherine McVay Hughes, Jonathan Bennett, Rob Spencer, Rachel Lidov, Sally Regenhard, Robert Gulack, Nina Lavin; member of the State Assembly from New York Linda Rosenthal; and Professor Glen Corbett.

The Chair recognizes himself for an opening statement. Today the Subcommittee begins—let me say since the Ranking Minority Member is not here yet, he will be here in about 20 minutes, we will give him an opportunity to make his opening statement after he arrives between rounds of questioning.

Before my opening statement, I want to ask unanimous consent, we are joined today by the gentleman from New York, Mr. Weiner, who is a Member of the full Committee but not a Member of the Subcommittee. Without objection, the gentleman will be permitted to sit on the Subcommittee and recognized to ask questions of our witnesses after the Members of the Subcommittee have had the opportunity do so. Without objection.

In addition to that, we are joined today by the gentleman from New Jersey Mr. Pascrell. Without objection, the gentleman will be permitted to sit on the Subcommittee and will be recognized for 5 minutes to ask questions of our witnesses after the Members of the Subcommittee have had the opportunity to do so. Without objection.

Today the Subcommittee begins its investigation of the possible substantive due process violations arising from the Environment Protection Agency's handling of air quality issues following the terrorist attacks of September 11, 2001.

I want to welcome our witnesses and thank them for their willingness to participate. This hearing continues the work begun in the hearing chaired last week by New York's junior Senator, Hillary Clinton, which also looked at the Federal Government's failures in responding to the environmental crisis that resulted from the World Trade Center attacks.

The hearing will examine whether the Federal Government by its actions violated the substantive due process rights of first responders, local residents, students and workers. Specifically, did the Federal Government itself, by responding inadequately or improperly to the environmental impact, knowingly do bodily harm to its citizens and thereby violate their constitutional rights, and if so, which government actors were responsible? We will look into what is known about the quality of the air versus what was communicated to the public and whether Federal Government "risk communications" properly communicated necessary and legal precautions.

So why are we asking these questions about events that happened nearly 6 years ago?

These hearings represent the first comprehensive congressional oversight investigations into these matters since the immediate aftermath of the attacks. Indeed, Congress and the American people have heard very little on the record from the key players in this controversy.

Today marks the first time that former EPA Administrator Christine Todd Whitman has testified at a congressional hearing dedicated solely to the Federal Government's response to the envi-

ronmental and health dangers caused by the terrorist attacks on the World Trade Center.

The heroes and victims of 9/11, and the families and workers who continue to live with the consequences of that environmental disaster, deserve to know the truth, to hear from the officials who provided the assurances on quality, and to learn why, and on what basis those assurances were made.

Finally we must address the future. What can we learn from the government's response? How will our government respond to future environmental disasters? The Administration seems to be headed in the wrong direction already. For example, the Administration has now mandated that public health communications during a terrorist attack be "coordinated" through the Department of Homeland Security, and it is developing standards for toxic clean-ups and national emergencies that may be weaker than current Federal standards.

I represent the site of the World Trade Center and the surrounding communities. The World Trade Center collapse propelled hundreds of tons of asbestos, nearly half a million pounds of lead, and untold amounts of glass fibers, steel and concrete into a massive cloud of toxic, caustic dust and smoke which blanketed parts of New York City and New Jersey, and was blown and dispersed into surrounding office buildings, schools and residences. In addition, fires that burned for many months emitted particulate matter, various heavy metals, PCBs, VOCs, dioxin, benzene and other deadly substances.

Tens of thousands of my constituents and others from around the country who responded to the call have already begun to suffer severe illnesses. I have unfortunately had to spend the better part of the last 5-plus years attempting to cajole the Federal Government into telling the truth about 9/11 air quality, insisting that there must be a full and proper clean-up of the environmental toxins remaining in apartments, workplaces, and schools that to this day, I believe, are poisoning people, and demanding that the government provide long-term, comprehensive health care to those already sick, be they first responders or area residents, workers or schoolchildren.

In the 6 years since the attacks, we have accumulated a mountain of evidence that tens of thousands of those exposed, including 10,000 firefighters, are suffering from chronic respiratory diseases and a variety of rare cancers. And the deaths of at least two individuals, James Zadroga and Felicia Dunn-Jones, whose families join us today, have been linked unquestionably by government medical examiners to World Trade Center dust. Nonetheless, the Federal Government still refuses to respond appropriately.

The Administration continues to conceal and obfuscate its misstatements, its failure to follow applicable laws, and its failure to take standard protective actions in the days and weeks following the attacks. Even worse, the Administration still fails to protect the health of the community and our first responders. Whatever may have been noted at the time the evidence available today mandates action.

The Administration's continuing lack of response stems directly, I believe, from a desire to cover up its misstatements and misdeeds

in the early days after the attacks. The Administration has continued to make false, misleading and inaccurate statements, and refused to take remedial actions, even in the face of overwhelming evidence, so that it would not have to admit it failed to follow applicable laws and to utilize basic precautionary principles in the first place. It continues to this day, to endanger the lives of American citizens, so it can deny that other White House concerns trumped its legal mandate to protect public health. That is why this hearing seeks to reexamine what happened back in the early days of September and October 2001.

Following the attacks Administrator Christine Todd Whitman repeatedly assured New Yorkers that the air was "safe to breathe." On September 14, 2001, the New York Times concluded from Administrator Whitman's assurances that "tests of air and the dust coating parts of Lower Manhattan appeared to support the official view expressed by Federal health and environmental officials that health problems from pollution would not be one of the legacies of the attacks."

The EPA Inspector General found these statements were falsely reassuring, lacked a scientific basis, and were politically motivated. The IG said, "When EPA made a[n] announcement that the air was "safe" to breathe, it did not have sufficient data and analyses to make such a blanket statement."

The IG called the EPA assurance, quote, "incomplete in that it lacked necessary qualifications and thus was not supported by the data available at the time." She concluded that "EPA's basic overriding message was that the public did not need to be concerned about airborne contaminants caused by the World Trade Center collapse. This reassurance appeared to apply to both indoor and outdoor air."

I believe the Inspector General was quite generous here. In a March 2002 White Paper, I detailed how EPA's statements not only lacked sufficient data and qualification, but how they also mischaracterized what data they did have, withheld critical information from the public, and ignored a wealth of information available at the time that directly contradicted their assurances.

The IG's report described the process by which the White House, through the Council on Environmental Quality and the National Security Council, ". . . influenced . . . the information that EPA communicated to the public . . . when it convinced EPA to add reassuring statements and delete cautionary ones." It concluded that, quote, "competing considerations, such as . . . the desire to open Wall Street, also played a role in EPA's air quality statements," close quote. Other observers have surmised that the cost of a proper government-financed clean-up of indoor spaces, given the scope of potential contamination, and concern about Manhattan real estate value may have been other "competing considerations."

These EPA statements and a series of subsequent EPA misdeeds lulled Americans affected by 9/11 to a false sense of safety, and gave other government decision-makers, businesses and employers the cover to take extremely perilous shortcuts, which did further harm. After making those initial safety claims, EPA continued to make materially misleading statements about air quality, long-term health effects and EPA's alleged lack of jurisdiction for reme-

diating indoor contamination. EPA illegally delegated its responsibility to clean indoor environments to New York City, which in turn dumped that responsibility onto individual homeowners, tenants and employers who were completely unequipped to discharge that responsibility.

EPA conducted indoor clean-ups in 2002 and later that the IG, EPA's own Scientific Advisory Panel, and now the Government Accountability Office have all found lacked a paper scientific basis and failed to ensure the proper decontamination of tens of thousands of residences and work places.

The response of other Federal agencies was similarly inadequate. The Occupational Safety and Health Administration, for example, failed to enforce workplace safety regulations on the "pile," the same regulations that were enforced at the Pentagon where every worker was required to wear respirators, and nobody has become sick. OSHA allowed indoor workers to reoccupy workplaces that had not been properly tested and cleaned. FEMA refused to pay for testing and clean-up of indoor spaces, a cost that was much too prohibitive for most residents and small businesses. FEMA also denied payments to residents to stay elsewhere even when their homes were full of World Trade Center dust.

New York City and State government officials followed suit by allowing reoccupation of buildings, including schools, that had not properly been tested and decontaminated; advising people to clean asbestos-containing dust in their homes and workplaces with a "wet mop and wet rag," illegal and unsafe advice endorsed by EPA and posted on its Website; and failing to enforce local environmental codes for worker protection.

Based on EPA assurances, insurance companies refused to cover individual claims for proper indoor clean-ups, and building owners and employers citing the Federal safety standards did not properly test and clean the spaces for which they were ostensibly responsible. Hundreds of thousands of people, not wanting to imagine that their government could act with such reckless disregard for their safety, believed the false assurances and continued to work on the pile with inadequate protective equipment and returned to their homes, schools and workplaces that had not been properly tested and cleaned and have still have not been.

Six years later we are just beginning to see the enormous consequences of these actions. Our government knowingly exposed thousands of American citizens unnecessarily to deadly, hazardous materials, and because it has never admitted the truth, Americans remain at grave risk to this day. Thousands of first responders, residents, area workers and students are sick, and some dead. And that toll will continue to grow until we get the truth and take appropriate action.

Those false statements continue to the present. Administrator Whitman has said, "There has never been a subsequent study that disproved what agency scientists told us all along." She omits to note that what Agency scientists and others told her was very, very different from what the EPA communicated to the public.

A September 2003 statement of 19 EPA union local heads read:

"Little did the Civil Service expect their professional work would be subverted by political pressure applied by the White

House. . . . These workers reported to senior EPA officials their best estimate of the risks, and they expected those estimates and the accompanying recommendations for protective measures to be released in a timely manner to those who need the information. The public was not informed of all the health risks. . . . This information was withheld . . . under orders of the White House. The Bush White House had information released, drafted by political appointees, that it knew to contradict the scientific facts. It misinformed. And many rescue workers and citizens suffered. Some citizens now face the long-term risk of asbestos-related lung cancer as well as other debilitating respiratory ailments as a result."

I want to conclude with a pronouncement made by then Administrator Whitman in 2001. She declared then, "The President said, 'Spare no expense, do everything you need to do to make sure the people of this city . . . are safe as far as the environment is concerned."

It is my fervent hope that after some of the truth begins to come to light through these hearings, we will see that this promise made to the victims and heroes of 9/11 is finally kept.

[The prepared statement of Mr. Nadler follows:]

PREPARED STATEMENT OF THE HONORABLE JERROLD NADLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

Today, the Subcommittee begins its investigation into possible substantive due process violations arising from the Environmental Protection Agency's handling of air quality issues following the terrorist attacks of September 11, 2001.

I want to welcome our witnesses and thank them for their willingness to participate.

This hearing continues the work begun in a hearing chaired last week by New York's Junior Senator, Hillary Clinton, which also looked at the federal government's failures in responding to the environmental crisis that resulted from the World Trade Center attacks.

This hearing will examine whether the federal government, by its actions, violated the "substantive due process" rights of first responders, local residents, students and workers. Specifically "[d]id the federal government itself, by responding inadequately or improperly to the environmental impacts—knowingly do bodily harm to its citizens, and thereby violate their constitutional rights? And, if so, which government actors were responsible?" We will look into what was known about the quality of the air versus what was communicated to the public, and whether federal government "risk communications" properly communicated necessary and legal precautions.

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Finally, we must address the future. What can we learn from the government's response? How will our government respond to future environmental disasters like this? The Administration seems to be headed in the wrong direction already. For example, they have now mandated that public health communications during a terrorist attack be "coordinated" through the Department of Homeland Security and

they are developing standards for toxic cleanups in national emergencies that may be weaker than current federal standards.

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Tens of thousands of my constituents and others from around the country who responded to the call have already begun to suffer severe illnesses as a result of this environmental disaster. I have, unfortunately, had to spend the better part of the last five plus years attempting to cajole the federal government into telling the truth about 9/11 air quality, insisting that there must be a full and proper cleanup of the environmental toxins remaining in apartments, workplaces, and schools that, to this day, are poisoning people, and demanding that the government provide long term, comprehensive health care to those already sick—be they first responders or area residents, workers or school children.

In the six years since the attacks, we have accumulated a mountain of evidence that tens of thousands of those exposed are suffering from chronic respiratory disease, and, increasingly, a variety of rare cancers. The sick includes 10,000 firefighters. And, the deaths of at least two individuals—James Zadroga and Felicia Dunn-Jones (whose family joins us today) have been linked unquestionably by government medical examiners to World Trade Center dust. Nonetheless, the federal government still refuses to respond appropriately.

The Administration continues to conceal and obfuscate its misstatements, its failure to follow applicable laws, and its failure to take standard protective actions in the days and weeks following the attacks. Even worse, the Administration still fails to act to protect the health of the community and our first responders. Whatever may have been known at the time, the evidence available today mandates action.

The Administration's continuing lack of responsiveness stems directly, I believe, from a desire to cover up its misstatements and misdeeds in the early days after the attacks. The Administration has continued to provide false, misleading and inaccurate statements, and refused to take remedial actions, even in the face of overwhelming evidence, so that it would not have to admit that it failed to follow applicable laws and to utilize basic precautionary principles in the first place. It continues, to this day, to endanger the lives of American citizens, so it can deny that other White House concerns trumped its legal mandate to protect public health. That is why this hearing seeks to re-examine what happened back in those early days of September and October of 2001.

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Other observers have surmised that the cost of a proper government-financed cleanup of indoor spaces, given the scope of the potential contamination, and concerns about Manhattan real estate values, were other "competing considerations."

These EPA statements, and a series of subsequent EPA misdeeds, lulled Americans affected by 9/11 into a dangerously false sense of safety, and gave other government decision-makers, businesses and employers the cover to take extremely perilous short cuts which did further harm. After making those initial safety claims:

- EPA continued to make materially misleading statements about air quality, long-term health effects, and EPA's alleged lack of jurisdiction for remediating indoor contamination;
- EPA illegally delegated its responsibility to clean indoor environments to New York City, which, in turn, dumped that responsibility onto individual home owners, tenants, and employers; and
- EPA conducted two so-called "indoor cleanups" that the IG, EPA's own scientific advisory panel, and, now, the Government Accountability Office, all found lacked a proper scientific basis and failed to ensure the proper de-contamination of tens of thousands of residences and workplaces.

The response of other federal agencies was similarly inadequate. The Occupational Safety and Health Administration, for example, failed to enforce workplace safety regulations on the "pile" that it enforced at the Pentagon (where every worker was required to wear respirators and nobody has become sick). OSHA also allowed indoor workers to re-occupy workplaces that had not been properly tested and cleaned. FEMA refused to pay for testing and cleanup of indoor spaces, a cost that was much too prohibitive for most residents and small businesses. FEMA also denied payments to residents to stay elsewhere even when their homes were full of World Trade Center dust.

New York City and State government officials followed suit by allowing re-occupation of buildings (including schools) that not been properly tested and decontaminated, advising people to clean asbestos-containing dust in their homes and workplaces with a "wet mop and a wet rag"—illegal and unsafe advice endorsed by EPA and posted on its website—and failing to enforce local environmental codes for worker protection.

Based on EPA assurances, insurance companies refused to cover individual claims for proper indoor cleanups. And building owners and employers, citing the federal safety statements, did not properly test and clean the spaces for which they were ostensibly responsible.

Finally, hundreds of thousand of people, not wanting to imagine that their government could act with such reckless disregard for their welfare, believed the false assurances, and continued to work on the pile with inadequate Personal Protective Equipment and returned to their homes, schools and workplaces that had not been properly tested and cleaned—and have still not been.

Six years later, we are just beginning to see the enormous consequences of these actions. Our government has knowingly exposed thousands of American citizens unnecessarily to deadly hazardous materials. And because it has never admitted the truth, Americans remain at grave risk to this day. Thousands of first-responders, residents, area workers and students are sick, and some are dead, and that toll will continue to grow until we get the truth and take appropriate action.

Those false statements continue to the present. Ms. Whitman herself has rationalized the White House's soft-peddling of risk in EPA statements, proclaiming to Newsweek in 2003 that she did not object to the White House changing her press releases and that, "the public wasn't harmed by the White House's decision to adopt the more reassuring analysis." Even now, they try to rewrite history, arguing, for example, that their reassuring statements were "only talking about air on the 'pile,' not in the surrounding neighborhoods" or that they were "only talking about outdoor, not indoor air" or that they had "always told residents to get their homes professionally cleaned." The IG reached a different conclusion, and the statements speak for themselves. Governor Whitman has even gone so far as to blame the victims themselves for their illnesses.

Administrator Whitman has said, "There has never been a subsequent study that disproved what agency scientists told us all along." She omits to note that what agency scientists and others told her, was very, very different from what she communicated to the public. A September, 2003 statement of 19 EPA union local heads reads:

> Little did the Civil Service expect that their professional work would be subverted by political pressure applied by the White House. . . . These workers reported to senior EPA officials their best estimate of the risks, and they expected

> those estimates and the accompanying recommendations for protective measures to be released in a timely manner to those who need the information. The public was not informed of all the health risks. . . . This information was withheld . . . under orders of the White House. The Bush White House had information released, drafted by political appointees, that it knew to contradict the scientific facts. It misinformed. And many rescue workers and citizens suffered. Some citizens now face the long-term risk of asbestos-related lung cancer as well as other debilitating respiratory ailments as a result.

I want to conclude with a pronouncement made by then-Administrator Whitman in September 2001. She declared then, "The President has said, 'Spare no expense, do everything you need to do to make sure the people of this City . . . are safe as far as the environment is concerned."

It is my fervent hope that after some of the truth begins to come to light through these hearings; we will see that this promise, made to the victims and heroes of 9/11, is finally kept.

Thank you.

Mr. NADLER. Please, no demonstrations, including applause.

Since the Ranking Member is not here, as I stated before, we will postpone his opening statement.

Normally in the interest of proceeding to our witnesses—we will have apparently two opening statements right now, first from the Chairman of the full Committee, the distinguished gentleman from Michigan Mr. Conyers.

Mr. CONYERS. Thank you, Chairman Nadler.

I come here in full recognition of the importance and gravity of this hearing, and I begin by welcoming the witnesses of which there are quite a few. But to begin with, it is important that we extend a welcome, as the Chairman Nadler will, to Governor Christine Todd Whitman, the former Administrator of EPA.

We thank you very much for your appearance here today and the discussion that we are going to have.

This isn't a courtroom, although most of the people might be lawyers. We want to try to get at the bottom of a very important historical question, obviously. And the reason I start off by welcoming you is that it would not be inappropriate to notice that you, at times when you felt it necessary, have been an independent voice in discharging your responsibilities not only as the Governor, but as the director or Administrator of EPA, the Environmental Protection Agency. And so we thank you for coming.

This will probably be the most important hearing that we will hear, and it is appropriate that you know that there—with Chairman Nadler, he has a very direct and vital connection to this terrible tragedy. His constituents were involved. He's represented the City of New York and the State of New York across a great number of years, and so we think that that is extremely important.

I would also like to thank the former Administrator of the Occupational Safety and Health Administration, OSHA, Mr. John Henshaw, who is sitting at the witness table as well. I want to thank you, sir, personally for the cooperation you have extended the Committee, which leads us to the best way that we can get at what happened.

Now, September 11, 2001, indelibly imprinted in the history of this country by reason of the fact that terrorists flew two hijacked commercial jets into the World Trade Center Towers in New York. Almost 3,000 people were killed by the terrorists in the collapse of the towers, including hundreds of first responders, police officers

and firefighters. Beyond the devastating loss of life, when the towers collapsed, numerous hazardous substances were released into the environment.

It also is appropriate to say that our attitude as a Nation toward the enemies of this country were automatically changed at the same time in a hugely dramatic way. And so we're here to reexamine it, and I have to comment on some of the theories that have been advanced to me across the years about this, which we need not recount now, but this has moved into the psyche of almost all of the citizens of this country.

And so evidence accumulated since the collapse of the World Trade Center under this attack indicates that the air exposure to these hazards have caused serious physical injury and death. That's probably the first thing we want to examine. Those who relied on statements that the air was safe and the instructions for insufficient clean-up of the indoor spaces have created serious results following that.

There's been a lot of injuries and deaths and suffering and family misery that has been caused as a result of the actual dastardly attack on this country. This oversight hearing of the Constitution Subcommittee gives us and the American people the first opportunity to try to establish what really happened, and we are looking for an honest revelation of the circumstances and the relationships between EPA and the White House, through the Council on Environmental Quality and the National Security Council, and other activities between them that will be inquired into.

It's very important to me that all of our witnesses' testimony be as candid as it possibly can be under the circumstances. We're here to learn, we're here to find out what happened, we're here to put to rest some of the misunderstandings that have occurred. And we are counting on our witnesses, beginning with Governor Whitman and Mr. Henshaw and those others—I think there are six more on panel two—to help us make history right by us proceeding with an inquiry that is long overdue.

But I commend the Chairman and even the Ranking Member in his absence, and I am hoping he will appear shortly, for the way they have constructed today's activity, and I thank the Chairman and congratulate him for his hard work.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, CHAIRMAN, COMMITTEE ON THE JUDICIARY, AND MEMBER, SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

On September 11, 2001, nearly 3,000 Americans lost their lives in a series of terrorist attacks, one of which caused the collapse of the World Trade Center. As a Nation, we collectively shared the pain and suffering of the victims and the survivors of these horrific attacks.

Sadly, there continues to be further casualties of this national tragedy. The collapse of the World Trade Center spewed numerous toxic chemicals into the air, which was then inhaled by the brave rescuers and clean-up personnel as well as the men, women and children living in the surrounding area. Already, many of these individuals have developed life-threatening illnesses as a result of their exposure to these chemicals.

Our Nation's air quality watchdog, the Environmental Protection Agency, however, may not have accurately assessed the extent of the hazard these airborne tox-

ins presented to the public. Indeed, the allegations go beyond that the EPA acted negligently.

While the EPA assured members of the public that the air was safe and that they could return to their homes, jobs, and schools, there is accumulating evidence that the available science did not support those statements and may have actually contradicted them.

The EPA's Inspector General found that the Agency's press releases and reports were altered to downplay or conceal the breadth of the environmental hazard and health consequences. In addition, the U.S. District Court for the Southern District of New York recently held that the EPA's actions violated the public's due process rights. Noting that the EPA's actions were "conscience-shocking," the court found that the Agency "affirmatively took actions that increased or created dangers" to the public.

Although the terrorists bear the ultimate responsibility for the September 11th attacks, it is the duty of our government to protect the public and to assist those whose lives have been affected by a catastrophe. Unfortunately, the government's failures here have compounded, rather than lessened the impact of the September 11th attacks.

Today, we have the opportunity to assess the EPA's response to the lingering health hazards presented by these attacks. It is my hope that the witnesses will shed light on the facts and circumstances of the Agency's actions and respond to these very serious allegations. Understandably, there has been much speculation as to why the EPA acted as it did, but the American public, particularly those who work and live in New York City deserve the truth.

Mr. NADLER. I thank the gentleman.

I am told that Mr. Weiner wanted to have an opening statement. Without objection—do any of the other Members of the Subcommittee want an opening statement first?

Fine. Without objection, Mr. Weiner will be recognized for an opening statement.

Mr. WEINER. Thank you, Mr. Chairman. I won't take much time.

I first want to begin by offering my thanks and the thanks of our whole city to you, Mr. Chairman. Shortly after the events of September 11, there began to be many people who sought to gloss over the challenges our city in Lower Manhattan faced. You were not one of them. You confronted the danger that was quite literally in the air and have not given up your quest to get to the bottom of it.

Today I also want to welcome Governor Whitman, the EPA Administrator, here today. We will get to hear two voices, and maybe even more, from the EPA Administrator. We heard the public assurances in the days after September 11; the assurances, for example, on September 13, in the EPA press release that the air quality is "unlikely to cause significant health effects, and the EPA is greatly relieved to have learned there appears to be no significant levels of asbestos dust in the air in New York City." We heard the EPA say on the 16th, air asbestos levels "cause us no concern." September 18: "I, the EPA administer, am glad to reassure the people of New York and Washington, D.C., that the air is safe to breathe." Those quotes were unambiguous, they were reassuring, and they were dead wrong. They were literally dead wrong. We know they were deadly because many of my constituents and some people in this audience are dying because they believed those assurances.

We also know they were wrong because the IG has said they were wrong. A Federal district court went so far as to say Whitman's deliberate and misleading statements made to the press where she reassured the public that the air was safe to breathe

around Lower Manhattan and Brooklyn and that there would be no health risk presented to those returning to the areas shocked the conscience.

We also know they were wrong because the EPA knew they were wrong at the time you, Madam Governor, stated them. At the point that those decisions were made, those statements were made, 25 percent of all the dust samples taken by the EPA had already shown to have unsafe levels of asbestos.

But now there is a second voice emerging from the former Administrator, after shouting from rooftops in the days after September 11 that the air was safe, now there are statements that, well, in fact, I, the EPA Administrator, was quietly whispering into the ear of city officials, saying, don't believe what I say publicly, only believe that it is unsafe; go out and make sure your workers protect themselves.

It looks very honestly like what it is, an unseemly attempt to rewrite the public record, to rewrite it in a way that effectively covers one person's responsibility and moves it to someone else. Make no mistake, this is a national responsibility. This was an attack on us, the United States, not one neighborhood, not two buildings. It was an attack on the United States.

It is the responsibility of the Federal Government to act now, and it is not too late. It is too late for some that stood on that pile and believed what they heard their highest government officials say, but it is not too late for the Federal Government to finally step up and say, we did wrong then, there were pressures on us that were unimaginable, but now is the time for us to start taking care of the health of the people who believed what we said.

There was an environment in the period after September 11 where many things that were told to us by our government turned out to be wrong. Slowly but surely, like an onion peeling away, we are learning more and more of them. Perhaps none were so damaging to the health and lives of the people in New York City than the ones made by our witness here today. We cannot continue this effort to say I said, he said, she said. Now is the time to accept responsibility, so finally the people who are harmed by those statements, harmed by those misjudgments, harmed by that mismanagement can finally reach some closure on the facts and get some opening on true health care for their families.

And I yield back.

Mr. NADLER. I thank the gentleman.

Without objection, all Members will have 5 legislative days to submit opening statements for inclusion in the record.

Without objection, the Chair will be authorized to declare a recess of the hearing if necessary at any time.

We will now turn to our first panel of witnesses. As we ask questions of our witnesses, the Chair will recognize Members in the order of their seniority on the Subcommittee, alternating between Majority and Minority, provided that the Member is present when his or her turn arrives. Members who are not present when their turn begins will be recognized after the other Members have had the opportunity to ask their questions. The Chair reserves the right to accommodate a Member who is unavoidably late or is only able to be with us for a short time.

Our first witness is the Honorable Christine Todd Whitman. Christine Todd Whitman served as Administrator of the U.S. Environmental Protection Agency under President George W. Bush from 2001 to 2003. Before that she served for 7 years as Governor of New Jersey. Governor Whitman is now the president of the William—I'm sorry, Whitman Strategy Group, a consulting firm that specializes in government relations and environmental and energy issues.

Our next witness is John Henshaw. Mr. Henshaw was nominated by President Bush and was confirmed by the Senate in 2001 to head the Occupational Safety and Health Administration. Prior to becoming the OSHA Administrator, he served as director, environment safety and health for Astaris, LLC. He was also the director of environment safety and health for Solutia, Inc.; corporate director, quality and compliance assurance, from Monsanto Company. He is now president of Henshaw & Associates, Inc., a safety and health professional services firm of Florida.

Your written statements will be made part of the record in its entirety. I would ask that you now summarize your testimony in 5 minutes, if you can. To help you stay within that time there is a timing light at your table. When 1 minute remains, the light will switch from green to yellow, and red when the 5 minutes are up. I will be a little lenient on the timing.

It is our custom in this Committee to swear the witness, so will the two witnesses please stand? I ask you to raise your right hand to take the oath.

[witnesses sworn.]

Mr. NADLER. Let the record reflect the witnesses responded in the affirmative.

You may be seated.

Governor, you may proceed.

TESTIMONY OF THE HONORABLE CHRISTINE TODD WHITMAN, WHITMAN STRATEGY GROUP

Ms. WHITMAN. I appreciate this opportunity to respond, to discuss the Environmental Protection Agency's response to the terrorist attacks of September 11, 2001. It's been nearly 6 years since two planes flew into the Twin Towers of the World Trade Center, yet not a day goes by that I don't think of friends that we all lost and the grief, despair and helplessness we felt as a Nation.

It is important to remember that many of the EPA personnel saw the planes hit knowing they had friends and relatives in those buildings. Yet within hours of those attacks, EPA officials were on the site collecting test data on potential environmental contaminants in order to assist New York City and the public.

In the early days EPA officials were monitoring for contaminants around Ground Zero without the benefits of electricity, surrounded by firefighting crews in the midst of desperate rescue operations. They deserve our respect and our appreciation.

On September 11, the President issued the declaration of emergency triggering the Federal response plan, which assigned lead Federal authority to the Federal Emergency Management Agency. FEMA then charged EPA with the responsibility of supporting the

city's response to any discharge of hazardous materials as a result of the attacks.

EPA immediately began collecting air, water and bulk dust samples for testing. By 2003, EPA had taken over 25,000 test samples, consisting of nearly 227,000 individual measurements of almost 700 contaminants. The EPA also performed other emergency response functions, such as the removal of hazardous waste, monitoring environmental conditions at landfills receiving debris from the World Trade Center, assisting the FBI in the recovery of evidence and remains, as well as constructing and operating wash stations near Ground Zero for both vehicles and personnel.

Within days of the attack, EPA took the initiative to secure critical protective gear for rescue and recovery personnel and in all provided them with 22,000 respirators, 13,000 safety glasses, 1,000 hard hats.

After I left the Agency in 2003, the Inspector General confirmed that the EPA fulfilled its mandate to support New York City. While understandably finding areas for improvement, she publicly stated, and I quote, "EPA did a really good job."

Mr. Chairman, I fully appreciate that the events of 9/11 touch raw emotions, but I am disappointed in the misinformation, innuendo and outright falsehoods that have characterized public discussion about EPA in the aftermath of the terrorist attacks. EPA's extreme critics have alleged that I knowingly misled New Yorkers and the workers of Ground Zero about the safety risks associated with environmental contamination. This destructive and incendiary charge was investigated by EPA's Inspector General, who confirmed in her 2003 report that we did not conceal any of our test data from the public.

In fact, within days of the 9/11 report, I authorized EPA to post all the test data, all of it, on a public Website. I did so precisely because I wanted to be as transparent to the public as possible. Statements that EPA officials made after 9/11 were based on the judgment of experienced environmental and health professionals at EPA, OSHA and the CDC who had analyzed the test data that 13 different organizations and agencies were collecting in Lower Manhattan.

I do not recall any EPA scientist or experts responsible for reviewing this data ever advising me that the test data from Lower Manhattan showed that the air or water posed long-term health risks for the general public.

With respect to the immediate area where the towers fell, however, the data revealed, and we publicly reported, that the air was different than in the rest of Manhattan. As these charts over here show, in the weeks following the attacks, EPA officials repeatedly warned of the risk to workers at Ground Zero and noticed the difference between air quality at the site and the air in the rest of New York. I and other EPA officials publicly urged rescue and recovery workers to wear protective gear that EPA had secured for their use at Ground Zero.

The EPA also advised workers at Ground Zero of the proper washing procedures for their clothes and equipment. In fact, on September 11, only hours after the attack, EPA officials prepared this flier that I would direct your attention to for distribution by

FEMA to rescue and recovery workers at the site. As you can see, Mr. Chairman, the flier informed workers of the risk of asbestos exposure caused by the collapse and cautioned workers to use protective equipment, including appropriate eyeglasses, respirators and protective clothing. It also urged proper cleaning procedures for clothing and equipment. It is utterly false, then, for EPA critics to assert that I or others in the agency set about to mislead New Yorkers or the rescue workers.

Mr. Chairman, the grief of 9/11 remains with us. Like many others, I lost personal friends that day. I suspect there will be a lot of talk in this hearing about blame and responsibility for what happened on September 11 and its aftermath. Let's be clear: There are people to blame. They are the terrorists who attacked the United States, not the men and women at all levels of government who worked heroically to protect this country.

Of course, there are lessons to be learned from the extraordinary challenges of 9/11. I welcome a constructive dialogue on those lessons that is undertaken in good faith. I came here today in that spirit, Mr. Chairman, and I trust the Subcommittee has as well.

I thank you and will be pleased to answer any questions that you might have.

Mr. NADLER. Thank you.

I now recognize Mr. Henshaw for an opening statement for 5 minutes.

TESTIMONY OF JOHN L. HENSHAW,
HENSHAW & ASSOCIATES, INC.

Mr. HENSHAW. Thank you, Mr. Chairman. You stated earlier I am an occupational safety and health professional and a certified industrial hygienist providing safety and health consultation services to clients around the world.

In June 2001, I was nominated by President Bush and then later confirmed by the U.S. Senate in August of 2001 as Assistant Secretary of Labor for the Occupational Safety and Health Administration, or OSHA.

I wish to take this opportunity today to discuss OSHA's role in protecting workers after the tragic events of the World Trade Center on September 11, 2001. My testimony represents my views and reflects my experiences as the OSHA Administrator.

OSHA's mission is to ensure to the extent possible safe and healthful working conditions for employees around this Nation. Under the OSH Act of 1970, OSHA has jurisdiction over private-sector employees and does not have jurisdiction over the public-sector employees such as the local fire and local police.

In addition, and under the Federal Response and National Contingency Plans established to deal with emergencies, OSHA operates under the incident command system which is invoked during significant emergency situations.

Our first action after the attack was to evacuate all 21 members of our Manhattan area office from building number 6 of the World Trade Center, which was destroyed with the collapse of the North Tower. It is because of their training and commitment to protecting workers, all of our employees, including an employee confined to a wheelchair, got out safely. They, too, were traumatized and ex-

posed to all the same conditions as others who were in Lower Manhattan that tragic day.

After all were accounted for, our staff joined the Federal, State and local agencies, as well as safety and health professionals from contractors, trade unions on site, all in an effort to protect the workers involved in the rescue, recovery, demolition and clean-up operations. In line with OSHA's internal directive, we determined we could be most protective in protecting worker safety and health by providing immediate assistance, oversight and consultation in an effort to ensure OSHA's standards and good safety and health practices were followed at a minimum.

It was apparent the site was not a typical construction or demolition project. Workers needed immediate protection from hazards whose scope and severity could be assessed only as the work progressed. In an effort to achieve quick and maximum effectiveness in saving lives and assuring worker protections, OSHA embarked on five specific activities: Number one, conducted personnel and area monitoring to characterize potential workplace exposures and the resulting hazards; number two, recommended appropriate personal protective equipment, including respiratory protection; number three, distributed and fit respirators, along with distributing other kinds of personal protective equipment; number four, conducted safety and health inspections 24 hours a day, 7 days a week in an effort to ensure standards were followed and workers were properly protected; and number five, provided site leadership and coordination of workplace safety and health.

OSHA committed nearly 1,100 staff, many times as many as 75 personnel on the site on any day. OSHA's staff worked on the site 24 hours a day, 7 days a week for the entire 10-month period. OSHA collected more than 6,500 air and bulk samples and performed over 24,000 analyses, looking at 81 different potentially hazardous materials such as asbestos, lead, silica and many other organic and inorganic compounds.

Personal air samples were collected around the clock each day, and we coordinated our efforts in monitoring with our safety and health compatriots, our professionals, and unions, and contractors and other agencies. OSHA's sampling effort focused on workers on and near the pile, as well as workplaces that were impacted by the attack, which is like the financial district. OSHA's breathing zone samples showed well below the Agency's permissible exposure levels for the majority of compounds and substances. The few that were above were on the pile.

OSHA distributed sampling summaries to trade unions, site contractors and agencies during our daily safety and health meetings and posted them on our Web. OSHA consistently instructed employers on the site to wear appropriate respiratory protection. Due primarily to the unpredictable nature of the hazards on the pile, a high level of protection was selected jointly with all safety and health professionals. These requirements were communicated through orders and notices posted throughout the sites, as well as during inspections, daily meetings and other communications.

During the first 3 weeks following the attack, OSHA gave out respirators at a rate of 4,000 a day. Over the 10-month period OSHA distributed more than 131,000 respirators to personnel

working at the World Trade Center. Initially handing out respirators on foot, OSHA quickly opened multiple distribution locations throughout the 16-acre site, including the ones at the Queens Marina, which was the Fire Department of New York's staging area.

Over 7,500 quantitative fit tests were conducted for negative pressure respirators, including nearly 3,000 fit tests specifically for the firefighters. In addition, 45,000 pieces of other kinds of protective equipment were distributed, including hard hats, safety glasses, gloves.

Mr. Chairman, I am very proud of how OSHA responded after the attack of September 11, 2001. Despite the highly intense, highly emotional and highly dangerous rescue, recovery and clean-up mission, this Nation did not lose another life at that site during that 10-month period. In fact, the lost day injury rate during that 10-month period was significantly less than what you would expect on a typical construction project.

Mr. Chairman, this was not a typical construction project. The absolute key to this success was working in partnership with unions, contractors, city employees, management, all in an effort to achieve compliance with OSHA's standards and our recommendations. The normal enforcement strategy was unacceptable to me, unacceptable approach, to enforce within the green line the pile, given the fact that enforcement may take days or weeks to develop the necessary evidence to support citations as this Committee knows. As you know, if citations are contested, it could take years before the administrative law judge's review and corrective action is required.

Mr. Chairman, if our purpose is to save lives and reduce injuries and illnesses, we did not have years, we did not have months, we did not have weeks, we did not have hours to wait for corrective action. We had to deploy a strategy to achieve compliance as soon as the hazard was recognized. The number of near misses that were reported indicated to me that the strategy that achieved immediate corrective action was the absolute right choice. OSHA did, however, execute normal enforcement strategy outside the pile, outside of Ground Zero, and we issued many citations as a result.

Mr. Chairman, I, like many people in OSHA, can say with confidence and a high degree of pride that OSHA's staff did everything they believed humanly possible to assure worker protection during those 10 months after the attack. OSHA did, however, learn a great deal at the World Trade Center site, lessons that can help the Agency and the Nation improve emergency preparedness and emergency response.

Following the World Trade Center experience, OSHA is pursuing a leadership role in coordinating worker health and safety during significant emergencies and is getting more involved in emergency preparedness. We now train with firefighters, law enforcement agencies and others responders across the Nation as a valued member of the response team.

Our Nation's responders deserve the very best protection, and the best way to assure that is for OSHA, supported by NIOSH, to be an integral part of our Nation's emergency planning, training and response efforts.

Thank you, Mr. Chairman. I will be glad to take any questions.
Mr. NADLER. Thank you.
[The prepared statement of Mr. Henshaw follows:]

PREPARED STATEMENT OF JOHN L. HENSHAW

STATEMENT OF

JOHN L. HENSHAW

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS,

AND CIVIL LIBERTIES

U.S. HOUSE OF REPRESENTATIVES

JUNE 25, 2007

Oversight Hearing on the U.S. Environmental Protection Agency's Response to Air Quality Issues Arising from the Terrorist Attacks of September 11, 2001: Were There Substantive Due Process Violations?"

Mr. Chairman, Members of the subcommittee.

I am an occupational safety and health professional and a certified industrial hygienist providing safety and health consultation services to clients around the world. In June 2001, I was nominated by President Bush then later confirmed by the US Senate in August 2001 as Assistant Secretary of Labor for Occupational Safety and Health or OSHA. I wish to take this opportunity today to discuss OSHA's role in protecting workers after the tragic events of the World Trade Center on September 11, 2001. My testimony today represents my views and reflects my experiences while OSHA Administrator.

OSHA's mission is to ensure to the extent possible safe and healthful working conditions for employees in this Nation. Under the OSH Act of 1970, OSHA has jurisdiction over Private Sector employers and does not have jurisdiction over the Public Sector which employs local, state and municipal employees such as local fire and police. In addition and under the Federal Response and National Contingency Plans established to deal with emergencies, OSHA operates under the incident command system which is invoked during emergency situations.

Our first action after the attack was to evacuate all 21 members of our Manhattan Area Office staff from #6 World Trade Center, which was destroyed with the collapse of the North Tower. It is because of their training and commitment to protecting workers, all our employees, including an

employee confined to a wheelchair, got out safely. They too were traumatized and exposed to the all of the same conditions as others who were in lower Manhattan that tragic day.

After all were accounted for, our staff joined with other Federal, State and local agencies, as well as safety and health professionals from contractors and trade unions onsite, in an effort help protect workers involved in rescue, recovery, demolition and clean up operations. In line with the Federal Response and National Contingency Plans and OSHA's internal directive, we determined we could be most effective in protecting worker health and safety by providing immediate assistance, oversight and consultation in an effort to assure OSHA standards and good safety and health practices were followed at a minimum. It was apparent the site was not a typical construction or demolition site and workers needed immediate protection from hazards whose scope and severity could be assessed only as the work progressed.

In an effort to achieve quick and maximum effectiveness in saving lives and assuring worker protections, OSHA embarked upon five activities:

- conducted personnel and area monitoring to characterize potential workplace exposures and resulting hazards;
- recommended appropriate personal protective equipment including respiratory protection;
- distributed and fit respirators along with distributing other personal protective equipment;
- conducted safety and health inspections and observations - 24 hours a day - seven days a week in an effort to assure standards were followed and workers are properly protected, and;
- provided site leadership and coordination on workplace safety and health.

OSHA committed nearly 1,100 staff, sometimes as many as 75 OSHA personnel a day on site. Our employees remained on the site for 10 months providing a 24-hour presence, 7 days a week.

OSHA collected more than 6,500 air and bulk samples and performed over 24,000 analyses for asbestos, lead and other heavy metals, silica and many other inorganic and organic compounds. All told, we analyzed for 81 different potentially hazardous materials.

Personal sampling was conducted around the clock each day and we coordinated our monitoring with onsite safety and health professionals from unions, contractors and other officials. OSHA's sampling efforts included breathing zone samples of workers on and near the pile as well as other areas

impacted by the attack. Work being done included such tasks as search and recovery, heavy equipment operation, steel cutting and burning, manual debris removal and concrete drilling and cutting.

OSHA's breathing zone samples showed exposures were well below the agency's permissible exposure levels for the majority of chemicals and substances analyzed.

In an effort to ensure that workers were informed about the potential risks, OSHA distributed sampling summaries to trade unions, site contractors and agencies during our daily safety and health meetings. Individual worker sample results were mailed directly to the worker monitored. OSHA also posted these results on our Web site within 8 hours.

OSHA constantly and consistently recommended and instructed employers and workers on the site to wear appropriate respirators. Due primarily to the unpredictable nature of the hazards on the pile, a high level of protection was selected jointly with all the site safety and health professionals. This was a half-mask, negative pressure respirator with, high efficiency particulate, organic vapor and acid gas cartridges. These requirements were communicated through orders and notices posted throughout the sites and as well as during inspections, daily meetings and other communications.

OSHA continued to conduct extensive risk assessments through personal monitoring to verify the selected respirators remained appropriate. When sample results indicated a higher level of protection was needed for example during jack hammering and concrete drilling operations, a full face piece respirator was required for those operations.

OSHA became the lead agency for respirator distribution, fitting and training. During the first 3 weeks following the attack, OSHA gave out respirators at a rate of 4,000 per day. Over the 10 month period, OSHA distributed more than 131,000 respirators to personnel working at the World Trade Center.

Assuring workers had the proper respiratory protection and that they were properly fitted and trained to wear the respirator, was a challenge. Initially handing out respirators on foot, OSHA quickly opened multiple equipment distribution locations throughout the 16 acres site including one at the Queens Marina, which was the Fire Department of New York's staging area.

Over 7,500 quantitative fit-tests were conducted for negative pressure respirators, including nearly 3,000 fit-tests specifically for the fire department.

These sessions also included instructions on the proper storage, maintenance, use and use limitations of respirators. In addition, 45,000 pieces of other kinds of protective equipment such as hard hats, safety glasses and gloves, were given out to those who needed them.

Mr. Chairman, I am very proud of how OSHA responded after the attack on September 11, 2001. Despite the highly intense, highly emotional, and highly dangerous rescue, recovery and clean up mission, this nation did not lose another life at that site during the 10 month operation. With over 3.7 million hours worked, only 57 non-life threatening injuries occurred during this period. This translates into a lost workday injury and illness rate of 3.1 per 100 employees, significantly less than the 4.3 per 100 workers for a typical specialty construction project – and Mr. Chairman this was not a typical construction project.

The absolute key to this success was working in partnership with unions, contractors, city employees and management in order to achieve compliance with OSHA standards and recommendations. A normal enforcement strategy was an unacceptable approach within the Green Line given the fact that enforcement may take days or weeks to develop the necessary evidence to support citations and if citations are contested, it could take years before an Administrative Law Judge's review and ultimately corrective action is required. Mr. Chairman: If our purpose was to save lives and avoid injury and illnesses, we did not have years, months or even weeks to wait for corrective actions. We had to deploy a strategy that achieved compliance as soon as the hazard was recognized so corrective action was immediate. The number of "near misses" that were reported, indicated to me, that the strategy that achieved immediate corrective action was absolutely the right choice. OSHA did however execute the normal enforcement strategy outside the pile or ground zero and issued many citations.

The joint labor-management safety and health committee that was established very early in the operation was another mechanism to identify and correct work hazards and appropriate corrective actions. This also resulted in an unusually high level of safety and health oversight, training and direct involvement of the employer and workers. Union stewards, management and other agencies met with OSHA at least on a weekly basis to share information. Communications such as safety bulletins were distributed to respective members through tool box talks and other communications.

Mr. Chairman, I like many people in OSHA, can say with confidence and a high degree of pride that OSHA staff did everything they believed humanly possible to assure worker protection during the 10 months following the attack. OSHA did however learn a great deal at the WTC site, lessons that

can help the agency and the Nation improve emergency preparedness and emergency response in the future. Nationwide, the agency with support from NIOSH, has been actively pursuing a leadership role in coordinating worker safety and health during emergencies which is critical when multiple entities are involved. Following the WTC experience, the agency has made a concerted effort to get more involved in emergency preparedness and now trains with local firefighters and law enforcement agencies and others responders across the nations as a valued member of the response team.

Responders are realizing OSHA's value in worker safety and health and the value of having OSHA trained staff involved in the emergency preparedness and emergency response. Our Nation's responders deserve the very best protection and the best way to assure that is for OSHA, supported by NIOSH, to be an integral part of our national's emergency planning, training and response efforts.

Thank You - I'll be please to answer any questions.

Mr. NADLER. The Chair will recognize himself for the first questions.

A September 12, 2001, e-mail circulated to top EPA officials stated, quote, "All statements to the media should be cleared through the National Security Council before they were released," close quote. So as early as September 12, the National Security Council and the White House were approving public statements. Let's take a look at some of those statements. There will be a video for about 30 seconds.

[Videotape played.]

Mr. NADLER. Ms. Whitman, an EPA press release from September 18th also quotes you as saying, "I am glad to reassure the people of New York and Washington, D.C., that their air is safe to breathe."

Mr. Henshaw, in a September 16th press release, you were quoted as saying, "Our tests show that it is safe for New Yorkers to go back to work in New York's financial district."

In a series of EPA press releases beginning on September 13, the following words were used to describe the air conditions: Good news, causes no concern, not detectable, no significant health risk and safe to breathe.

Ms. Whitman, do these words and phrases convey a sense of danger or even of caution, or do they, in fact, convey a sense of safety and security?

Ms. WHITMAN. Mr. Chairman, those words, to the best of my recollection and every effort that I made at the time, were also added with the phrase, "However, on the pile it is different."

Mr. NADLER. Well, we will get to that.

Ms. WHITMAN. There is a significant difference, the readings we were getting at the time.

Mr. NADLER. At the time—would you answer my question—do they convey a sense of safety and security or a sense of caution?

Ms. WHITMAN. They convey exactly what they were meant to convey. Those were the readings we were getting from the scientists.

Mr. NADLER. Do you regret your repeating the sentence that the air was safe to breathe?

Ms. WHITMAN. I do not regret repeating what the scientists said was appropriate.

Mr. NADLER. Mr. Henshaw, do these words and phrases convey a sense of danger or even of caution? Or do they convey a sense of safety and security in your opinion?

Mr. HENSHAW. Again, not counting the pile, the pile was a separate issue.

Mr. NADLER. We will get to the pile.

Mr. HENSHAW. All right. We took 240 samples———

Mr. NADLER. Please answer the question.

Mr. HENSHAW. All of our samples were below our—significantly below our significant exposure limits.

Mr. NADLER. You said that already. It is on the record. I just asked you to convey the sense of———

Mr. HENSHAW. That conveys that the environment is safe.

Mr. NADLER. Okay. Thank you. Do you now regret saying it was safe for New Yorkers to go back to work 6 days after the terrorist attack? Was that a mistake?

Mr. HENSHAW. Not within the Financial District. On the pile was a different circumstance. Sir, I do not regret it.

Mr. NADLER. The area around it was okay?

Mr. HENSHAW. All of our data indicated it was okay.

Mr. NADLER. Ms. Whitman, during 2001 did any government official or outside scientist tell you that EPA statements were not adequately communicating health risk warnings based on the data available at the time?

Ms. WHITMAN. Mr. Chairman, to the best of my knowledge, not one of the scientists who were responsible for analyzing the data on the pile ever indicated———

Mr. NADLER. Did any scientist?

Ms. WHITMAN. Not that I can recall.

Mr. NADLER. Okay. Now, Ms. Whitman, I would like to talk about the information you had or did not have at the time and compare it to what EPA said publicly. Much of this organization is—I am sorry—much of this information is contained on that chart to your left, although not all of it. It is Document 16 in the binder that was supplied to you. Since I know it's a little difficult to read that, because I can't read it from here, that chart summarizes overwhelming evidence that when the EPA was assuring everyone was—that the air was safe, in fact, it either didn't have supporting data or it had data showing the opposite.

Ms. Whitman, on September 13 you said in an interview, everything we are getting back from the sampling that we are doing is below background levels. There's not a reason for the general public to be concerned, closed quote. And yet on September 12, the day before that statement, in response to an urgent White House inquiry, Dr. Ed Kilbourne of the Centers for Disease Control warned that EPA sampling data was, quote, scanty, unquote, that he was, quote, aware of other toxic hazards in the area about which EPA hasn't asked, and that of the first five EPA bulk samples from the World Trade Center site, one contained a, quote, substantial concentration of asbestos, closed quote. That is 20 percent of the available samples.

Doesn't this information make your September 13 statement a flat out falsehood?

Ms. WHITMAN. No, it does not, Mr. Chairman.

Mr. NADLER. Why doesn't it?

Ms. WHITMAN. The fact that dust contained high levels of lead and asbestos, or asbestos I should say, is absolutely accurate and true. But that was different from what we were finding in the air. In fact, that was why we were working with the city to put HEPA trucks on the street that could get in and suck up the dust and to wash down the outsides of the buildings.

Mr. NADLER. Were you aware that Dr. Kilbourne had warned that EPA wasn't asking about lots of toxic hazards and that he said that the EPA sampling data was scanty and should not be relied upon for safety at that———

Ms. WHITMAN. I was not aware of any scientist—what happened—let me describe for you the process. Perhaps it will help things. The first week, or 2 weeks actually, we had three phone calls a day, gradually went down to two and then one, that involved every regional administrator from around the country, Re-

gion 2 scientists at Region 2, on-scene coordinators as well as headquarters staff, who was involved with emergency response and in communications. We would go over what the dust—what the samples they were getting in those days. And we were constantly adding to the samples. There's no doubt about that. We were getting results on a lot of those samples. We would go over. I would ask what was accurate to say to the public, what they could hear, what I could say accurately. And I was told we were—went over that, we decided what it was and we went out and conveyed that to the public.

Mr. NADLER. Well, EPA did not begin regular outdoor air monitoring in Lower Manhattan until September 14. The only air monitoring results, we are told, that you had for September 12 and 13 were from the New York City Department of Environmental Protection. Those air samples, of the 10 air samples the city took during those days, seven showed asbestos levels above the EPA's 1 percent trigger mark, including one from as far away as six blocks away in front of the Municipal Building. Yet the September 13 press release states that EPA, quote, found either no asbestos or very low levels of asbestos and further states that monitoring the sampling has been very reassuring about potential exposure. The general public should be very reassured. This despite the New York City findings of 70 percent of its samples showing asbestos levels above the EPA's 1 percent trigger level.

Isn't this a little contradictory.

Ms. WHITMAN. Mr. Chairman, I am not going to try to go back almost 6 years now to second-guess the scientists at the time.

Mr. NADLER. Excuse me. It's not second guessing the scientists at this time.

Ms. WHITMAN. It would be second guessing the scientists.

Mr. NADLER. No. My question has nothing to do with the scientists. My question is to do with the fact that you are putting out very reassuring statements saying nobody's finding any asbestos levels above—any high asbestos levels when in fact the only test they had at that time, the New York City test, showed high asbestos levels above the 1 percent mark in 70 percent of the tests.

Ms. WHITMAN. Two things here, Mr. Chairman, and I cannot determine based on the question what is in play either, whether all of the samples that you are talking about from New York City were relative—related to the dust or related to the air. Those are two different things.

Mr. NADLER. Excuse me. Those were air samples.

Ms. WHITMAN. All right. Fine. Thank you. I will also tell you that it was my understanding—we had people back on the site. We did use New York City samples. We used New York State samples. We used samples, as I had mentioned, from over 17 different organizations and we were taking our own samples, which we were taking at which time? I can't tell you. I can't go back and tell you.

Mr. NADLER. Let's go into your own samples. The EPA dust samples, dust samples of September 14 show asbestos levels of 2.1 to 3.3 percent, which is 210 percent and 330 percent above the EPA's 1 percent trigger level. Yet the EPA September 16 press release describes this as slightly above the 1 percent trigger. Don't you believe that characterizing dust samples that are 210 to 330 percent

above your own standard as only slightly above the trigger is falsely reassuring and misleading?

Ms. WHITMAN. Mr. Chairman, with all due respect I can't imagine that we would have released a statement 3 days later that wasn't based on new testing data and results because we were getting new information every single day. When I was on the phone———

Mr. NADLER. The fact is, is that you did release that statement, and these were the test results that were there at the time.

Ms. WHITMAN. Well, if we are talking about dust or air, again there was a difference with dust and air.

Mr. NADLER. These were dust samples.

Ms. WHITMAN. You are saying that the second statement related to dust samples, too, or air samples?

Mr. NADLER. The second statement simply said that um—yes, they referred to these specific tests, and they characterized the results of these specific tests of 2.1 and 3.3 as slightly above the 1 percent trigger. So we are referring to these specific tests.

Mr. WHITMAN. I will have to take your word for that. I haven't seen that. Recently I haven't had a chance to go back over all that. But I will tell you again that every statement that we made, that I made, was based on what the experts who had a great deal of experience in this kind of response were conveying to me.

Mr. NADLER. Thank you very much. I will now recognize the distinguished—I will come to Mr. Henshaw in the next round. I will now recognize the distinguished Chairman of the full Committee, the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman, and I thank the witnesses for their testimony. Mr. Henshaw, the September 16 EPA press release quotes you in the following way:

Our tests show that it is safe for New Yorkers to go back to work in New York's Financial District.

Now this release implied that you said this on the basis of the fact that some indoor tests in the Financial District buildings were, according to the EPA, negative for asbestos. But again, outdoor test results showed the 2.1 to 3.3 levels.

Do you believe it is practical in a dust-saturated environment for workers to walk through debris with unsafe levels of asbestos without somehow breathing it in or getting it on their clothes or tracking it into the buildings?

Mr. HENSHAW. Mr. Congressman, tracking materials, you will see in that press release we talk about and caution about tracking it back into the buildings. That was a big concern of ours, and that's why the HEPA vacuum, as the Governor mentioned, and the cleaning of the streets of the Wall Street area was a significant event, to make sure that we maintain safe work environments.

Now, our results—the results you are talking about are referring to percent in a bulk sample. And true, we found as high as 1.9 percent in bulk. This was a chunk on top of a patrol car. That was the highest percentage we found of asbestos. What we found in the workplace in the air, which is the critical piece, if it's in a bulk, it's not going to be hazardous unless it gets in the air and people breathe it. We spent—starting on the 13th, our data began to measure and monitor exposures throughout the entire Wall Street

area; in fact, from Canal Street down, and collected over the period of time 204 samples. All of those samples showed we were well below—we barely detected any asbestos or any fibers in the air.

And let me clarify this, we did find fibers in the air using our base contrast microscopy. When we used TEM, we found out those were not asbestos. Keep in mind, there's two towers loaded with carbon material, with fabric from wall covers, from the cubicles, from the ceiling tiles to the curtains. There were a lot of fibers. And when you see results as you saw in the NYCOSH data that talks about fibers, not speciating as to whether it is asbestos or not. And that's the confusion, Mr. Chairman. And that's why somebody needs to coordinate this whole effort, to make sure that we have a constant message. Because showing samples that is using the PCM method that we have a lot of fibers doesn't mean it's asbestos.

And so, Congressman, the answer to your question directly, we did find some fibers in tests but they were not asbestos. And therefore, we believed it was appropriate to open up Wall Street, as long as we put in the right precautions, that we do what we can to minimize the tracking and reentrainment when you kick on ventilation systems, reentrainment of whatever dust may be in those systems. It was safe for people to go back to work.

Chairman CONYERS. Well, it was safe to go back to work if you could get through the pollution to get to work. I mean, what we are talking about here, sir, are the outdoor tests as compared to the safety that you claim was on the inside. The outdoor tests showed there was great danger of very potent———

Mr. HENSHAW. And while our issues are workplace environments, we knew workers were going to walk to and from their workplace. We monitored, and we had OSHA inspectors walking the streets of New York City on the 14th, 15th and 16th, and we did that following the 17th when we opened up Wall Street, to see what exposures the people who are walking to and from work might be exposed to. And sir, we did not find them being exposed above any kind of acceptable standard, or unacceptable standard in respect to workplace standards.

Mr. CONYERS. You didn't find—you didn't know that the outdoor test results showed that there were 2.1 to 3.3 levels existing in the outside atmosphere?

Mr. HENSHAW. When you say levels, I am not sure what you are talking about. But I did not know of any result. We did not find any result of fibrous per cc of air, is the units we use, to estimate or judge whether in fact a workplace is an issue. We did not find those concentrations. If you are talking about a bulk sample, which represents the percent of asbestos in that by weight of that substance or that chunk, that's a different story, and we did find percentages. At the highest we had was 1.9 percent.

But again, Congressman, if I may interrupt, the key really is what's in the air. That's———

Mr. CONYERS. That's what I am saying. What is in the air. In the air, let me just read———

Mr. NADLER. The gentleman's time has expired. You can ask just this question.

Mr. CONYERS. All right. Let me just follow this out. And I thank you, Mr. Chairman. Here is EPA, Environmental Protection Agency response to September 11. And this is dated September 16. In the fifth paragraph, air samples taken on September 13 inside buildings in New York's Financial District were negative for asbestos. Debris samples collected outside buildings on cars and other surfaces contained small percentages of asbestos, ranging from 2.1 to 3.3. That's where I get that—that's where I get it.

Mr. HENSHAW. That, sir, is———

Mr. CONYERS. That is what was outside. So all I am raising is that to get inside where you claim it was safe, you had to work—you had to walk through an environment that was highly, highly infested with the kinds of materials that are harmful to human beings, right?

Mr. HENSHAW. Not—no, sir.

Mr. CONYERS. I am not right. Well, is this statement incorrect in the EPA release of September 16, 2001? Would you like to take a look at it?

Mr. HENSHAW. You are saying the EPA release?

Mr. CONYERS. Yes, sir.

Mr. HENSHAW. Well, I will be glad—but all I can—you are referring to bulk samples, which is sediment, dust on a surface, and one of the reasons why we recommended on Friday that we clean Wall Street, and that's with the HEPA vacuums and that's with the washing down of the streets where a lot of that debris was removed.

Mr. CONYERS. So you are suggesting we shouldn't pay any attention to this asbestos ranging from 2.1 to 3.3 in the release, that wasn't relative to any———

Mr. NADLER. The gentleman's time has expired. The witness may answer the question.

Mr. HENSHAW. Certainly bulk concentrations of an asbestos above 1 percent is something that we need to pay attention to. No doubt about it. And what's important is, we want to make sure that doesn't get reentrained in the air where people are exposed to it. And so that's why we continue to monitor. We monitored before Wall Street was open, and we monitored after to make sure that nothing was getting in the air. And Congressman, we didn't find anything getting in the air.

Mr. NADLER. Thank you. Thank you. We've now been joined by the Ranking Republican Member of the Committee, of the Subcommittee rather, Mr. Franks, and I will now recognize him for an opening statement because I promised I would before.

Mr. FRANKS. Thank you, Mr. Chairman, and I thank Governor Whitman and Mr. Henshaw for being here. I apologize, and no one tried to get here sooner. With that in mind, Mr. Chairman, this oversight hearing is ostensibly to explore the legal issues that are currently being examined in ongoing litigation specific to the case of *Lombardi v. Whitman*. Initially this case was unanimously decided by a three-judge appellate panel, including Robert D. Sack, a Clinton appointee, but the decision by that panel is not the final step in the litigation process, as there will be appeals to the full Second Circuit for an en banc decision by all of its judges and a possible appeal to the U.S. Supreme Court after that. And while I

look forward to an exploration of some of the legal issues raised in this case, I am concerned that our hearing today will be seen as a constitutionally questionable or inappropriate congressional attempt to second-guess the judiciary decision before the appeals process has made the final determination on the merits.

The claims involve whether the EPA's public statements regarding the quality of the air at the World Trade Center cleanup site were entirely accurate with the benefit of 20/20 hindsight. The court determined that the EPA took substantial measures to warn the public of environmental dangers. The court resolved the claims as follows, stating:

Government action resulting in bodily harm is not a substantive due process violation unless the government action was so egregious, so outrageous that it may be fairly said to shock the contemporary conscience. In order to shock the conscience and trigger a violation of substantive due process, official conduct must be outrageous and egregious under the circumstances. It must be, quote, truly brutal and offensive to human dignity, closed quote. The OIG report shows that the defendants were required to make decisions using rapidly changing information about the ramifications of unprecedented events in coordination with multiple Federal agencies and local agencies and governments. If anything, the importance of the EPA's mission counsels against broad constitutional liability in this situation. The risk of such liability will tend to inhibit EPA officials in making difficult decisions about how to disseminate information to the public in an environmental emergency. Knowing that lawsuits alleging intentional misconduct could result from the disclosure of incomplete, confusingly comprehensive or mistakenly inaccurate information, officials might default in silence or default to silence in the face of the public's urgent need for information.

In essence, the Second Circuit held that it would not be lawful to hold the Federal Government responsible for harm suffered by rescue workers who may have relied upon information issued by the Federal Government in circumstances in which the Federal Government was, quote, required to make decisions using rapidly changing information about the ramifications of, once again, unprecedented events in coordination with multiple Federal agencies and local agencies and governments, closed quote. As the OIG report stated, responding to this crisis required organizations from all levels of government to coordinate their response efforts and to make critical public health and safety decisions quickly and without all of the data that the decision makers themselves would normally desire. To impose liability in such circumstances would actually risk even greater harm in the future because fear of liability might deter the government from saying anything about an emergency situation. And I hope we can all agree that nothing should be done to force the Federal Government to remain silent in the midst of a crisis.

I understand that Chairman Nadler held a press conference to criticize State and local official efforts to provide for injured 911 rescue workers in which he said, quote, the villains are no longer the terrorists. The villains live in the White House and in the Gracie mansion and in the Governor's office, closed quote.

Let us be clear, Mr. Chairman, the villains are the terrorists, the villains remain the terrorists. The terrorists caused the harm on 9/11. We must be very careful not to equate even unintentionally the good-faith efforts of government officials to dutifully respond to an emergency in strange circumstances with the vicious premeditated violence perpetrated by blood thirsty murderers who express desire to kill as many innocent people as possible.

Mr. CONYERS. Would the distinguished———

Mr. FRANKS. Mr. Chairman, I look forward to the witness.

Mr. CONYERS. Would the distinguished gentleman yield to me?

Mr. FRANKS. Certainly.

Mr. CONYERS. I thank you, Mr. Franks. As the Ranking Member, we appreciate your presence very much. What I wanted to just make sure that we all agree on, that we're in no way attempting to intervene with the court procedures or what's going on in the court, and that we're not trying to obfuscate or in any way discredit anything that is going on at this present time in the Federal courts under the legal procedure. I think we're all in agreement that that is not our goal here, to interfere or even to instruct the courts. We're holding the hearing pursuant to our responsibilities as Members of the one Committee in the Congress that can inquire into these matters, and I just wanted to seek your assurance that that's why we're all here.

Mr. FRANKS. Well, I understand, Mr. Chairman. And I accept that at face value. I guess I would just suggest that given the sensibilities of the issue here that it might be better for the courts to come to their conclusion before we begin to second-guess them. And with that, I will yield back.

Mr. NADLER. Thank you. Let me just say that I don't think that the Congress in the exercise of its legislative responsibilities can or should wait for courts to decide limit questions that are before the courts.

Mr. CONYERS. Yes.

Mr. NADLER. There are at least three cases before the courts. Our purpose today is not to influence those cases in any way, but neither should we wait for them because we have responsibilities to undertake, and I must comment I did say what I was quoted as saying. And I think the terrorists—with the terrorists, they were the villains who did what they did. But insofar, insofar as government, as government officials in bad faith, if they were in bad faith, acted in such a way as to inflict bodily harm or to subject people to bodily harm in the United States, then they also are guilty if that is the case that happened.

I'm not saying that now. That happens to be my personal opinion. But that's not before the Committee now. But that was the—what I was saying there, I was not equating them with the terrorists. The terrorists did what they did, which was obviously heinous. But that doesn't eliminate the logical possibility that other people compounded the damage, which I believed to be the case. And that—and that it may be incumbent on us as Congress to take remedial action, which is what we have to examine.

Mr. CONYERS. Would the gentleman yield?

Mr. NADLER. Yes.

Mr. CONYERS. I just wanted to get the assurances and the continued cooperation of the distinguished Ranking Member of this Committee that I hope that he has no objection to us moving forward with the inquiry. No one has mentioned the courts until now. And we don't intend to invade their jurisdiction, nor do we intend to describe or limit or instruct them as to how they should proceed. And so we would like to continue the comity that we've enjoyed in this Committee so far and get your assent to the continuation of these hearings as we're proceeding. We've got distinguished witnesses here, and we would like this to be a bipartisan inquiry.

Does that meet with the objections of the gentleman.

Mr. FRANKS. Mr. Chairman, I would just say I look forward to the hearing and what the witnesses have to say and do so with an open heart.

Mr. CONYERS. Wonderful. Now one point though. Could you call for me our distinguished friends, Mr. Pence and Mr. Issa and Steve King and Jim Jordan, to invite them if they are here, to please join these proceedings because this isn't a party, a partisan inquiry. And I don't want anybody to think that it is. It's a bipartisan point of view in which they are entitled to express any opinions that they hold about this proceeding. And I don't think that the Committee serves its fullest purpose without all of our colleagues here.

Mr. FRANKS. Mr. Chairman, if I could just respond to that just extremely briefly.

Mr. NADLER. Briefly, yes.

Mr. FRANKS. The meeting being held—in all due deference to the Chairman—at 1 on a Monday has been difficult for some of our Members. As you know, I had to make great effort to be here personally and I know all of you are here, so that leaves us without excuse. But I do suggest to you that the particular timing of the hearing made it———

Mr. CONYERS. And I'm sorry that you were inconvenienced, your Members, not you, but those that may not have been able to be here.

Mr. NADLER. Let me just say, the meeting was scheduled for 1 on a Monday because that was the only time that some of the witnesses could make it. With that, I will yield for 5 minutes of questioning to the distinguished gentleman from Minnesota, Mr. Ellison.

Mr. ELLISON. Ms. Whitman, on September 14, the EPA had its own workplace tested in Manhattan and found asbestos. Without even waiting for the results, the EPA had its building professionally cleaned. How could you say that there were, quote, no significant levels of asbestos, unquote, in your September 16 press release when significant amounts of taxpayer dollars were spent to clean your own building at 290 Broadway?

Ms. WHITMAN. Congressman, we advised everyone who was going to reoccupy buildings that they should be appropriately cleaned. There was no extraordinary cleaning undertaken at our buildings, but clearly every building in that area where people were going to be occupying should have been cleaned. And what we said at the time was, while we recommended professional cleaners, if individuals couldn't afford that or didn't have access to them, that HEPA vacs and wet wipes were the procedures that they should under-

take. But we absolutely recommended that everybody clean the buildings. And I would repeat that nothing extraordinary occurred with our building, but surely it was important to get the men and women back within who were responding in a very direct way and were responsible for a lot of the analysis of the information and the data on which the public so depended back into their building, which was literally four blocks away.

Mr. ELLISON. Governor Whitman, did the EPA issue a press release and also state on its Website that residents should clean their residences and workplace with a wet rag or a wet mop?

Ms. WHITMAN. I don't recall EPA ever saying wet rag or wet mop. EPA said professional cleaners if possible and HEPA vac and wet wipes together. Vacuum cleaner with a special HEPA filter and wet wipes. It is my understanding that in subsequent retesting that those who followed those procedures, they were found to have very low, if any, incident of remaining asbestos. We also recommended that if people had shag carpets———

Mr. ELLISON. I'm sorry, Ms. Whitman. I have limited time. Thank you, Governor Whitman. On September 16 the EPA told New York Newsday that its highest recorded asbestos rating for contamination was about 4.5 percent. New York Newsday quoted you, Ms. Whitman, as saying, quote, there is no reason for concern. Why did say there's no reason for concern when EPA's official own position since 1986 has been that there's no safe level of asbestos?

Ms. WHITMAN. Well, as Mr. Henshaw indicated, the concern that we had for the general public was in asbestos getting into the air into their lungs. What we found in dust—in bulk samples was different. Nobody wants asbestos anywhere. There's no———

Mr. ELLISON. Excuse me. Could I just say that you'd agree with me that in the aftermath, the immediate aftermath of this tragedy, people were scared?

Ms. WHITMAN. Of course people were scared.

Mr. ELLISON. People were panicked, right?

Ms. WHITMAN. Of course.

Mr. ELLISON. People wanted to know what should they do and they wanted to know from you, that is right?

Ms. WHITMAN. That is correct.

Mr. ELLISON. You gave them reassurances about the quality of the water and the quality of the air being okay. Today you come and say okay, we're talking about bulk or this or that. But the fact is that on the September 18 press release, you said that we're very encouraged by the results of the———

Ms. WHITMAN. We were.

Mr. ELLISON. You gave the assurances to people. Let me ask you this, do you agree that after those planes collided with the towers that it caused immediately dangerous toxic levels for people of air quality, dust and water?

Ms. WHITMAN. We were enormously concerned when those towers came down.

Mr. ELLISON. Right. And do you also agree today even looking back in hindsight that the language that you used gave people a false sense of safety?

Ms. WHITMAN. No, I do not agree it gave them a false sense of safety. We were talking about air quality, the general ambient air

quality in Lower Manhattan and the impact on long-term health. And I'm sorry if that was not what people now looking back on see, but that was what the scientists———

Mr. ELLISON. I'm sorry, Governor. I only have 5 minutes. I would never interrupt you under normal circumstances, but I only have 5 minutes. This is a quote from the September 18 EPA response: Given the scope of tragedy from last week I am glad to reassure the people of New York and Washington, D.C. that their air is safe to breathe and the water's safe to drink. Now that is a fairly sweeping statement about reassurance.

Do you now feel that you spoke a little bit too broadly and a little bit too soon about the actual quality of the air and the water?

Ms. WHITMAN. Every test that we have———

Mr. ELLISON. Excuse me, Governor.

Ms. WHITMAN. Congressman, you know, it's fine to go through the yes and noes. But I think it's important for people to understand that these were not whims, these were not decisions by a politician. Everything I said was based on what I was hearing from professionals. My son was in Building 7 on that day, Congressman. And I almost lost him. This is as personal to me as it is to anyone.

Mr. ELLISON. Governor, excuse me. I'm not going to allow you to turn this into a personal thing. It's personal for the people out here too, Governor.

Ms. WHITMAN. It's personal to everyone.

Mr. ELLISON. I'm not going to stand here and allow you to try to obfuscate the questions that I am asking.

Ms. WHITMAN. I'm not obfuscating, Congressman. I am asking. I have been called a liar. I have been called a liar even in this room today. My actions were not criminal. With all due respect, you are sitting on a panel with people———

Mr. NADLER. The time of the gentleman has expired.

Mr. ELLISON. With permission

Mr. NADLER. Without objection, the gentleman has 1 minute.

Mr. ELLISON. On September 27, the USDA gave the EPA test results that found WTC dust to be highly toxic. The WSGS—excuse me, the USGS concluded that the ph level of the WTC dust was as toxic as drain cleaner. Why didn't the EPA issue a single press release about the USGS findings?

Ms. WHITMAN. The reference in, as I understand it again, looking—to the best of my recollection looking back 6 years, that statement was relative to the dust, the contaminants found on the pile of Ground Zero, and that is where EPA was constantly reminding all those involved that Ground Zero, the air quality on Ground Zero on the pile was different than in Lower Manhattan, and that those responders should wear respirators, should wear HAZMAT suits, should take—wear eye protective and that's—eye protection and that's why we even set up wash stations.

Mr. ELLISON. My time has expired.

Mr. NADLER. The gentleman's time has expired. The gentleman from Arizona, Mr. Franks.

Mr. FRANKS. Thank you, Mr. Chairman. And thank you again, Mr. Henshaw and Governor Whitman, for being here. Governor Whitman, I read in the IG report that the IG, quote, found no evidence that EPA attempted to conceal data results from the public,

closed quote. That's pretty straightforward. Is that your understanding? How do you answer critics who claim that the EPA misled the public about the data results?

Ms. WHITMAN. Well, again in that instance I would absolutely agree with the IG's finding there because we were providing—we had a Website up within 10 days. We had data that was being collected by 13 different entities to synthesize. We tried to ensure that those in the public who—and the scientists and the public and in other parts of government at all levels had the opportunity to look at the data that we were looking at to be able to compare apples to apples and make their own decisions, were we telling them the truth, was it safe or not. So they could see what was happening in that area.

Mr. FRANKS. Governor, you know that the same report states again, quote, that EPA provided public access to its monitoring data through its public Website. I am assuming this is the one you just mentioned.

Ms. WHITMAN. Yes, sir.

Mr. FRANKS. Which included interactive maps that could be used to identify monitoring results. Am I reading this correctly, that the EPA provided public access to all of its data?

Ms. WHITMAN. We put everything up on the Website as fast as we could get that.

Mr. FRANKS. Why did you do that?

Ms. WHITMAN. Because I thought transparency was of the utmost importance. People needed to see what we were seeing, how we were coming to the conclusions that we were, to make the statements that we were. It was important because in science you are always going to get second-guessed and we need people to be able to see all the data.

Mr. FRANKS. Sometimes you get 10 scientists in the room and you get 20 opinions. Up here you get 10 of us and you get 150 opinions. These scientists could have come to a different conclusion looking at the same data about whether the air was safe in your mind?

Ms. WHITMAN. Scientists certainly could. It's a little bit like climate change. There are a number of scientists who don't feel that that is occurring, yet the bulk of the scientists believe that it is. It is sort of the same kind of situation.

Mr. FRANKS. I'm confused, as some of us, that Mars is also increasing there, and we wonder how that's greenhouse gases.

Governor, I keep reporting, keep referencing this IG report. But let me just reference one more. The conclusions from the EPA draft risk evaluation completed over a year after the 9/11 attacks have tended to support EPA's statement about long-term health effects when all the necessary qualifications are considered.

Do you think this means that the EPA has found no evidence of a long-term health effect from the air in New York beyond the Ground Zero sites?

Ms. WHITMAN. Congressman, there are ongoing studies on which EPA is—in which EPA is participating to monitor the health of the responders and those who live at Ground Zero. And I would have to respect whatever those—those studies find. But as yet, I have not seen any final peer review scientific conclusion from any of

those studies, those long-term studies. But the agency I gather is part of those. I know they are continuing to go along with those and I would bow to whatever those studies ultimately conclude.

Mr. FRANKS. Well, the IG report also noted that the IG consulted with environmental and medical expert—or medical external experts who confirmed that such exposure to the general public was not likely to present a risk of long-term health risks.

Were you aware of the external experts that they had reached these kind of conclusions?

Ms. WHITMAN. I was aware of what I was getting every day on the calls, sometimes three times a day early on, from the scientists who were analyzing the data. And sometimes it may not seem intuitive to those of us standing around that what they were finding was real. But I will believe the scientists. When they tell me that they examined the data and what is safe for humans to breathe, I will believe them. And in this instance, I did. And I think they have been proven to be correct in large measure, to the best of my knowledge.

Mr. FRANKS. Well, we've heard a lot about the White House and its involvement in this hearing. Why was the White House involved in crafting the press release?

Ms. WHITMAN. Congressman, my experience as a Governor, I always found that in the time of a crisis you need to speak with one voice. You need to have someone who is collating the information and is communicating it in a reasoned way that the public can understand, especially when you have a number of different agencies under your purview that have responsibility for that kind of response. In this instance, obviously you had EPA, you had OSHA, you had CDC, you had the FBI, you had CIA. ATSDR, you had a number of different organizations looking at a variety of data. And it was important that that be synthesized and communicated in a way that was coherent and that the public could use, and I thought it was entirely appropriate to have the White House perform that function.

Mr. FRANKS. If I can get under the line here, I would like to ask, there's a letter from Mr. Bruce Sprigg, which is EPA's chief of Response and Prevention Branch, to Mr. Kelly R. McKinney. And that's Associate Commissioner of the Bureau of Regulatory and Environmental Health Services of the City of New York. It's dated October 5, 2001, which states, quote, the EPA has recommended and continues to recommend that workers at the site wear respiratory protection, closed quote.

Were you aware that the EPA made these recommendations to New York City shortly after the 9/11 attacks?

Ms. WHITMAN. Yes, I was.

Mr. FRANKS. Well, my time has expired, but thank you, Governor. Mr. Henshaw, I'm sorry I left you out.

Mr. NADLER. Thank you. I now recognize for the purpose of asking questions for 5 minutes the gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. I thank our witnesses for being with us today. Mr. Henshaw, you mentioned the fact that asbestos was detected and was over a certain level. Are there safe levels of asbestos?

Mr. HENSHAW. Yes, sir, there are safe levels of asbestos. We have an Occupational Safety and Health—what we call permissible exposure limit, which is 0.5 fibers per cc for an 8-hour average. That is our current standard with respect to asbestos.

Mr. SCOTT. And you consider that safe?

Mr. HENSHAW. Yes, sir, I do.

Mr. SCOTT. I understand that the EPA office was professionally cleaned. Was there a recommendation that people cleaning their own apartments use professional cleaning?

Ms. WHITMAN. Yes, there was.

Mr. SCOTT. There was?

Ms. WHITMAN. Yes, there was, sir.

Mr. SCOTT. Was that in your press release?

Ms. WHITMAN. It was in a number of our press releases, in statements, and I believe that the City of New York had assumed the responsibility for indoor air cleaning. They had asked us not to participate in that but we worked together collegially to help them with it, but they were doing it. And we referred them, anyone who had questions, to New York City, as well to their health office and they had a series of recommendations. I also believe I included the recommendation to use professional cleaners wherever they could.

Mr. SCOTT. Okay. And there was one press release that was a legal exchange. One of the reports we have, it's Document 15, paragraph 35. It says that the OIG representative read a statement that the Wall Street Journal attributed to EPA's Region 2 administrator. We have said from the very beginning, the departments need to be professionally cleaned. The OIG representative asked, did your office consider advising the public through a press release that they need to obtain professional cleaning for their indoor spaces? Ms. Kreisher replied that, quote, it was in a press release. It was removed by Sam.

Ms. WHITMAN. That was one press release, and that's absolutely correct. It was the only time in fact when the press releases—that I was ever made aware of a substantive difference between the White House and EPA on what should be communicated to the public. We had been saying prior to that time professional cleaners. We said after that time professional cleaners. When it was brought to my attention that, in fact, it was recommended that this sentence be removed, the phrase be removed, at that point in time there had been apparently quite a bit of discussion back and forth on the use of this sentence. It was in the afternoon, and I don't remember, Congressman, what else was in that press release, but I do remember thinking—there was information there that needed to be communicated to the public. So I made the determination rather than continue the fight, battle over that particular phrase, to let the press release go out as it was because I knew I was going to be appearing on, I believe it was CNBC, but again going back in time, I don't remember which particular media outlet I was going to be on. And I said I will use that phrase. It appeared in every subsequent press release. But in that one press release, that was the only time that I remember anything of substance being taken out. The information may not have been the exact order wording that the EPA sent over, but it conveyed all the relevant information that the public needed.

Mr. SCOTT. Do you believe there are safe levels of asbestos exposure?

Ms. WHITMAN. Well, in general the EPA doesn't like to see asbestos anywhere. But yes, there are standards that represent safe levels of exposure.

Mr. SCOTT. And do you know what that safe level is?

Ms. WHITMAN. I bow to Mr. Henshaw's analysis of that. He's the expert.

Mr. SCOTT. Now you mentioned Ground Zero and people were going back—Mr. Henshaw, Ground Zero people were going back to Ground Zero. Were they wearing the appropriate respirators?

Mr. HENSHAW. Were all the folks wearing appropriate respirators? Obviously, sir, no. That was our dilemma. How do you get people to wear proper personal———

Mr. SCOTT. Do you communicate to them in such a way that they were risking their lives by not using the respirators?

Mr. HENSHAW. Constantly. That's why that is why we did 24/7 inspections.

Mr. SCOTT. Do you have any enforcement powers when people are violating OSHA regulations?

Mr. HENSHAW. As you know, we do not have jurisdiction over the firefighters and police. So we couldn't tell them that they should do that.

Mr. SCOTT. But you were aware that they were endangering their lives.

Mr. HENSHAW. That's precisely, sir, why we put together on October 15 the partnership, which included the firefighters and police, we put down in writing, they will follow our OSHA standards. I can't guarantee they follow them always. This was something that we had not done before. And we did it because these circumstances required extraordinary efforts.

Mr. CONYERS. And do you have any evidence to contradict what I've heard that 70 percent of the first responders are already having symptoms of asbestos and other problems?

Mr. HENSHAW. Sir, as the Governor had mentioned earlier, clearly the exposures right after the collapse of the tower were immense. No doubt about it. Unfortunately we did not measure, but that was, in my mind, an extraordinary amount of exposure. When it clouded out the sky, when you couldn't see the sun, that was—I've been an industrial hygienist almost all my life. I keep saying, I'm not done yet. But that was an immense concentration. And clearly those folks were exposed to all sorts of things, even the caustic environment that was mentioned earlier. And clearly—we just don't—we can't quantify what that was but that clearly was an extreme exposure.

Mr. NADLER. The gentleman's time———

Mr. HENSHAW. That was the effect of the terrorist attacks, not because of the response.

Mr. NADLER. The gentleman's time has expired. The gentleman from Tennessee, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman.

Governor Whitman, according to the Inspector General, your Chief of Staff, Ms. McGinnis, I understood that Sam Thernstrom provided press releases to other government officials but she didn't

know who those officials were. Do you know who in the White House these other government officials were that the crafted press releases were given to?

Ms. WHITMAN. No, sir, I don't.

Mr. COHEN. You don't know who the ultimate White House decision-maker was on press releases?

Ms. WHITMAN. I assumed it was the Council on Environmental Quality.

Mr. COHEN. The Council on Environmental Quality changed quite a few of the releases from what your office had suggested. And I think it's summarizing them, your office acted as a scientist health-based group, I guess, and had precautionary press releases. The changes were uniformly made by the White House or the environmental quality group to less precautionary and more reassuring. More political, so to speak.

Was that appropriate, do you believe from your perspective? I know as a Governor you see a common—it should be a common voice. We saw in Jaws that the sheriff told everybody it's safe to go back in the sea, you know, we know it wasn't. Was that appropriate for the White House to take that pro-environment, economic, everybody come and have a nice time at the beach and don't worry about the sharks approach?

Ms. WHITMAN. Congressman, with all due respect I don't think that was ever even implied in any of the press releases. No kind of levity, no kind of———

Mr. COHEN. I know they weren't.

Ms. WHITMAN. Dismissive of the threats and the concerns that everybody had. To the best of my knowledge, as I indicated in a previous response, the only time that there was anything substantive that I felt was important that the public know was in the one press release where the phrase "use professional cleaners when possible" was omitted. Beyond that, as I indicated earlier, press—what happened—we'd sit down, we'd talk to those on-scene, we had talked to those who were analyzing the data, we being a group at headquarters, myself, the deputy chief of staff, the head of emergency response, the head of the press office, we would determine what was the appropriate message. After that, it was left to—it became a process that was coordinated by the White House to bring some kind of agreement of all the various agencies responding so that how it was—how the ultimate—my concern was that the information get out.

Mr. COHEN. Let me ask you this, Governor, the White House's first concern was to see that the markets were open the next day. Their first concern was that everybody could go shopping. Don't you think that you as the EPA Administrator should have taken a higher—you were held to a higher duty and a higher standard and should have implored somebody in the White House that having the market open, having MSNBC active, having everybody feel reassured was not as important as a precautionary note, which we now know that the precautionary note was correct? Don't you think you had a higher responsibility than commerce?

Ms. WHITMAN. Congressman, I couldn't disagree with you more with what you just said about what the White House wanted. Yeah, did I get a call? I reported it before. I got a call from the

White House a day after from the Office of the Economic Advisers, which is not surprising, they're concerned about the economy of the country saying, reminding me of the importance of Wall Street, of opening the stock market. I indicated that until that building was cleaned, until it was safe it would be inappropriate, and that's the last I heard of that. It was cleaned, it was safe, as you have heard from Mr. Henshaw, for them to go back in, and they were allowed back in. Was it wrong to try to get the city back on its feet as quickly as possible in the safest way possible? Absolutely not. Safety was first and foremost, but we wouldn't let the terrorists win.

Mr. COHEN. Please. I'll take care of that. I appreciate your help. I mean, the terrorists, you talk about a uniform voice. I have heard the terrorists twice. We have got a uniform voice here. The original EPA language stated that dust samples showed levels of asbestos ranging from 2.1 percent to 3.3 percent. EPA views 1 percent of asbestos as containing material to be dangerous. This language was deleted and the White House added, our tests show it's safe for New Yorkers to go back to work in New York's Financial District. Isn't that a big change from 200 to 300 percent higher than what EPA recommends to "it's safe to go back to work"?

Ms. WHITMAN. Congressman, I can't tell you, again, I'm not looking at the press release, I don't know what it said. I know that when contacted by the White House and asked if it wouldn't be safe for reoccupation of the building by the Friday after the Tuesday after the attacks, we indicated that until the buildings were safe and had been cleaned and were safe that it wouldn't be appropriate, and as Mr. Henshaw has indicated, cleaning took place, testing was done, and it was safe. It would have been inappropriate to say you can't go back if it is in fact safe. Safety is first and foremost.

Mr. COHEN. Are you submitting, with all you know today, that it was safe to be back in that area other than on the pile?

Mr. NADLER. The gentleman's time has expired. The witness may answer the question.

Ms. WHITMAN. I said yes.

Mr. NADLER. Thank you. The gentleman from New Jersey, Mr. Pascrell.

Mr. PASCRELL. Thank you. Governor, there's no one in this room that believes—I don't believe—knowing what I know about you, that you feel any less or are any less sensitive to the workers and the folks that came from New Jersey, many of them, and the first responders. That's not the issue. The issue is this, that you said there was no conspiracy, you said there was no White House interference. Yet let me simply repeat what your own IG stated, your own. Quote, the White House Council on Environmental Quality influenced the information that EPA communicated to the public through its early press releases when it convinced EPA to add reassuring statements and delete cautionary ones. Tables II-4 and tables II-5 in the IG's report is very clear about that. And a letter that we sent in 2003, and another letter we sent in 2006 to the Attorney General, we never got really a response on. I don't remember a response. Do you?

Mr. NADLER. None.

Mr. PASCRELL. The Associate Administrator Kreisher, K-R-E-I-S-H-E-R, told the IG there was a conscious effort, quote, to reassure people, and that came from the Administrator and the White House, unquote. She told the IG that, quote, felt extreme pressure from the White House. You are stating today again that there was no extreme pressure from the White House, Governor Whitman. Is that correct?

Ms. WHITMAN. Congressman, I'm saying that I felt no extreme pressure from the White House. And I think if you'll go further———

Mr. PASCRELL. Why does the Associate Administrator feel that way? Why does Kreisher feel differently than you?

Ms. WHITMAN. You will have an opportunity to ask her that in a minute. She is on the next panel.

Mr. PASCRELL. I certainly will. We're talking here about credibility and accountability. Let me ask you this question, do you think the City of New York acted responsibly?

Ms. WHITMAN. I think the City of New York did absolutely everything in its power to do what was right by the citizens of New York.

Mr. PASCRELL. So now we're in a different stage since———

Mr. NADLER. I would remind people. The gentleman will suspend. I would remind people again no demonstrations. Continue.

Mr. PASCRELL. Mr. Chairman, I don't lose time, do I?

Mr. NADLER. No, no, no.

Mr. PASCRELL. I had the honor to serve on the Homeland Security Committee for 4 years. We went into this certainly not in the depth that this Committee's going to go into it. And Chairman at that time it was Peter King. It just didn't seem right, what was going on and what we were hearing. If you've read the reports from Mount Sinai, two, a couple of reports—by the way, did you read the reports from Mount Sinai about those people who worked———

Ms. WHITMAN. I have not read the reports.

Mr. PASCRELL. Let me recommend them to you. I say that in all sincerity. Because I conclude after reading the two reports that I read, it might have been more, that the people are not making these stories up. The people are not claiming that their illnesses or sicknesses are coming from something other than they felt their work in the area. That's very dangerous, and I think you'd agree with that, very serious, and we have a responsibility in the government to protect and to prevent things from happening. If these people are correct that they suffered these things, then I don't care what reports you tell us about. I don't care what evidence you present. The evidence is that people I'm convinced are not lying, that they are sick, that they have had very difficult situations in breathing, pulmonary problems. I've talked to these people myself, Governor. They're not making this stuff up.

Ms. WHITMAN. Congressman, I would never say they were making it up. And I have talked to them as well.

Mr. PASCRELL. Well, good. Now that we agree———

Ms. WHITMAN. That's one of the reasons why we continue to say that those working on the pile should wear respirators.

Mr. PASCRELL. But they all didn't. And the judge who handled the case—and in conclusion, I want to make this point very clear.

The judge who handled the case that was brought against you and against the EPA was very clear. He said this:

"Whitman's deliberate and misleading statements made to the press, where she reassured the public that the air was safe to breathe around Lower Manhattan and Brooklyn, that there would be no health risk presented to those returning to those areas shocked the conscience." That's what he said. I didn't say that. Nadler didn't say that. King didn't say that. That's what he said. He also said, "no reasonable person would have thought that telling thousands of people that it was safe to return to Lower Manhattan while knowing such return could pose long-term risks and other dire consequences was conduct sanctioned by our laws."

And let me tell you, something, Governor, very clearly. There is a reason, there is a reason for this happening. And there's a reason for why this judge said what he did. And let me tell you also, you know that this Administration that you worked for has very little credibility and accountability. So you wonder, you don't wonder why we ask questions about what they were—what was coming out. We wanted one voice. Give me a break. We're talking about people here. We're talking about families. We're talking about human faces. And you know that just as well as I do. I ask you, come clear, clear the air so that we can all go forward.

Mr. NADLER. The gentleman's time has expired. The witness may answer the question.

Ms. WHITMAN. Thank you. First of all, I would just like to correct, it was a she, that particular judge, and there was another judge in the Southern District Court on the same day———

Mr. PASCRELL. I apologize for that, Governor.

Ms. WHITMAN. Congressman, there was a judge in the Southern District Court on the same day looking at the basic same fact pattern came to a very different conclusion. She did not look at fact. I think you are a lawyer, Congressman?

Mr. PASCRELL. No, I'm not. No, I'm not.

Ms. WHITMAN. I'm not either. That's one of the few things we share, Congressman. Neither one of us are.

Mr. PASCRELL. I have two sons who are lawyers. I don't hold it against them.

Ms. WHITMAN. One of the things that a judge must take as fact in that kind of the proceeding are the allegations by the plaintiffs. They don't look at fact. They don't hear testimony on it. They have to take that as fact and she was adjudicating whether or not———

Mr. PASCRELL. Well, I'm glad someone from the Administration, past and present, believes that we should rely on science. That's what we will do.

Mr. NADLER. The gentleman's time has expired. The gentlelady from Florida's recognized for 5 minutes.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman. Mr. Henshaw and Governor Whitman, I in my other role serve as the Chair of the Legislative Branch Appropriations Subcommittee and I say that because we have just been through a process by which we are having to make sure that we can now take care of tunnel workers who were exposed to very high levels of asbestos in our tunnels while working on the Capitol Visitor Center site as well as the site leading to the Capitol power plant. And for years we bat-

tled the Architect of the Capitol, who refused to do anything about it or acknowledge that there's a problem, and now we know that we have tunnel workers who were exposed. And we're going to have to deal with that to the tune of hundreds of millions of dollars, both to clean up the site and make sure we can take care of those workers. So I have spent a little bit of time on this and I wanted to lay that out in that context.

Mr. Henshaw, at the Pentagon my understanding is that OSHA enforced regulations requiring the use of respirators and then no one became sick. But at the World Trade Center site OSHA regulations were not enforced and 70 percent of the first responders are now sick. So why did OSHA not enforce the law in New York with respect to the non-city or State employees on the site despite repeated requests from, what I understand from the city to do so? And given the fact that thousands of people are now sick, do you now believe that OSHA's nonenforcement of the respiratory protection standard at Ground Zero was the correct course of action?

Mr. HENSHAW. Congresswoman, you probably missed my opening statement. But Virginia has a State program, and the State program also has authority to enforce with firefighters and police. We in the Federal system do not have the authority to enforce with firefighters and police. The municipal employees, public sector are now covered under the OSHA Act, as you know.

Number two———

Ms. WASSERMAN SCHULTZ. The EPA did have the ability to take over the site at the point that they felt that—and that is under Presidential Decision Directive 62, Emergency Support Function 10, and the National Contingency Plan under CERCLA, EPA could have taken over control of the site from the city as the lead agency if they felt that the city was not properly protecting their workers. So they certainly had the ability to do it, and you chose not to. So if you are saying that the law wasn't structured in New York to allow you to do that, then why didn't EPA step in and take over?

Mr. HENSHAW. First, I can't speak to why EPA didn't step in. And if you want———

Ms. WASSERMAN SCHULTZ. I will have Governor Whitman answer then.

Mr. HENSHAW. If I can complete the other part of your question, previous question, in respect to enforcing, even with the nongovernment employees or nonpublic sector employees, which were the contractors, the four primary contractors, that were at the site. We met with them the day after. They produced safety and health plans. We coordinated those safety and health plans. We got an agreement up front that we were going to follow one safety and health plan which has required the use of respiratory protection.

That plan was put in place and signed by all parties eventually on October 15. Yes, Congressman, it was signed by the 15th. That plan, the contractors were the ones that were putting that together. We did not enforce—and that's why we had 70 people on the ground for 24/7 for that 10-month period when we saw—when we did inspection and found they weren't wearing respiratory protection, we told them to put it on and we also got a few of them removed from the site because they weren't wearing respiratory protection.

Again this was the contractors. We had an agreement up front.

Now, sir, I'm not a lawyer either and I don't want to employ any more lawyers. And as you know if we go through enforcement, we have to develop the evidence, we have to present it, issue the citations, they have 15 days to contest the citations. And then it goes through the administrative law judge and ultimately possibly to the review commission. That could take years. And we did not have seconds. I was there, and I agree 150 percent, this was the best approach to make sure we had immediate compliance. And that's why we put 1,100 people on the ground to make sure that they were complying.

Now, in the earlier days it was very, very difficult because there were a lot of issues.

Ms. WASSERMAN SCHULTZ. Mr. Henshaw, when you are talking about exposure to that type of environment, you don't have the luxury of letting that type of time pass. The more time passes, the more people are exposed, and the more likely they are to get sick down the road. So even a lapse of a few weeks made a significant difference in people's health. And Governor, I would like to ask you, because I don't think it has been covered before I got here, why is it that EPA didn't take in and step over and use your legal authority to make sure these things were taken care of? Because that is a great concern to me.

Ms. WHITMAN. Congresswoman, under—as you know, the EPA would have under certain circumstances had the authority to take over the site. What had to be proven in order to invoke the CERCLA, the Superfund Act, substantive—substantial and imminent danger, and the readings that we were getting relative—and this was relative to the overall air, I'm talking more about outside of the pile, were not indicating that. And we were working in a collegial fashion with the City of New York.

Again, as far as the workers on the pile, what our—we were tasked by OSHA to do the—I mean, excuse me, by FEMA to do the health and safety monitoring, to monitor the air. And we did that, and then we provided respirators.

Ms. WASSERMAN SCHULTZ. When it comes to imminent—substantial and imminent danger, are you talking about immediate death, horrible sickness within weeks? Because mesothelioma, the cancer that is the result of exposure to asbestos, does not manifest itself substantially or immediately. It could be years, but it's almost certain. So how is it that you didn't step in and exercise your authority given that knowledge, which has been known for years?

Mr. NADLER. The gentlelady's time has expired. The witness may answer the question.

Ms. WHITMAN. Congresswoman, that was based on what the interpretation of what our legal ability was to act by—in consultation with counsel at the time. We did have conversations about invoking Superfund and determined that frankly, the other part of it was, even if we had it, given the fact that we were trying to work in a collegial way with New York, I'm not sure the public would have stood with my taking New York to court to take Federal control of the site. But I can't speak to that because that would be supposition on my part.

We did look at it and didn't feel the legal basis for exerting that existed. That's what I was told.

Mr. NADLER. Thank you.

Thank you. We will start the second round of questions and I yield myself—well, we won't start the second round of questions. I recognize the distinguished gentleman from Iowa.

Mr. KING. I thank the Chairman, the distinguished gentleman from New York. I want to make my short confession here in that and I just arrived on the scene and there are many pieces, details, of this that I haven't had an opportunity to accumulate and sort in as rational an approach that I would like to. I didn't want to pass up this opportunity, Mr. Chairman. What I'd like to do is, if I could just direct a question to Governor Whitman.

The narrowness of the questions that have been asked at this point: Is there something you would like to address that you haven't had an opportunity to speak to?

Ms. WHITMAN. What has always been frustrating is that I believe that the men and women of the Environmental Protection Agency were heroes as much as everyone in the way they acted after that and the kind of work they did, going down. They were on the pile, as far as I can recollect, on an almost daily basis. We had people on the site wearing monitors, trying to convey the best information. We tend to forget, looking back almost 6 years, the chaotic and emotional nature of this event. It was unprecedented. We were doing the very best we could, putting out information as fast as we could get it to the public, with the best interpretation of scientists who were not neophytes at this.

While we had never faced something of the magnitude of the Twin Towers coming down, the professional men and women of the Environmental Protection Agency have responded to crises all around the world, and they were in Oklahoma City when the buildings came down. They know the kinds of things to look for, they make appropriate scientific-based assumptions based on what they know and the readings they are getting. To me, it is really sad that their reputation is being so undermined and so questioned when I believe they did an extraordinary job.

Mr. KING. Governor, I thank you for those comments and I reflect upon a number of other incidents across the country where in the aftermath firemen charged the fire. And we know how many of them lost their lives because of their selfless dedication to their duty, without question about measuring the risk.

I've seen it happen on a smaller scale in the district that I represent and this is the aftermath I understand, but also there have been many Monday mornings since then that have passed to get to this point. It is my view that we should measure the circumstances in the time that it took place and also measure the dedication of the people who made those decisions and question what they had to work with at the time and the political climate that we were in, well as the emergency situation that was there.

How could anyone—I pose this question to you, Governor: How could anyone argue that we shouldn't have engaged in the recovery operations until we had a definitive response, definitive understanding of all of the implications that might have unfolded?

Ms. WHITMAN. Congressman, I don't think anybody would. Obviously nobody did. The men and women who went in to respond to that—and many of them were people who were there because they worked for the Port Authority of New York and New Jersey, and I have had the opportunity to work with them and they didn't come back out of those buildings. They were true heroes and we owe them a debt of gratitude. And for those who did come out, but spent then months on that pile, this was a response where I believe every level of government did their very best.

To say that anyone is perfect, that's not within the purview of mankind. But to then say that because there might not—to say that no one, not everyone is perfect in every instance, although I think we did an outstanding job, to say therefore it was malicious and with forethought and intent to mislead is an extreme—well, I think it is dangerous and it is going to be hard for people, if we should ever suffer another attack, for people to trust their government.

Mr. KING. I leave with you that conclusion, Governor. I appreciate your testimony; yours also, Mr. Henshaw, and I yield back the balance of my time.

Mr. NADLER. I thank the gentleman.

I'll now begin the second round of questioning. I yield myself 5 minutes.

First of all, let me make a couple of comments on what was said before I get into my questions. Mr. Henshaw, you talked about 70 percent of the victims and you talked about people caught in the plume and it was the terrorists' fault. But the 70 percent was not of people caught in the plume, the 70 percent of people who are sick are 70 percent of the first responders who were not caught in the plume. They are sick because they worked in the pile for 40 and 50 days without proper protection, so that is not the same thing. The people who were caught in the plume lots of them are sick, but the 70 percent of the first responders who were not caught in the plume, who did not inhale anything toxic on 9/11, but who worked there 40 and 50 days later, they are now sick because they worked without proper protection from OSHA or EPA or other agencies of government.

Second of all, I must comment on Ms. Whitman's claims that EPA constantly told people to get a professional cleaning of their homes. There were no such recommendations in any EPA press release or on the 24-hour hot line or in any statements that we could identify before November 26th of '01.

EPA region II Acting Administrator Kathleen Callahan testified at a New York City council hearing on November 1, '01, only about the New York City instructions to clean up, that people should clean up their apartments and their places of business with a wet rag and a wet mop, and made no distinctions in her testimony about levels of dust.

In response to January 2002 Freedom of Information Act request, EPA could not produce any publicly disseminated document that either assumed the dust to contain asbestos or told people that they should use professional contractors if there is more than minimal dust. So unless you can provide to this Committee something dating before November 26th, 2001, I would hope you would not re-

peat the untruth that EPA was constantly telling people to get professional help. They were certainly not doing so in anything that we have been able to identify before November 26th.

Ms. WHITMAN. Congressman, I will attempt to get you the tape of October 26, an MSNBC interview that I gave that talks about that. I'll get it to you.

Mr. NADLER. And October 26, if you said that on October 26, that's a month and a half after you'd given the wrong information.

Now, EPA press releases at its Website referred residents and employers returning to their homes and workplaces to New York City Department of Health guidelines that advised people to remove dust from their homes and workplaces using a wet mop or a wet rag.

Now, Mr. Henshaw, on January 31, 2002 you wrote a letter to President Peterson of Local 78 of the Asbestos Workers Union and you said the following: In that the materials' referral to dust—he had asked whether dust found in people's homes should be considered asbestos containing material. You wrote the following: In that the materials containing asbestos were used in the construction of the Twin Towers, the settled dust from their collapse must be presumed to contain asbestos. Therefore, you concluded, the dust contained asbestos must be removed by a competent person and be disposed of properly.

Now, Mrs. Whitman, the IG report, as was noted before, said that a recommendation to obtain professional cleaning was deleted from an EPA press release by a White House official. We will get into that in Panel II. The EPA Website was constantly referring people to the New York City Department of Health recommendation to clean up their apartments with a wet mop and wet rag.

Now, Mrs. Whitman, isn't it a fact that EPA prosecutes people all the time for illegal removal and disposal of asbestos?

Ms. WHITMAN. Yes, yes.

Mr. NADLER. If the EPA saw removal crews dumping asbestos-containing material in the trash, wouldn't the EPA prosecute them?

Ms. WHITMAN. I would presume they would.

Mr. NADLER. Then given that Mr. Henshaw's letter properly stated that all World Trade Center dust must be presumed to be asbestos-containing material, and that therefore all asbestos regulations apply, and since EPA's own 1986 regulations state that there is no safe levels of asbestos, how could EPA urge people, how could they permit the City Department of Health to urge people to illegally dump asbestos-containing material in the trash and to illegally clean it up without being licensed to do so or without being properly protected?

Isn't that illegal advice for which you would prosecute people in the normal course of events?

Ms. WHITMAN. Congressman, no, I am not a lawyer so I can't tell you whether counsel would have advised under those circumstances to bring charges against anyone who was trying to dispose of the dust.

Mr. NADLER. Let's rephrase the question. Isn't it clearly illegal for people who are not licensed to do so, and are not properly pro-

tected, to remove asbestos-containing material and throw it in the garbage?

Ms. WHITMAN. Congressman, I actually cannot answer that question. I am not a lawyer.

Mr. NADLER. Mr. Henshaw, can you answer that question?

Mr. HENSHAW. I don't know if I can answer that exact question, except that letter was in response to invoking what the standards are required for hazardous waste. And that wasn't the case under these circumstances.

Mr. NADLER. What wasn't the case?

Mr. HENSHAW. That this was a hazardous waste site.

Mr. NADLER. It certainly was.

Mr. HENSHAW. It was hazardous, but it wasn't declared to be a hazardous waste site.

Mr. NADLER. It wasn't declared to be hazardous site, but nonetheless your letter stated that since there was asbestos in the World Trade Center, you must presume that the dust from it contained asbestos. And the law would simply operate to say if it is asbestos-containing material, you must dispose of it according to the law.

We will get to that in Panel II, though. But my conclusion is this: That was illegal advice, not to mention unsafe. My time is expired, but I permit you to answer the question.

Mr. HENSHAW. Thank you very much. We were operating under 1926, which is construction standard for asbestos, those are—that's the standard which we were operating under during the World Trade Center events.

I would also like———

Mr. NADLER. And, therefore, what———

Mr. HENSHAW. And that required based on the assessment, based on exposure assessment, and our assessment was we did not find asbestos concentrations in those workplaces. And therefore the appropriate—we had in the cleanup operation scope A and scope B. If you read further in the discussions, you will hear scope A and scope B. If there was scope A, what was visible dust, then we would recommend respiratory protection. If it was scope B, which is nonvisible dust, then we didn't require it.

I'd like to go back———

Mr. NADLER. My time is expired.

Mr. HENSHAW. But during your time you raised the issue about 70 percent.

Mr. NADLER. I'll have to get to that later. My time is well overexpired.

Mr. Franks? Mr. Franks is recognized for 5 minutes.

Mr. FRANKS. Thank you, Mr. Chairman.

Let me just start the second round here by saying that I know that anyone who's gotten sick as a result of this tragedy is an ancillary part of it. I don't want it ever to be thought or assumed that there's not a great concern on my part and, I am convinced, as well as those members of the panel here today. But I think what is disturbing me is that somehow, Governor, as you put it earlier, that there is being attached to this tragedy some malicious part, malicious motivation on the part of the EPA to somehow either not care

or just deliberately do things that would harm people in the aftermath of this tragedy.

I've heard things as outrageously ridiculous as that 9/11 was orchestrated by the American Federal Government. You hear things that are stupid beyond degree, and yet it seems that there are those in certain quarters willing to say them with great conviction.

So I just—I want to register my disgust with people that would deliberately attach a malicious attitude on the part of government officials that were trying, trying to respond to a tragedy that beggars the description of all of us.

With that said, I am particularly concerned about some of the things related to the White House involvement and press releases. The 9/11 Commission Report at note 13 on page 555 already examined this issue and they concluded as follows: All the White House-reviewed process resulted in some editorial changes to the press releases. These changes were consistent with what the EPA had already been saying about the White House clearance. There were disputes between EPA's communication person and the White House coordinator regarding those press releases. But the White House coordinator, however, told us—this is the 9/11 Commission—that these disputes were solely concerned with process, not the actual substance of the press releases. Former EPA Administrator, Christine Whitman, agreed that the White House coordinator—agreed with the White House coordinator, the document supports this claim. We found no evidence of pressure on the EPA to say the air was safe in order to permit the markets to reopen.

So I guess, Governor Whitman, I would ask you, hasn't the 9/11 Commission already looked into this and concluded that there was no wrongdoing?

Ms. WHITMAN. Congressman, the 9/11 Commission did a very thorough investigation of the entire tragedy. I have read that word for word, been through the entire 9/11 report, and I think they were very accurate in their portrayal of the response of the Environmental Protection Agency and the other levels of government to this unprecedented attack and tragedy.

Mr. FRANKS. Did anyone within the EPA ever complain to you that they believed that EPA's public statements about the test data were false and misleading.

Ms. WHITMAN. To the best of my recollection, I don't remember anyone ever coming to me within the Agency and saying that. To the best of my recollection.

Mr. FRANKS. Related to the lawsuits, isn't it true that two of the lawsuits filed against the EPA and you personally, one of them has been thrown out of court and the other one is on appeal with the same court that threw out the first one?

Ms. WHITMAN. Yes, it is.

Mr. FRANKS. Let me just conclude here with a quote from the IG's statement and New York Times: "We looked at a lot of things and we only came up with those very few things that we talked about, and what that says is that the EPA did a really good job. I don't think you can read five pages in that report without us talking about the fact that it was an unprecedented thing.

Also an official from the New York City Department of Design and Construction said about the EPA's response to 9/11 that it was

"phenomenal" and that the EPA's response crews were on top of every issue under EPA's mandate. And you, Governor, led this agency through those tough times and, for whatever it is worth to you, I would like to try to applaud your conduct.

Ms. WHITMAN. Thank you, Congressman. Could I do one follow-up response to the Chairman?

Mr. FRANKS. Certainly.

Ms. WHITMAN. When you indicated that we were misleading and not providing the information to the public on the cleanup, I would refer you to a 9/16/01 statement where we did refer people to the New York City Department of Health, they were the ones who were leading for New York City, where they specifically called for a professional cleaning of the buildings. New York City did do that. They had that on their Website. We were deferring to them. I just want to make sure that you understood the full picture there, that New York City was doing this as early as 9/16.

Mr. NADLER. Time for the gentleman has expired.

The gentleman from Michigan, Mr. Conyers, Chairman of the full Committee is recognized for 5 minutes.

Mr. CONYERS. Thank you, Mr. Chairman.

We are trying as best we can as a congressional Committee, to recreate as accurately as we can recall, the circumstances—and in some ways they are complicated—about what happened following this disastrous tragic attack upon our country in New York.

Governor Whitman, you said that New York City was not properly protecting its workers; is that accurate?

Ms. WHITMAN. I don't recall ever making a quote to that effect, no. Not using those words. New York was the primary responder; I did say that, yes, because that was how the emergency response works out, that's how it happens, that they are the primary responder. But I don't think I ever blamed—and Congressman, I can understand how you might be misinformed on that, because the press is dying for a fight here.

Mr. CONYERS. Well, I am dying to get Katie Couric and your conversation on 60 Minutes———

Ms. WHITMAN. Certainly.

Mr. CONYERS.—on September 2006 accurately interpreted. Let me review that with you.

Couric: The Environmental Protection Agency is to protect people from the environment.

Ms. Whitman: Right.

Couric: Did you really do it?

Ms. Whitman: We did everything we could to protect people from that environment and we did it in the best way that we could, which was to communicate with those people who had the responsibility for enforcing what we were telling, saying should be done. We didn't have the authority to do that enforcement, but we communicated that to the people who did.

Couric: But who had the ultimate authority over the site?

Ms. Whitman: Really it was the city; it was the primary responder.

Do you recall that?

Ms. WHITMAN. Yes, I do.

Mr. CONYERS. Okay.

Couric: Did your people do enough to call the people who were overseeing the site, i.e. Mayor Guliani and city officials, and say, damn it, we have got to protect these people?

Ms. Whitman: Oh, EPA was very firm in what it communicated, and it did communicate up and down the line.

Couric: In no uncertain terms?

Ms. Whitman, no uncertain terms.

So if this were the case, does it not appear that it was the city that was not properly protecting its workers?

Ms. WHITMAN. Congressman, my response is, those are all accurate, to the best of my knowledge; that the city was the primary responder, and as I indicated, that's—we conveyed the information about the importance of wearing protective gear on a regular basis to those who had the most direct oversight of the responders on the pile. There were mornings it's my understanding up in Region II with everyone.

Again, this was a highly emotional time and I fully appreciate your sentiment of wanting to see how we do better, and I hope that one of the things that will come out of a Committee like this is whether they want to call it a line item or whatever, but a real focus on how do we make respirators that don't clog, that aren't cumbersome, so responders will wear them without worrying about it.

These were people who were trying to save their brothers and sisters. These respirators inhibited communications. They did clog. They were hot. Those were warm days in the September, early October days. There were reasons.

Nobody—again, we all seem to want to always find blame, somebody to blame—that's the terrorists over and over again—but there are some very good things we can do: Get HAZMAT suits that are not cumbersome, that allow them to do their job and that are safe. Those are the kinds of things that we ought to be looking at.

Mr. CONYERS. Well, did you———

Mr. NADLER. The time for the gentleman is expired.

Mr. CONYERS. Could I get an additional minute?

Mr. NADLER. By unanimous consent, without objection, the gentleman is yielded 1 additional minute.

Mr. CONYERS. I have got a number of minutes, but here is what Mayor Guliani said on September 12, 2006. And I am not trying to be provocative, but if we don't straighten it out with you, I don't know who to go to except for Katie Couric herself. But Guliani also lashed out at the former Environmental Protection Agency Administrator for trying to blame him. That's what he said.

"What I remember from Cristine Whitman is her saying that the air was fine," he said, "and her saying that quite prominently over and over again, and insisting on it."

Now, that's why I raised the question in the way that I did. I wasn't trying to put words in your mouth.

Can you help me with that response before—the Chairman is raising his gavel again.

Ms. WHITMAN. I would be happy to.

Mr. NADLER. The gentleman's time is expired, but the witness may answer the question.

Ms. WHITMAN. I would be happy to, Congressman, once again. There are two different things we are talking about, the pile and ambient air quality in Manhattan in general. One of the things that I learned, as I am sure you have, is not to respond to purported allegations given to me by reporters and the press, because usually we find that those are taken somewhat out of context, and we find that people weren't really blaming other people in the way that is implicated or implied by the way the question might be asked. So I don't think the mayor is blaming me. I am certainly not blaming the mayor. I don't think that that is a fruitful thing in which to engage.

Mr. CONYERS. In other words, you don't think he said it.

Ms. WHITMAN. I don't think he said it relative to the pile, certainly relative to the ambient air quality in Lower Manhattan in general, because that's what I said.

Mr. NADLER. The gentleman's time is expired. The gentleman from Iowa is recognized for 5 minutes.

Mr. KING. Thank you, Mr. Chairman. I think most of us on this Committee have looked upon that tragic smoking pile of rubble and, later, into that smoking hole of rubble. I can't imagine anyone not thinking it was a war zone, that it was a war zone. I can't imagine anyone not thinking that did not put us at war right then, at that moment of impact, on that day.

As I look down into that smoking hole, I think back across our history and what did it mean? The first word when I found out about the first plane—actually the second plane that hit the Twin Towers, the first one was, "oh my God, what's happened to a passenger plane?" The second one was my passenger who was with me said "Pearl Harbor." The scope of the whole thing rolled into his head instantaneously.

I spent my Father's Day weekend down to the Civil War battlefields at Manassas. And the first Battle of Manassas as it is known up on the south side of the Mason-Dixon line and, as I learned, the Battle of Bull Run, there was a momentous time in history and a lot of people think that the Civil War might have been over within months instead of years, at the cost of thousands of lives rather than hundreds of thousands of lives, if the battery that protected the right flank of the Union had simply received the order to fire on the charging regimen of, I believe, the 32nd Virginia. That order was apparently never issued, but no one really knows because every one who defended that battery was killed within a 10-minute period of time. The Union line was overrun and the first Battle of Bull Run was won by the Confederates and we launched ourselves on a tragic path of American history.

What's interesting about that is Congress held hearings on that battle and they held hearings on why the order wasn't given. If it was given for that battery of cannon-to-fire-rate-shot, how it might have turned history if it had just done something different.

I read that history down there, and I think how could Congress go back and be a Monday morning quarterback and even put themselves into the circumstances of the troops who lost their lives that day or those who survived the battle. And it is different when you are at war, it is different when decisions have to be made on the

spot, and it is different in the aftermath. And this Nation had needs.

And I am trying to imagine what it would be like, with a city that covered with ash, to file charges against someone for not doing a proper EPA cleanup when they maybe lost their wife or husband in the Twin Towers? How could you bring that kind of enforcement from the EPA? And I guess that's really where my question is. I ask you that question, Governor Whitman, because I'd ask you again: Can you set the scene, how would that have been, if you would have followed the path that seems to be recommended here by some of the members of the panel, what do you think would have been the reaction of the public, of the President, of the Congress? Do you think you would have been called before hearings before this Congress if you had punished people who maybe didn't follow all of the letters of the regulations of the EPA and the cleanup in the aftermath, especially in the first couple of months afterwards?

Ms. WHITMAN. Again, Congressman, it is so hard to speculate about what might have happened or might not have happened. But given today's atmosphere I would have to say, yes, I would have been probably brought to Congress long before this.

Mr. KING. Governor, that's my speculation too. It strikes me that the circumstances that you found yourself in, that history called you to, were a no-win situation. Whichever side of the argument that might have come down, there were going to be a lot of questions, a lot of recriminations.

And what is different about this era than the Civil War era, is we're a litigious society. Nobody was going to file a lawsuit at the beginning of the Civil War or in the aftermath, but today we have a lot of litigation that goes on. We have people that are looking for these kind of opportunities, people that advertise for these kind of opportunities. And the financial incentive that's there is part of the equation.

And I am not impugning anyone's integrity here, we know, it is part of the equation. We deal with that debate in this Committee. We have every year since I have been here. So I think we need to put this in a proper perspective, being that we were at war, we still are at war, and decisions had to be made on the spot. And to go back and, by the way, engage ourselves in a hearing here that may well affect the results of litigation, I think is something that we have refrained from in this Committee, but it is happening here today.

I would ask Mr. Henshaw if he'd comment on that.

Mr. HENSHAW. Congressman, I agree 100 percent. I came to New York on Thursday after driving all night from Wisconsin, and I had a really deep appreciation of what some of those folks were going through. Incidentally, Congressman, Mr. Chairman, your people in New York were outstanding individuals. I went to some of the candlelight vigils. I have the utmost respect from New Yorkers. I grew up in Delaware and on the east cost, but I have the utmost respect for New Yorkers. When I arrived, we're trying to get a sense of how we can add value and save lives and reduce injuries and illnesses. Quite frankly, one of the purposes behind this ought to be how can we move forward.

We had firefighters tell us, we don't need civilians to tell us how to do our job. And it's not because—I went through fire school———

Mr. NADLER. Could the witness please———

Mr. HENSHAW. I am wrapping up.

My point is I have the utmost respect for those individuals. We did not train them on wearing negative pressure respirators, and during an emergency you are not going to add a new element to their training. You just don't do that. And so the fallacy here is we did not prepare them adequately to deal with those kinds of conditions.

And so the future ought to be how can we train them to put on the negative pressure respirators because we did not train them prior to that, and that's where we need to focus on. I yield back.

Mr. NADLER. I thank the gentleman, I now recognize the gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Governor Whitman, you indicated that the 9/11 Commission had exonerated the EPA.

Ms. WHITMAN. No, I don't believe I used the word "exonerated," Congressman. I think I said they had done a very thorough report on what happened.

Mr. SCOTT. Okay. There is one statement in a footnote that said we did not have the expertise to examine the scientific accuracy of the EPA pronouncements in the press releases. Is that in their report?

Ms. WHITMAN. Yes, that's in the footnotes as you allude to, as I recall. I don't recall every footnote.

Mr. SCOTT. Mr. Henshaw, just to get a couple of things on the record for clarification. I understand you say that you knew when the workers were at Ground Zero, working without respirators, that you were aware that they were in eminent danger for health problems; is that right?

Mr. HENSHAW. No, sir, I did not say that. In fact, what our requirements were to wear respiratory protection. And to answer the question of the Congresswoman about citation, we did not find many samples above our standard able to cite.

Mr. SCOTT. You knew they were working at Ground Zero without respirators.

Mr. HENSHAW. Our requirement was to wear respirators and when we saw one not wearing it, we in fact told them put it on, and they did. And we also had a few people dismissed because they weren't.

Mr. SCOTT. So you were not aware of anyone working without a respirator that you didn't take immediate action to correct?

Mr. HENSHAW. I am not aware of any that we did not take immediate action to correct.

Mr. SCOTT. And in response to the gentleman from New York, the Chairman's comment, you indicated that one of the problems with exposure was exposure was immediate, and so a lot of the illness could not have possibly been prevented because the exposure was right there at the explosion.

Is it your testimony that people were not exposed after the initial 9/11 and subjected to significant health problems?

Mr. HENSHAW. Congressman, certainly during the collapse of the building there was an immense exposure, no doubt about it. There is a picture right here to see the kind of environment that individuals were in.

During the cleanup and recovery and as soon as we began to take samples, we began to characterize what those exposures were. And we found very few above our permissible exposure levels. But regardless, the requirement was to wear respiratory protection when you are on the pile.

Mr. SCOTT. While you are talking about acceptable levels, can you remind me what you said the acceptable level for asbestos exposure was?

Mr. HENSHAW. On an 8-hour time-weighted average, it is 0.15 fibers per cc.

Mr. SCOTT. There are some that think that any exposure to asbestos is hazardous; you would disagree with them?

Mr. HENSHAW. I disagree with them.

Mr. SCOTT. Okay.

Mr. NADLER. Would the gentleman yield for a second?

Mr. SCOTT. I yield.

Mr. NADLER. I would point out that the Federal Register of April 25th, 1986, the official EPA regulations state available evidence support the conclusion there is no safe level of exposure to asbestos. I yield back to the gentleman.

Mr. SCOTT. Reclaiming my time. I am aware of that, I just wanted to make sure I didn't misunderstand the gentleman's testimony.

Mr. HENSHAW. That's based on a 1980's risk assessment that was based on some old information. We have new information today.

Mr. SCOTT. Governor Whitman, you indicated in response to the Chairman's inquiries on the question of whether the places ought to be professionally cleaned, you have knowledge that the White House changed the press release, that was a substantive change, but that was the only time that you failed to mention the places ought to be professionally cleaned?

Ms. WHITMAN. To the best of my—no, what I said, to the best of my knowledge, that was the only time that something substantive had been changed in a press release, that did not convey all of the information that we felt should be conveyed. Again, I am surprised to hear the Congressman say there weren't other press releases that indicated the need for professional cleaning. I know that I have said it on numerous occasions, and I am surely happy to go back and find tapes, although we———

Mr. SCOTT. We know now that evidence was there that we should have known better than to send people back into some of those situations. If we don't know whether it is safe or not, should we say that it's safe or should we say that it's not safe if we don't have firm evidence one way or the other?

Ms. WHITMAN. Congressman, we were basing everything—there were tests that were done on air quality. Again, it is not the usual prerogative or responsibility of the Agency to do indoor air. However, this was clearly a need, and we were working with the city of New York that took the lead on indoor air, and we were following their lead. They were the primary responders———

Mr. SCOTT. We know now that it was not safe, so obviously we didn't———

Ms. WHITMAN. No, it was a question of the readings as to whether they were high enough where they exceeded levels, and to the best of my knowledge in going back and talking to people about 5-1/2 years ago and what we were finding, that they were not finding levels in the air that were—when they did go into apartments—that were problematic. But that's my recollection looking back. That was run out of Region II and again it was New York City who was the primary responder.

Mr. NADLER. The gentleman's time is expired. The gentleman from Tennessee, Mr. Cohen. I'm sorry, did I skip Mr. Ellison? I am sorry. The gentleman from Minnesota, Mr. Ellison.

Mr. ELLISON. Thank you, Mr. Chair.

Governor, I just want to tell you I appreciate you being here. I know we had an exchange last time. Nothing here is intended to be personally offensive to you. I'm just trying to get some information.

Do you agree that people were made sick because of the exposure to toxins that were in the environment in the aftermath of 9/11?

Ms. WHITMAN. Congressman, I can't make that kind of finding. That has to be based on the scientific data and the studies.

Mr. ELLISON. Okay. Based on the scientific data and the studies, do you believe people were made sick by toxins that were in the environment after 9/11?

Ms. WHITMAN. If they come to those conclusions I would have to agree. But waiting for those conclusions———

Mr. ELLISON. But, Governor———

Ms. WHITMAN. No. Clearly we were concerned, Congressman. Obviously we were concerned or we wouldn't have recommended time and again that those working on the pile wear appropriate safety protections.

Mr. ELLISON. So can we safely say that you do agree that the illnesses that people have suffered as a result of their work of recovery, post 9/11, are related to their illnesses? You———

Ms. WHITMAN. That's something that will be proven by all those studies, including the Mount Sinai one.

Mr. ELLISON. So are you saying yes, no, or you just don't know?

Ms. WHITMAN. I don't know. I am not a scientist. I am not a doctor.

Mr. ELLISON. I know, I've read your bio. What does your common sense tell you?

Ms. WHITMAN. Excuse me?

Mr. ELLISON. What does your common sense tell you?

Ms. WHITMAN. My common sense tells me that we were concerned about possible health ramifications from workers who were not adequately protected; otherwise we would not have repeated over and over again that they should wear protection.

Mr. ELLISON. So you have testified already today about how the toxins that you tested for were within limits in terms of the studies that you relied on.

If you—do you doubt the testing—do you doubt any of those tests that you found that were within the acceptable limits for exposure for people?

Ms. WHITMAN. Do I doubt the quality of the tests?

Mr. ELLISON. Yeah.

Ms. WHITMAN. I have no reason to doubt the quality of the tests. Again, the men and women at the Environmental Protection Agency, the scientists—and they weren't just the Environmental Protection Agency scientists who were looking at this data, it was OSHA, CDC, ATSDR, a number—as well as hospitals, the city and the State. There was a lot of instantaneous peer review, if you will, going on. So it as not just EPA.

Mr. ELLISON. Well, here's the thing, Governor. We have a lot of people who are sick, many of them are here today. And yet we have you saying, hey, we tested it and it was within acceptable; levels, that's why we told the public that—we reassured the public that it was safe.

How do you account for what looks to me like a discrepancy?

Ms. WHITMAN. Congressman, again, I think we are talking about two different things. On the pile there were concerns, and clearly, as Mr. Henshaw has indicated, when those towers came down, anybody that was engulfed in that dust you have to believe there was enormous amount of contamination that took place then, but that as it was happening nobody was out there taking readings; everybody was trying to figure out what to do. Our offices in fact were very near that site and had to be evacuated and people had to go immediately to the Emergency Response Center. But in the ambient air quality in Lower Manhattan in general, after setting aside the moment when those buildings came down, after that, when we started taking tests and data—the scientists were telling me that they didn't see anything that indicated long-term health problems for the general public.

And, of course, remember that Lower Manhattan was closed to the general public, to most of the general public for quite some time afterwards as well. It wasn't a complete kind of a closeout, but there were pretty strict police patrols. But that's aside—we were just dealing with what we were hearing from the scientists, to the best of my knowledge.

Mr. ELLISON. Well, let me—are you saying that the people who have contracted illnesses—well, who I believe contracted illnesses as a result of the exposure were people who were only—who were exposed later and not as a result of the on-the-scene—at the time of the attack that were engulfed in that big pile? You are saying that the illnesses are folks who—the people who are sick are people who got exposed outside of the initial attack?

Ms. WHITMAN. I couldn't even begin to speculate on that, which is why the Environmental Protection Agency is part of the ongoing health registry and examinations that are being conducted to follow people to find out exactly what kind of exposure, whether these are—whether they can make that kind of correlation. I couldn't speculate on that, sir.

Mr. ELLISON. One last question, Mr. Chair.

Earlier on, a member of our panel sort of raised a question about why would we go through an exercise of asking questions post hoc about what happened here. My question—my point would be because we want to do better next time.

My question to you is in that light, going forward, do you think that you would give reassurances about safety of the air and the water and the toxic exposure after a catastrophe the way you did this time, if we were to, heaven forbid, to have another kind of catastrophe like this?

Ms. WHITMAN. Going forward, I think it is the absolute responsibility of the Agency to communicate to the public the information and conclusions being drawn by the scientists who are looking at the data and making that analysis, not to inject any kind of a personal presumption into it, but to communicate what they are getting, based on what the scientists and professionals who are trained in this are finding.

Mr. NADLER. Gentleman's time is expired. The gentleman—now we'll get to the gentleman from Tennessee, Mr. Cohen.

Mr. COHEN. Governor Whitman, were the scientists involved in the issuing of the—given the information that were used in the press releases at the EPA issued?

Ms. WHITMAN. Were there scientists involved? As I explained at the beginning, Congressman, when we would have the meetings in the morning, our scientists, the head scientist was generally present at headquarters, but also on the other end at Region II, their Acting Administrator who was overseeing things was there, he had scientists there. Scientists were very much a part of the discussions; yes, sir.

Mr. COHEN. And when the press releases were changed, were the folks in the White House—do you know if scientists were involved in that office?

Ms. WHITMAN. I don't know that, sir.

Mr. COHEN. Well, being that you don't know if there were scientists involved on that end and there were on your end, and you state, which is accurate and correct, that the scientists are the people who should be making these decisions, why did you never object once, with the changing of the press releases to an "all is safe and clear" from a precautionary note? The scientists were precautionary, the politicians weren't. Why did you never once be precautionary?

Ms. WHITMAN. Congressman, as I indicated earlier, the thing of concern was to ensure that all of the information that the public needed to make intelligent choices was it contained in these press releases and there was—as far as the actual wordsmithing went, I left that to people who were trying to get consensus from the various agencies. And I have to presume that scientists were involved from other agencies as well.

Mr. COHEN. You presume, but you don't know.

Ms. WHITMAN. No, I don't know.

Mr. COHEN. And you never questioned one time, you didn't think your position was to speak truth to power, even if they refused and overruled you, that at least you would have rested—your conscience would have felt good about raising an issue.

Ms. WHITMAN. All the relevant data was communicated in those press releases to the best of my remembrance and looking at them. I know, I feel assured, because in one instance where we felt that all the data wasn't getting out, it was brought to my attention. So again we talked in the morning about what information we knew,

what the scientists and professionals felt was acceptable to communicate to the public. That was communicated to the communications office that went through this process———

Mr. COHEN. But you looked at the differences. The differences are very dramatic from, you know—there's a problem, and asbestos is never a safe substance and it is 200 to 300 percent higher to———

Ms. WHITMAN. Well, I would disagree with your characterization of the changes and I think you could go through and argue back and forth. But also remember,

Congressman, that press releases were not the only way we were communicating information and data. In fact, I find that they were probably the least effective way because most of the people that needed the information, particularly those on the pile, didn't have time to sit and read press releases, which is why we communicated, too, verbally and a whole lot of different levels as well.

Mr. COHEN. How do you define "the pile?" What's the dimensions of the pile, the parameters?

Ms. WHITMAN. I can get it for you, I don't have it here, but there was actually a blue line drawn around it—or green line I guess it was—a green line that indicated the parameters of the highest exposure where people were working on. It was basically those areas where the buildings collapsed.

Mr. COHEN. And so was it out to the fence?

Ms. WHITMAN. Which fence?

Mr. COHEN. When I was there, this is what I was given about 3 weeks afterwards. I was out around the fence. Was that the pile? Or was the pile—did the pile stop?

Ms. WHITMAN. Actually our area, you'd probably get a better answer with the next panel, Congressman. Off the top of my head, I can't tell you what the parameters were, but again, that's a matter of record.

Mr. COHEN. There were differences in how the folks who worked at the Pentagon were allowed to work and the ones at the Twin Towers. You waived some standards, did you not, at the Twin Towers that weren't waived as far as using respirators or conditions?

Ms. WHITMAN. Are you addressing me or Mr. Henshaw?

Mr. COHEN. Either one that can give me a proper answer.

Mr. HENSHAW. No standards were waived.

Mr. COHEN. But everybody at the Pentagon wore the respirators, did they not?

Mr. HENSHAW. I don't know that for sure.

Mr. COHEN. The information I have says they were and that there were different standards. You don't know anything about that.

Mr. HENSHAW. They were not different standards. We enforced the same standard, but just in a different way.

Mr. COHEN. In a different way.

Mr. HENSHAW. Well, I know there was a snicker behind me. This is as serious to me as it is to them.

We applied a different enforcement policy or strategy on the pile because we did not have enforcement authority. And circumstances require a little different standard in respect to enforcement, as I said earlier, than happened at the Pentagon. Under the cir-

cumstances, we had to deploy a partnership requiring people to follow those standards because we did not have authority for the firefighters and the police.

Now, was every one of them wearing a respirator? Obviously, I see photographs of people not wearing respirators, or they are hanging around their chin. I'm an industrial hygienist, and I know the only way it is going to work is if it is on your face properly and you are fitted properly. So you are asking me, did everybody wear it the same way? No. You're asking me, did people wear it always at the Pentagon? I don't know for sure. In workplaces all around this country people are supposed to wear it, and sometimes they are not, so I don't know.

Mr. NADLER. Thank you. The time of the gentleman is expired. The gentleman from New Jersey, Mr. Pascrell.

Mr. PASCRELL. No one is suggesting that the EPA or OSHA doesn't care about human life. The bottom line is we have to find out whether you did your job or not, and we are going to do that, believe me.

Governor Whitman, I have a question for you. I want to know who was the highest-ranking White House official you ever spoke to about air quality at the site we are discussing today?

Ms. WHITMAN. Congressman, they were regular Cabinet meetings that we have, and in the course of those Cabinet meetings, I reported to the President.

Mr. PASCRELL. So you spoke to the President about the air quality at the site.

Ms. WHITMAN. At least one Cabinet meeting it was mentioned what was happening.

Mr. PASCRELL. Was any official at the White House involved in the decision not to use your authority to take over the site cleanup to protect workers?

Ms. WHITMAN. No.

Mr. PASCRELL. You don't remember anything like that?

Ms. WHITMAN. Never had a conversation with anyone at the White House on that issue.

Mr. PASCRELL. What about your authority at the site?

Ms. WHITMAN. No, we were operating within the authority as invoked when the President issued the emergency declaration required under the law.

Mr. PASCRELL. I can only conclude from what you are saying, Governor, that you wouldn't have changed one darn thing if, God forbid, this heinous act happened again. I listened very carefully to your answers from both sides of the aisle, and I don't think you would have responded much differently. That disturbs me because a lot of people are hurting. I know you don't want to hurt people—but the results of your actions.

I have another question to ask you.

Ms. WHITMAN. Could I respond to that? I would refer you to the lessons learned plan here. The Environmental Protection Agency was the first Agency of the Federal Government to take a look at what happened after 9/11 and to come up with a number of ways that we could have improved our performance, and those things I endorse.

Mr. PASCRELL. Governor Whitman, you have a habit of quoting what you want from the documents. If you go back to 9/11, since you brought it up, the quoting from 9/11 that totally exonerates you—do you want me to read what else they said in this report?

Ms. WHITMAN. Excuse me, but I don't believe I ever said it totally exonerates.

Mr. PASCRELL. Then we should open up and clear the air. I have a question to ask you, because if I repeat on the record for the first time what else the 9/11 report said, it isn't as clear as you pretend it to be. And you know what I am talking about.

Ms. WHITMAN. No, Congressman, I honestly don't.

Mr. PASCRELL. If you want me to read it to you?

Ms. WHITMAN. If you want to read, Congressman, I have learned in dealing with you in the past, if you want to read it, you will read it. That's up to you.

Mr. PASCRELL. Before I read it, I want to ask you a question. Why did you shut down the EPA Ombudsman Office when they were———

Ms. WHITMAN. The EPA—certainly.

Mr. PASCRELL. I didn't finish the question.

—when they were investigating two major areas, plus how 9/11. What did the 9/11 response encounter? Why did you shut the office down?

Ms. WHITMAN. Congressman, the office wasn't shut down. The functions of the office were moved to the Inspector General's offices, a more appropriate place to place it, frankly, because we were concerned. There had been numerous times where the ombudsman office had conducted hearings at Superfund sites, raised very serious questions about EPA's response in those Superfund sites, and yet not issued a report on them. In order for EPA to change its behavior and to make a difference we needed to have those reports. It started under Carol Browner.

Mr. NADLER. Would you yield for a moment?

Mr. PASCRELL. Sure.

Mr. NADLER. I would like to ask Governor Whitman, in February and March of '02 the EPA Ombudsman's Office held hearings in New York on this whole question. And you refused to attend those hearings. You sent a memo saying to other government agencies, saying they should refuse to attend those hearings, and you put out a press release in advance of the hearings saying it would be a Broadway production and a farce and that no one should attend the hearings. My information is that you had never done this for any previous ombudsman hearings. Why did you do that?

Ms. WHITMAN. Congressman, I have to tell you, I have no recollection of doing that.

Mr. NADLER. I was cochairing those hearings. I remember you doing it.

Ms. WHITMAN. Well, okay. Well, fine.

Mr. NADLER. There will be no comment from the audience, please. Governor?

Ms. WHITMAN. Congressman, obviously I am taking your word for it. I am just saying I have no recollection of that.

Mr. NADLER. Thank you, I yield back.

Ms. WHITMAN. Okay.

Mr. PASCRELL. It says in the 9/11 report a lot of things, "Former EPA administrator, Cristie Whitman, Christine Whitman, agreed with the White House coordinator. Christine Whitman interviewed June 28th, 2004. The documentary evidence supports this claim, although Whitman told us she spoke with White House senior economic advisor Lawrence Lindsay regarding the need to get the financial markets open quickly. She denied you pressured her to declare the air was safe due to economic expediency. We found no evidence of pressure on the EPA to say the air was safe in order to permit the markets to reopen.

The most controversial release that specifically declared the air safe to breathe was released after the markets had already reopened. The EPA did not have the health-based benchmarks needed to assess the extraordinary air-quality conditions in Lower Manhattan after 9/11. The EPA and the White House therefore improvised and applied standards developed for other circumstances in order to make pronouncements regarding air safety, advising workers at Ground Zero to use protective gear and advising the general population that the air was safe.

The first questions that I asked you my first time around: Those standards—different standards when you respond to first responders at the site and compared to different standards when you talk about school kids and other workers in the area. Let's not confuse those two, because there were two judges involved here. One was a male and one was a female. I just want to make that clear.

Mr. NADLER. The gentleman's time is expired. The witness may answer the question.

Ms. WHITMAN. Congressman, there were no new standards applied. Frankly, I thought it would be a huge mistake to suddenly start imposing new standards in the middle of a crisis. We went by the standards that EPA has traditionally used when it has responded to emergencies. We did not change any of the criteria on the testing data, we didn't change any of the markers, we stayed with what EPA has used in the past. And I will go back again to say it is an extraordinarily professional Agency, with very smart scientists, who are a lot smarter than I am.

Mr. PASCRELL. Mr. Chairman, if I may conclude with this one point.

Mr. NADLER. The gentleman is granted an additional 30 seconds.

Mr. PASCRELL. I'm reading in the 9/11 report that everybody seems anxious to quote from.

"The White House efforts during the crisis were coordinated by the President's Working Group on Financial Markets."

Thank you, Mr. Chairman.

Mr. NADLER. I thank the gentleman.

That concludes the first panel of witnesses. The witnesses are excused, with our thanks. And we will go on to the second panel of witnesses. We will give a moment or two to change over.

[Recess.]

Mr. NADLER. The hearing will resume. I hope everyone can take their seats. Let me remind everybody of what I said prior to the first panel, that the rules of the House of Representatives do not permit demonstrations of any kind by the spectators. Given the emotions, I think everybody's pretty good about that, but please

continue. We have the opportunity to get answers to questions, that many of us have been asking for 6 years, today and we must proceed in an orderly manner. I know that those of you who have traveled so far to be here today agree with that.

I would now like to introduce our second panel of witnesses. Our first witness, who I don't see there but who I saw earlier—our first witness is Samuel Thernstrom. He is managing editor of the AEI Press, which is a publisher of the American Enterprise Institute, and director of the AEI's W.H. Grady Program on Culture and Freedom. He was the associate director for communications for the White House Council for Environmental Equality from 2001 to 2003. He was also chief speechwriter for the U.S. Department of Labor, speechwriter for former Governor George Pataki of New York, and spokesman for the New York Department of Environmental Conservation. Previously he was an environmental studies fellow at the Pacific Research Institute for Public Policy, a research assistant to Aaron Rudofsky at the University of California at Berkeley, and a research fellow of the Political Economy Research Center.

Our second witness is Tina Kreisher. Ms. Kreisher became director of communications of the U.S. Department of the Interior in 2004 where she had been a speechwriter and acting deputy communications director since 2002. She was associate administrator, Office of Communications, Education and Media Relations for the Environmental Protection Agency from 2001 to 2002. Previously she was communications director for the U.S. Senate, Energy and Natural Resources Committee; deputy director of Governor Christine Todd Whitman's Washington Office, and special assistant to the Public Liaison Director for the Information Agency.

Next, Witness David Newman who has served as a nongovernmental expert on the EPA World Trade Center Expert Technical Review Panel. He is an industrial hygienist with the New York Committee for Occupational Safety and Health and coordinates its World Trade Center Health and Safety Project. Mr. Newman serves on the Community Advisory Committee of the World Trade Center Environmental Health Center at Bellevue Hospital and on the Labor Advisory Committee of the New York City Department of Health and Mental Hygiene World Trade Center Registry. He served on the advisory board of Columbia University Mailman's School of Public Health World Trade Center Evacuation Study and on the Exposure Assessment Working Group of the World Trade Center Worker and volunteer medical screening program. Mr. Newman is a member of the American Industrial Hygiene Association, the American Conference of Governmental Industrial Hygienists, and the American Public Health Association.

Our next witness is Ms. Eileen McGinnis. Ms. McGinnis served as chief of staff to the Administrator of the U.S. EPA. Ms. McGinnis also served in Governor Whitman's cabinet as chief of policy, where she was responsible for the government operations of 16 State departments. She also served in the administration of Governor Thomas Caine as director of the Office of Policy in the Department of Human Services.

The next witness is Marianne Horinko who was named Acting Administrator of U.S. Environmental Protection Agency by Presi-

dent Bush on July 10th, 2003. She served in this position from July 14th, 2003 until November 5th, 2003. She then returned to her position as system administrator for the Office of Solid Waste and Emergency Response. Ms. Horinko has served as a system administrator since being confirmed by the Senate on October 1, 2001. Following the events of September 11, Ms. Horinko spent her first few months at EPA involved in environmental cleanup activities in Lower Manhattan, the Pentagon, Washington, D.C. And the U.S. Capitol during the crisis over anthrax contamination. During the first Bush administration, Ms. Horinko was attorney advisor to Don Clay, EPA's Assistant Administrator for Solid Waste and Emergency Response. In that capacity she was responsible for RCRA regulatory issues and Superfund reauthorization.

Our final witness is Suzanne Mattei. Suzanne Mattei has worked in environmental policy analysis and advocacy for 25 years. After graduating from Yale Law School in 1981, she became staff attorney and then director for the Connecticut Fund for the Environment, and environmental advisor to the New York City Comptroller from 1990 to 1993. In 1994, she became assistant deputy advocate to the Public Advocate. She then served as public policy director for the Access to Justice Campaign for the New York State Trial Lawyers. From 2003 to early 2007, she served as New York City executive for the National Sierra Club where she produced three in-depth reports on the health impacts of human exposure to pollution from the September 11 attacks and response at the World Trade Center, and failed environmental response at the World Trade Center and the Katrina Hurricane. She now serves as regional director for the New York State Department of Environmental Conservation, Region II. She is testifying not in her State capacity, but in her capacity as the former New York City Executive for the Sierra Club and author of its "Pollution and Deception at Ground Zero" series of reports. Her comments are her own and do not necessarily reflect the views of the New York State Department of Environmental Conservation. I am pleased to welcome all of you.

As a reminder, each of your written statements will be made part of the record in its entirety. I would ask that you now summarize your testimony in 5 minutes or less.

To help you stay within that time, there's a timing light at your table. When 1 minute remains, the light will switch from green to yellow and then red when the 5 minutes are up. As is customary, I ask the witnesses now to please stand and raise your right hand to take the oath.

[Witnesses sworn.]

Mr NADLER. Let the record reflect all of the witnesses responded in the affirmative.

You may be seated.

Mr NADLER. The first witness we'll invite to testify is Mr. Thernstrom.

Mr. Thernstrom, you are recognized for 5 minutes.

TESTIMONY OF SAMUEL THERNSTROM, AMERICAN ENTERPRISE INSTITUTE

Mr. THERNSTROM. Good afternoon. And thank you, Mr. Chairman, for the invitation to testify. This is an important opportunity to correct some widespread misconceptions about the environmental issues related to September 11. Prior investigations, including the bipartisan September 11 Commission investigation, debunked those misconceptions and I hope the Committee will do so as well.

As you know, the EPA Inspector General's report made a number of inflammatory claims regarding CEQ's interactions with EPA. As a White House employee, I was not at liberty to respond to the IG's questions, although I would have liked to. As a result, the IG's report was based on an incomplete and faulty assessment of the facts.

Let me be clear. The White House had a legitimate role to play in reviewing EPA's public statement at this time of grave national emergency, and I am proud of my work. My goal was to ensure that EPA's statements were as clear and accurate as possible, providing the public with both the environmental testing data and EPA's best assessment of its significance.

Every EPA staffer working on this issue shared that goal, and we worked together to achieve it. There was no disagreement between the White House and EPA about the degree of danger to the public. On that question, I deferred to the experts at EPA and OSHA, who had assessed the data, and I relied upon my counterparts at those agencies to consult with their colleagues to ensure that the press releases that they issued were accurate. This was a collaborative process involving dozens of agency staffers, and the actions we took reflected the broad consensus within the agencies about the data.

It is true that I made many suggestions to EPA about ways to improve their press releases, and when EPA agreed with those suggestions, they accepted them. In instances where we revised EPA's drafts in ways that made them more reassuring, it was my belief that those changes accurately reflected EPA's assessment of those risks as repeatedly articulated in daily conference calls with and prior public statements by EPA officials. There was no meaningful dispute between EPA and the White House about how to characterize those risks.

The IG's claim that the White House improperly influenced the substance of these press releases is simply false, as the documentary evidence clearly shows.

Fortunately, a far more thorough and objective investigation of these claims was conducted by the bipartisan September 11 Commission. The Commission's findings were unambiguous. There was no improper White House influence. EPA's statements accurately reflected its assessment of the risks. The Commission was appropriately agnostic as to whether EPA's risk analysis was infallible, as indeed am I; but they were quite clear that my role in this process was not improper and indeed did not influence Administrator Whitman's decision to declare that the air in lower Manhattan was safe.

As the Commission noted in its report, quote, "We did examine whether the White House improperly influenced the content of the press releases so that they would intentionally mislead the public. The EPA press releases were coordinated with Samuel Thernstrom, Associate Director for Communications at the White House Council on Environmental Quality. Oral reports, interviews with EPA officials and materials on EPA's Website were not coordinated through the White House. Although the White House review process resulted in some editorial changes to the press releases, these changes were consistent with what the EPA had already been saying without White House clearance," closed quote.

The Commission report then cites several examples of news stories published on September 14 and 16 in which Administrator Whitman reassured the public that there was no reason to be concerned about air quality in New York. The Commission report continues, quote, "There were disputes between the EPA's communications person and the White House coordinator regarding the press releases. The White House coordinator, however, told us that these disputes were solely concerned with process, not the actual substance of the releases. Former EPA Administrator Christine Whitman agreed with the White House coordinator. The documentary evidence supports this claim. We found no evidence of pressure on EPA to say the air was safe in order to permit the financial markets to reopen. Moreover, the most controversial release that specifically declared the air safe to breathe was released after the markets had already reopened," closed quote.

The Commission's findings are very clear, and I hope this Committee will give them proper consideration.

In closing, I want to simply make clear that my statements here today have been and will be accurate to the best of my recollection. But almost 6 years have elapsed since September 11, and I have not had access to my White House records while preparing for this testimony. A lot has happened in the intervening years, but I will do my best to answer your questions as completely and accurately as I can.

Given the time limitations on my oral testimony, I will have to stop here. But my written testimony adds considerable additional detail to these points, and I encourage all of you to read it.

Mr. NADLER. I thank the gentleman.

[The prepared statement of Mr. Thernstron follows:]

PREPARED STATEMENT OF SAMUEL THERNSTROM

STATEMENT OF SAMUEL THERNSTROM
United States House of Representatives
Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Oversight Hearing on the U.S. Environmental Protection Agency's Response to Air Quality Issues Arising from the Terrorist Attacks of September 11, 2001:
Were There Substantive Due Process Violations?
Monday, June 25, 2007
2141 Rayburn House Office Building

Good afternoon, and thank you for this opportunity to recount my perspective on the events of September 11 and the work I did at the White House Council on Environmental Quality (CEQ) in the weeks that followed. This hearing is an important opportunity to correct some widespread popular misconceptions about these events, and I hope the committee will do so.

I was the associate director for communications at CEQ from August 2001 until March 2003. As you know, a report issued by the EPA Inspector General (IG) in 2003 made a number of widely reported and inflammatory claims regarding CEQ's interactions with EPA immediately after September 11. As a White House employee at the time the report was prepared, I was not at liberty to respond to the IG's questions, although I would have liked to have been able to do so. As far as I know, the IG's report was also prepared without the input of Administrator Whitman.

As a result, the Inspector General's report was based on an incomplete and faulty assessment of the facts. Even given those limitations, however, it is still surprising that the IG managed to conclude that the EPA's press releases were improperly influenced by the White House when there was ample evidence to contradict that claim, and no evidence beyond the vague, uncorroborated, and self-interested statements of a single person to support it.

Let me be clear: The White House had a legitimate role to play in reviewing EPA's public statements at this time of grave national emergency and coordinating the work of different agencies that responded to the destruction of the World Trade Center towers, and I am proud of my work. My consistent goal was to help ensure that EPA's statements were as clear and accurate as possible, providing the public with both the environmental testing data that we had and with EPA's best assessment of the significance of that data. At no time was there any disagreement between the White House and EPA or any other agency about the degree of danger to the public; on that question, I deferred to the experts at EPA and OSHA who had reviewed and assessed the data, and I relied upon my counterparts at those agencies to consult with their colleagues to ensure that the final versions of the press releases they issued were accurate in every respect.

It is true that I made many suggestions to EPA about ways to improve their press releases—and when EPA agreed with those suggestions, they accepted them. In instances

where we revised EPA's draft press releases in ways that made them more reassuring, it was my belief that those changes accurately reflected EPA's assessment of those risks at the time, and EPA's acceptance of those edits reflected the fact that they agreed with them. There was no meaningful dispute whatsoever between EPA and the White House about how to characterize these risks. Any suggestion by the EPA Inspector General that the White House improperly influenced the substance of these press releases is simply false and, I believe, entirely unsupported by the documentary evidence.

Fortunately, a far more thorough and objective investigation of these claims was conducted in 2004 by the bipartisan September 11th Commission, under the direction of Thomas Kean and Lee Hamilton. Both Governor Whitman and I spoke with the Commission staff, providing it with a more complete account of the relevant facts and circumstances than the IG's office had when its report was prepared in 2003.

On the question of alleged White House interference with EPA's statements about the air quality in Manhattan following September 11, the Commission's findings were unambiguous: There was no improper White House influence; the EPA statements accurately reflected EPA's assessment of the risks at the time. The Commission was appropriately agnostic as to whether EPA's assessment was infallible—as, indeed, am I—but they were quite clear that my role in this process was not improper and, indeed, did not influence Administrator Whitman's decision to declare that the air in lower Manhattan was "safe" or to allow Wall Street to reopen. As the Commission noted in their report:

> We did examine whether the White House improperly influenced the content of the press releases so that they would intentionally mislead the public. The EPA press releases were coordinated with Samuel Thernstrom, associate director for communications at the White House Council on Environmental Quality. Oral reports, interviews with EPA officials, and materials on the EPA's Web site were not coordinated through the White House. Although the White House review process resulted in some editorial changes to the press releases, these changes were consistent with what the EPA had already been saying without White House clearance. See, e.g., David France and Erika Check, "Asbestos Alert; How much of the chemical does the World Trade Center wreckage contain?" *Newsweek Web Exclusive*, Sept. 14, 2001 (quoting EPA Administrator Whitman as saying the air quality is not a health problem); Andrew C. Revkin, "After the Attacks: The Chemicals; Monitors Say Health Risk From Smoke Is Very Small," *New York Times*, Sept. 14, 2001, p.A6 (EPA says levels of airborne asbestos below threshold of concern); Hugo Kugiya, "Terrorist Attacks; Asbestos Targeted in Cleanup Effort; EPA's Whitman: 'No reason for concern,'" *Newsday*, Sept. 16, 2001, p.W31 (Whitman says there is no reason for concern given EPA tests for asbestos). There were disputes between the EPA's communications person and the White House coordinator regarding the press releases. The EPA communications person said she felt extreme pressure from the White House coordinator, and felt that they were no longer her press releases. EPA Inspector General interview of Tina Kreisher, Aug. 28, 2002. The White House coordinator, however, told us that these disputes were solely concerned with process, not the

actual substance of the releases. Samuel Thernstrom interview (Mar. 31, 2004). Former EPA administrator Christine Whitman agreed with the White House coordinator. Christine Whitman interview (June 28, 2004) The documentary evidence supports this claim. Although Whitman told us she spoke with White House senior economic adviser Lawrence Lindsey regarding the need to get the financial markets open quickly, she denied he pressured her to declare the air was safe due to economic expediency. We found no evidence of pressure on EPA to say the air was safe in order to permit the markets to reopen. Moreover, the most controversial release that specifically declared the air safe to breathe was released after the markets had already reopened.

The Commission's findings were so clear and well-founded that I am tempted to let them speak for me entirely, but I want to make some additional observations to help the members of this committee truly understand the events of September and October 2001.

Mr. Chairman, the historian James McPherson, in his classic book *Abraham Lincoln and the Second American Revolution*, wrote of the dangers of "presentism"—the "tendency to read history backwards, measuring change over time from the point of arrival rather than the point of departure." As McPherson observed, "this is the wrong way to measure change. It is like looking through the wrong end of a telescope—everything appears smaller than it really is."

As we sit here today, five-and-a-half years after the events of September 11, a true understanding of the federal government's actions at the time requires that we think about those events in the context of the time, rather than looking back at them through the wrong end of the telescope. Let's remember the circumstances we faced in September 2001.

In the aftermath of the worst terrorist attack in American history, the people of New York were, literally, terrorized. They had reasonable fears about potential environmental hazards—but the information we had indicated that there were reassuring answers. Everyone involved felt it was important to speak clearly and calmly in this time of extraordinary crisis, and I did what I could to help ensure that the administration did so.

Very shortly after the terrorist attacks, a decision was made by the White House to coordinate all public statements regarding the attacks through the National Security Council. Under ordinary circumstances, getting the entire United States government to speak with one voice is a nearly impossible task. But under the extraordinary circumstances following 9/11, it was essential. As part of that government-wide effort, I was designated to serve as the communications liaison between EPA (and other federal environmental agencies) and the NSC. Similarly, CEQ Chairman James Connaughton served as the policy liaison between those agencies and the NSC. My work in this capacity ended sometime in mid or late October 2001, as I recall.

In the first days after September 11, the primary environmental concern—dwarfing all others—was the possibility of widespread asbestos contamination. People were understandably terrified. I was not in New York, but I was told that the fires at Ground Zero could be smelled all over town, creating an atmosphere of understandable fear on the part of already traumatized New Yorkers. There were rumors of vast clouds of asbestos and toxic fumes pouring out of Ground Zero. In an atmosphere of tremendous fear and uncertainty, public panic was a serious concern.

It was certainly reasonable to be concerned about the possibility that lower Manhattan might have become an environmental disaster area. But the data that EPA and other agencies were collecting showed that those fears were largely misplaced. Although some bulk samples of dust and debris that were taken off of the streets contained asbestos, the air itself, outside of the immediate vicinity of Ground Zero, was quite clean. The data we had were somewhat limited, certainly, but the experts who analyzed it agreed: they were very relieved by what they saw. While there was asbestos in some of the debris, it mostly seemed to be at relatively low levels, and most importantly, it was not suspended in the air in any meaningful quantities. That meant people were not likely to be breathing it. It could be cleaned up.

I am not an environmental scientist, obviously, nor did I participate in the policy deliberations that senior White House and EPA staff had on the wide range of issues related to the Trade Center. My job was much more limited: to do what I could to ensure that EPA's written statements were clear and to the point, and to ensure that the National Security Council had a chance to review them prior to their public release.

As I understood it, my responsibility was to review EPA's and OSHA's written materials such as press releases and web site postings directed at the general public. I had no role in reviewing or crafting anything that agency staff said during public appearances, media interviews, and so forth. Much of that work, I believe, was done by EPA Region 2 staff in New York City, and by all accounts they made extraordinary efforts to communicate to the media and the public and to respond to every public concern with as much information and assistance as was possible under very difficult circumstances. I was also not involved in reviewing EPA's and OSHA's direct communications to the emergency responders and other workers and volunteers working at Ground Zero itself, but I was told that there were extensive efforts to provide them with critical information about the environmental hazards on the work site and the measures they should take to protect themselves, and that thousands of respirators were sent to Ground Zero and distributed to the crews.

Given the allegations of White House influence on EPA that have been made, I think it's worth noting for the record that, as far as I know, everything I suggested EPA include in its press releases was entirely consistent with what Administrator Whitman, her staff, and countless other federal, state, and local employees in a myriad of government agencies were already saying in entirely unscripted and unsupervised interviews. (This is particularly notable since EPA has no press policy for its regional media contacts; in other words, regional EPA employees do not need to get approval or guidance from Washington before answering media or public inquiries of any sort.)

For instance, as the September 11 Commission correctly noted, days before Administrator Whitman said (on September 18) in an EPA press release that the "air is safe" to breathe, she gave media interviews to local reporters saying the same thing. There was no disagreement between the White House and EPA—or, as far as I know, within EPA—about that statement at the time.

In fact, if there had been any significant difference of opinion on substantive matters of environmental risks, either within EPA or between EPA and the White House, it seems inconceivable that the losing party would not have taken his or her concerns (perhaps anonymously) to the press. That didn't happen, because from the beginning, the data and our collective interpretation of it seemed pretty clear, and as far as I know, there was complete consensus among all involved parties on the final language of all statements.

To the best of my recollection, not once, in the course of weeks of difficult work and sometimes heated deliberations, did anyone at EPA or anywhere else object to anything we had said, or were about to say, on the grounds that it misstated the facts or downplayed the risks that the public faced. If any such concerns were raised within EPA, they were not brought to my attention, although there were many opportunities to do so, including daily conference calls with EPA staff.

On the subject of disagreements: Much has been said, both in the press and in the EPA Inspector General's report, about the disagreements I had with my counterpart at EPA, Tina Kreisher. I have previously declined to engage in a public debate on this issue, since I thought it would be unseemly and counterproductive. But, since stories of these arguments have been interpreted as evidence of some sort of vaguely inappropriate White House "interference" in EPA's public communications, I think it's time to explain what those disagreements were about, and what they *weren't* about.

Most importantly, they decidedly were not about different opinions concerning health risks, or anything of the sort. Any implication that EPA wanted to warn people of environmental dangers but was held back by the White House is simply false.

We did, however, often differ over matters of work quality. I wanted to ensure that EPA's statements spoke clearly and directly to the key issues of public concern; I often felt that initial drafts of press statements were vague and incomplete in important respects. I sought to improve them—and when EPA agreed with my suggestions, they incorporated them. Since I do not have access to my White House records, I have not had the chance to review the many suggestions I made to EPA during those weeks, but I have every confidence that such a review would show that I materially improved the clarity and accuracy of the documents I worked on. (Indeed, when Senate Environment and Public Works Committee staffers in 2003 asked the head of OSHA, John Henshaw, to review the changes that had been made to these press releases as a result of my comments, they reported that "in every instance [Henshaw] believed the changed or added language more clearly communicated the real risks of asbestos exposure than the [original] draft.") Certainly there was never any question at all that EPA staff were under

no requirement to accept a single one of my editorial suggestions if they felt they were unwise.

EPA *was* required, however, to submit its statements to the National Security Council (NSC) for clearance, and it was my job to facilitate that process. This responsibility was the source of friction with my EPA colleague. Ms. Kreisher resisted my requests that she follow the same clearance procedures that every other federal agency was following, during the extraordinary crisis period after 9/11. I frequently spoke with my superiors, in CEQ and other White House offices, about her refusal to follow established clearance procedures that other federal agencies were following without objection.

One important reason for this clearance process was to ensure that the entire federal government—other agencies, and the president and his senior staff—was fully informed about the vast range of rapidly developing situations. In managing such a complex operation, such careful procedures are the only way to stay on top of what's going on.

A good example of the kind of conflicts we had is the matter of the posting of test results—raw data—to the EPA web site, which began in late September. EPA posted this information one day without notifying the White House. This, obviously, was a violation of the terms of the clearance process, which had been much discussed with EPA over the previous two weeks. When I discovered the unapproved web posting, I had two concerns, both of which still seem valid: First, the failure to obtain NSC clearance, and secondly, the raw data *alone* posed more questions than it answered. The public had a right to know not just the numbers, but what the numbers *meant*.

When EPA's web posting indicated, for example, only that three samples of something violated some technical standard for something, and these samples were found somewhere "in and around ground zero and New Jersey," a vast area in which millions of Americans live, I thought that the public had a right to know more: Where the samples were taken; whether the standard that was violated was a health-based, short-term exposure-based standard or something different; what steps were being taken to clean up that specific area; and so forth. And, as I recall, my comments did prompt EPA to make its web site at least somewhat more informative. It is also worth noting, however, that EPA ignored my suggestion that they remove the raw, out-of-context, data from their website until more complete information could be posted—as clear an indication as any that EPA viewed my comments as nothing more than suggestions that they were free to follow or ignore as they saw fit.

In the aftermath of that incident, I spoke to CEQ Chairman Connaughton about my belief that the public would benefit from a more comprehensive, interagency effort to describe the totality of our data and our understanding of its significance, rather than simply posting the data and leaving it to the public to interpret that information as best it could. Chairman Connaughton agreed with me and directed me to draft an interagency press release myself, incorporating all of the data we had available to date, and then bring both EPA and OSHA in on the process. I did just that, and the resulting press release and

accompanying fact sheets (issued October 3 by EPA and OSHA) provided the public with what I believe was the most comprehensive written evaluation of the available data either agency released that year.

I want to emphasize that in these examples, and in my work in general, my goal was to provide the public with *more* information about the government's assessment of the environmental risks associated with the World Trade Center, not less.

Before I conclude, I need to address two important statements Tina Kreisher is reported to have made to the EPA Inspector General. On page 15 of the IG's report, Ms. Kreisher is quoted as saying that she was told by CEQ that "anything dealing with health effects should come from New York because they were on the ground and they were already dealing with it." This is simply false, and indeed, utterly implausible. Everything we worked on together was designed to communicate to the public about the risk of possible health effects from potential environmental hazards. That was essentially the sole subject of our work, and I never made any effort to stop Ms. Kreisher from communicating with New Yorkers about possible health effects of World Trade Center-related contaminants.

On the specific question of a "particulate matter fact sheet" that was apparently drafted by EPA regional staff but never submitted to the White House for clearance, Ms. Kreisher now claims that she never raised the issue because she was convinced I would not have approved it. In fact, I have no memory of EPA ever raising the issue of particulate matter exposure as an ongoing concern, or the need to communicate to the public about it. I have no doubt that we would have quickly approved a public statement about those concerns if they had been raised with us.

A second matter of concern to me is Ms. Kreisher's reported statement to the EPA Inspector General that she "did not feel like [EPA's September 16 press release] was mine." Some have interpreted this rather vague, existential statement to mean that the release was issued over EPA's objections. That is entirely false. While that press release reflects more collaborative, interagency input than earlier ones, integrating valuable data that OSHA had provided, there was never any question that EPA had the authority to determine the content of its own press releases, and I have no recollection of Ms. Kreisher or anyone at EPA objecting to the final version of that statement or expressing any concerns whatsoever about it. Certainly, there were many well-traveled avenues for appeal if there were irresolvable disagreements between agency and White House staff, and I have no doubt that Administrator Whitman would never have allowed that press release to be issued if it misrepresented EPA's judgment in any way. Incidentally, the substance of that press release was entirely accurate, to the best of my knowledge.

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Before I conclude, I'd like to make a few observations about the report issued by the Sierra Club in 2004 that criticizes the federal response to these events, since the author of that report is going to testify today. This is a rather remarkable document. The Sierra Club's report opens with a preface that declares unequivocally:

> Nothing in this report should be construed as a criticism of the hard-working staff in federal agencies, who in some instances risked their own safety to respond to the World Trade Center attack and the aftermath of the disaster. The report takes issue, rather, with policy decisions that were made at high levels of government which had the effect of prolonging the harmful effects of the attack.

This claim, in fact, is the crux of the issue—were EPA's mistakes the result of inadvertent and possibly unavoidable errors by career staff, or the deliberate, diabolical work of political appointees?—yet the Sierra Club does not present the slightest shred of evidence to support this serious allegation. Instead, its report is an extended discourse on how the Sierra Club would have preferred to handle these questions, if it had been in charge of the EPA. There is absolutely no information in this report about the crucial question of how EPA reached the decisions that it did make, and what the reasons for those decisions were.

It is not surprising to me that environmental activists, acting with the benefit of years of hindsight, and looking at these complex issues through their own ideological perspective, could find areas of disagreement with the way EPA responded to the terrorist attacks of September 11. There may, or may not, be merit to the Sierra Club's various arguments about which testing methodology should have been used, and so forth; I am not qualified to judge those questions (although some glaring errors in the Club's report, such as the wildly inaccurate comparisons it makes between the World Trade Center contamination and the environmental conditions in Libby, Montana, certainly does not give me confidence in their analysis). But what is striking to me is the complete absence of any evidence at all to support their strident claim that these alleged errors were the sole and deliberate fault of political appointees of the Bush administration.

Even if we accept the Sierra Club's arguments about EPA's alleged errors in testing methodology and assessment at face value—which we should not—the question remains, who was responsible for making decisions at EPA about how to handle the testing and analysis of data, and what was their basis for their decisions? Were Administrator Whitman's actions based upon the recommendations of her career staff—or contrary to them? The Sierra Club report sheds *no light whatsoever* on that question, although it makes very strong assertions about it.

Personally, although I have very limited knowledge of the relevant facts, it strikes me as exceedingly implausible that Administrator Whitman and other political appointees at EPA (or the White House) overruled the recommendations of EPA's career staff on technical questions such as which testing methodology to use or how to interpret the data they had. If they had, I would think the career staff (many of whom lived and worked in New York) would have been in open revolt. Certainly, in the numerous daily conference calls that I participated in, I have no recollection of any EPA staffer expressing any concerns about the public statements EPA was making regarding the health risks related to the collapse of the World Trade Center. And if there was any evidence of inappropriate political interference with the career professionals at EPA, I would think that the EPA Inspector General's investigation in 2002–03 would have uncovered it.

I think the most logical conclusion is that, if EPA made mistakes in how it assessed or responded to these risks, those mistakes were made by dedicated career professionals who were acting in good faith, in exceptionally difficult circumstances, doing their best to protect the people of New York and help them recover from this terrible tragedy.

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Mr. Chairman, you have said that this hearing would be an effort to get to the facts about how the post-9/11 air quality decisions were made. I think the evidence on this question has been remarkably clear and consistent: These decisions were made by EPA staffers, working in cooperation with other agencies, under very difficult circumstances. There is no evidence of political interference in that process.

Indeed, it is simply illogical and implausible to believe that any American, much less the dozens of dedicated public servants who collected and analyzed the data regarding environmental hazards arising from September 11, could possibly have cooperated in a conspiracy to deceive New Yorkers about the nature of those dangers. Yet that is exactly what some activists would have us believe.

The American people—and particularly New Yorkers—pay the price when such irresponsible claims are made by people who should know better. For the people who have been misled into believing these false charges, there is a very real cost: A misguided mistrust of their own government's commitment to protecting them in times of national emergency.

People of good faith may disagree still whether or not EPA's assessment of the threats was wise or well-founded, but no one should have any doubt that EPA did the best they could at the time. And any mistakes the agency may have made were entirely inadvertent and, I believe, understandable under the unprecedented circumstances. This committee owes it to the American people, and particularly to the people of New York, to set the record straight, so they understand that they can trust their government to do its level best to protect them, as much as possible, in times of national emergency. The bipartisan September 11th Commission's findings on this question were unequivocal, and I hope this committee will use this opportunity to affirm those findings.

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In closing, I want to simply make clear that my statements here today have been, and will be, accurate to the best of my recollection, but five-and-a-half years have elapsed since September 11, and I have not had access to my records at the White House while preparing for this testimony. A lot has happened in the intervening years. I have been engaged in many other pursuits since leaving government service on March 1, 2003, including raising a family and overseeing the editing of more than one hundred books and monographs. Inevitably, recollections of specific details of long-ago conversations and events—both my recollections and those of others—have begun to fade. Nonetheless, I

will do my best to answer the Committee's questions as accurately and completely as possible. Again, I appreciate the opportunity to testify.

Attachments:

1) September 11th Commission report excerpt
2) Senate Environment and Public Works Committee 2003 report
3) *New York Times* editorial, September 8, 2003

Report of the National Commission on Terrorist Attacks Upon the United States, chapter 10, note 13, page 555.

The collapse of the World Trade Center towers on the morning of September 11 coated Lower Manhattan with a thick layer of dust from the debris and fire. For days a plume of smoke rose from the site. Between September 11 and September 21, 2001, EPA issued five press releases regarding air quality in Lower Manhattan. A release on September 16 quoted the claim of the assistant secretary for labor at OSHA that tests show "it is safe for New Yorkers to go back to work in New York's financial district." (OSHA's responsibility extends only to indoor air quality for workers, however.) The most controversial press release, on September 18, quoted EPA Administrator Christine Whitman as saying that the air was "safe" to breathe. This statement was issued the day after the financial markets reopened. The EPA Office of Inspector General investigated the issuance of these press releases and concluded that the agency did not have enough data about the range of possible pollutants other than asbestos to make a judgment, lacked public health benchmarks for appropriate levels of asbestos and other pollutants, and had imprecise methods for sampling asbestos in the air; it also noted that more than 25 percent of the bulk dust samples collected before September 18 showed the presence of asbestos above the agency's 1 percent benchmark. EPA Inspector General report, "EPA's Response to the World Trade Center Collapse: Challenges, Successes, and Areas for Improvement," Aug. 21, 2003.

We do not have the expertise to examine the scientific accuracy of the pronouncements in the press releases. The issue is the subject of pending civil litigation.

We did examine whether the White House improperly influenced the content of the press releases so that they would intentionally mislead the public. The EPA press releases were coordinated with Samuel Thernstrom, associate director for communications at the White House Council on Environmental Quality. Oral reports, interviews with EPA officials, and materials on the EPA's Web site were not coordinated through the White House. Although the White House review process resulted in some editorial changes to the press releases, these changes were consistent with what the EPA had already been saying without White House clearance. See, e.g., David France and Erika Check, "Asbestos Alert; How much of the chemical does the World Trade Center wreckage contain?" *Newsweek Web Exclusive*, Sept. 14, 2001 (quoting EPA Administrator Whitman as saying the air quality is not a health problem); Andrew C. Revkin, "After the Attacks: The Chemicals; Monitors Say Health Risk From Smoke Is Very Small," *New York Times*, Sept. 14, 2001, p.A6 (EPA says levels of airborne asbestos below threshold of concern); Hugo Kugiya, "Terrorist Attacks; Asbestos Targeted in Cleanup Effort; EPA's Whitman: 'No reason for concern,'" *Newsday*, Sept. 16, 2001, p.W31 (Whitman says there is no reason for concern given EPA tests for asbestos). There were disputes between the EPA's communications person and the White House coordinator regarding the press releases. The EPA communications person said she felt extreme pressure from the White House coordinator, and felt that they were no longer her press releases. EPA Inspector General interview of Tina Kreisher, Aug. 28, 2002. The White House coordinator, however, told us that these disputes were solely concerned with process, not the actual substance of the releases. Samuel Thernstrom interview (Mar. 31, 2004). Former EPA administrator Christine Whitman agreed with the

White House coordinator. Christine Whitman interview (June 28, 2004) The documentary evidence supports this claim. Although Whitman told us she spoke with White House senior economic adviser Lawrence Lindsey regarding the need to get the financial markets open quickly, she denied he pressured her to declare the air was safe due to economic expediency. We found no evidence of pressure on EPA to say the air was safe in order to permit the markets to reopen. Moreover, the most controversial release that specifically declared the air safe to breathe was released after the markets had already reopened.

The EPA did not have the health-based benchmarks needed to assess the extraordinary air quality conditions in Lower Manhattan after 9/11.The EPA and the White House therefore improvised and applied standards developed for other circumstances in order to make pronouncements regarding air safety, advising workers at Ground Zero to use protective gear and advising the general population that the air was safe. Whether those improvisations were appropriate is still a subject for medical and scientific debate. See EPA Inspector General report, "EPA's Response to the World Trade Center Collapse," Aug. 21, 2003, pp. 9–19.

EPW Committee Releases 9-11 Report
Majority staff finds EPA, White House acted properly in response to tragedy
September 23, 2003

http://epw.senate.gov/public/index.cfm?FuseAction=PressRoom.PressReleases&ContentRecord_id=C9518F08-C3A7-438F-9E5C-1E57401CE19C

Washington, D.C.--The majority staff of the Committee on Environment and Public Works today released its oversight report on the EPA's response--and White House involvement in crafting that response--to the September 11 attacks on the World Trade Center. The report is the culmination of a committee inquiry into the EPA's Inspector General investigation into how EPA handled the aftermath of September 11.

The committee report transcends the EPA Inspector General investigation, which, because of limited jurisdiction, lacked authority to question officials from the Occupational Safety and Health Administration (OSHA) and the Council on Environmental Quality (CEQ), who were intimately involved in the decision making process after September 11. Committee staff questioned these officials, providing a broader, and more complete picture of what transpired in the days and weeks after the September 11 attacks.

In summary, the majority report reached 5 conclusions:

EPA acted properly in its response to the World Trade Center collapse, as well as in its communications with the public regarding exposure risks faced by workers and residents near the catastrophe.

The Administration did not suppress any public health information or data. EPA's communications reflected the prevailing coordinated views expressed by agencies weighing in on the risks posed by asbestos.

EPA went beyond its statutory obligations in its attempts to protect public health.

The Council on Environmental Quality's "influence" on EPA's communications was a proper function delegated to it by the President for coordinating environmental health and safety decisions and information between EPA and OSHA.

On matters of indoor air in the fall of 2001, it was proper for EPA to defer to New York City, which was assigned the lead role.

"The findings of this report confirm that EPA responded admirably and effectively during an unprecedented crisis," said Sen. James Inhofe, chairman of the EPW Committee. "It also confirms that there was no conspiracy on the part of White House officials to conceal information about public health. Further, the White House role in coordinating the dissemination of information after September 11 was entirely appropriate."

The report urged the Department of Homeland Security to develop a task force to work with various federal agencies (including, but not limited to, EPA and OSHA) and state and local governments to develop a uniform and coordinated system of risk communications.

A copy of the report is attached.

Report on the Oversight Investigation of the EPA's Response to the World Trade Center Collapse

Conducted by the staff of Chairman Inhofe of the U.S. Senate Committee on Environment and Public Works

September 23, 2003

Report on the Oversight Investigation of the EPA's Response to the World Trade Center Collapse conducted by the staff of Chairman Inhofe of the U.S. Senate Committee on Environment and Public Works

Senate Environment and Public Works staff interviewed seven officials from the four government entities most closely involved with the issue:

EPA Inspector General's office:
- Kwai-Cheung Chan, Assistant Inspector General for program Evaluation
- Rick Beusse, Director for Program evaluation, Air
- Jim Hatfield, Project manager
- Chris Dunlap, Staff Member

EPA Acting Administrator Marianne Horinko
Council of Environmental Quality Chairman James Connaughton
Occupational Safety and Health Administration Assistant Administrator John Henshaw

Summary Conclusion:

EPA acted properly in its response to the World Trade Center collapse, as well as in its communications with the public regarding exposure risks faced by workers and residents near the catastrophe. The Administration did not suppress any public health information or data. EPA's communications reflected the prevailing coordinated views expressed by agencies weighing in on the risks posed by asbestos. EPA went beyond its statutory obligations in its attempts to protect public health.

The Council on Environmental Quality's "influence" on EPA's communications was a proper function delegated to it by the President for coordinating environmental health and safety decisions and information between EPA and OSHA. On matters of indoor air in

the Fall of 2001, it was proper for EPA to defer to New York City, which was assigned the lead role.

Background

On August 21, 2003, EPA Inspector General Nikki Tinsley issued an evaluation report entitled "EPA's Response to the World Trade Center Collapse: Challenges, successes, and Areas for Improvement." The report evaluates EPA actions during the 9-11 crisis, but also makes a number of policy recommendations based on its findings during the two years since 9-11.

The press coverage of the report has focused on the dissemination of information via press releases that the OIG has highlighted. The report and subsequent news articles raised concerns by Members of Congress. Specifically, Members of the EPW Committee requested a hearing due to their concerns about what they characterized as "the findings...which stated that local citizens received inadequate information from EPA about the safety of their air. Furthermore, we are deeply troubled by the OIG's determination that the White House Council on Environmental Quality appears to have pressured EPA to downplay risks to public health." In response to these concerns, Chairman Inhofe initiated a review of the issues surrounding the controversy.

Three major conclusions of the OIG report have been the focus of criticisms of EPA and the Council of Environmental Quality (CEQ):

EPA did not have sufficient information to conclude the air was "safe" to breathe in its September 18 press release.

CEQ influenced the "information that EPA communicated to the public through its early press releases when it convinced EPA to add reassuring statements and delete cautionary ones."

EPA could have acted in a more proactive manner on indoor air issues for which New York City had the lead role.

Oversight Investigation conclusions:

In viewing this issue, the magnitude and nature of what the residents of New York, rescue workers, and government officials faced in those early days after 9-11 cannot be dismissed or discounted. Not only was the magnitude of the rescue efforts unprecedented, it was also believed that additional attacks were imminent. This wartime mentality pervaded every action and decision made by officials in attempting to respond to the collapse of the World Trade Center. This takes on even higher significance given that the OIG, when questioned whether EPA's World Trade Center response had been a success or failure, answered by pointing to a New York City official's statement that EPA's response was "phenomenal" and that EPA's response crews were on top of every issue.

In the days following the attack, the informational flow and decision-making process was done with little of the usual memorializing that often takes place within government deliberation. Much had to be decided in very short time frames. To coordinate this, the President gave CEQ the role of coordinating public health and safety information between OSHA and EPA. EPA and OSHA were in turn coordinating with State and local officials. In its interactions with EPA, CEQ was fulfilling its obligation as the coordinating agency to ensure that the message conveyed by EPA reflected a wider view, including those of OSHA.

Information flowed through numerous channels. The primary conduits of information to the public were direct flyers (in three languages) and one-on-one communications to residents and workers in the affected area. Numerous meetings were held with a multitude of groups, which met with smaller groups such as building managers and resident leaders, who could in turn pass on the most necessary information. In addition, data was put on EPA's website and press releases were released that reflected the result of numerous meetings, phone conversations and conference calls.

Ground zero was a difficult issue for federal officials. Early on in the crisis, it was determined that New York would be in charge of the response. OSHA and EPA employees were not given authority over the city response crews. These workers were, in the early days, still digging as quickly as possible for hoped-for survivors. Workers would often take off their masks. While company employees subject to OSHA standards complied fairly well, the same was not always true of other first responders. Nevertheless, EPA went beyond their mandate by attempting a creative solution to improve environmental conditions for workers. EPA set up a tent away from the site where workers could take off their masks safely, wash off, eat, drink, and be reminded before returning of the need to wear their masks.

What the OIG did not find is telling. The OIG concluded, "in regard to the monitoring data, we found no evidence that EPA attempted to conceal data results from the public." The OIG also stated that there was neither a conspiracy nor an attempt to suppress information.

The most controversial issue centers around whether it was appropriate for EPA's press releases to assert the air was safe and for CEQ to influence EPA's public communications. The investigators find that this criticism stems from a disagreement over how risk from asbestos should be communicated to the public. The pollutant that posed the most concern among officials was asbestos. Essentially, the OIG appears to believe that it was inappropriate to reassure the public and that, instead, it was appropriate to keep more cautionary statements about the dangers of asbestos in the press releases. Both OSHA and CEQ believed that the central issue was the extent to which residents and workers were actually exposed to asbestos, and the risk posed by that exposure. It is important to note the OIG investigation did not include interviews with OSHA nor CEQ. This dramatically limited the OIG's ability to convey a complete picture. The report, in fact, only provides a minority view of the entire information

process. The Committee staff notes that this is not due to the lack of thoroughness on the part of the OIG, but instead is due to the limitation of authority of an agency OIG.

What should not be lost in assessing the issue is that no short-term nor long-term health impacts have been found to residents. While it is true that the health affects of asbestos exposure can take years to manifest, at this point there is no evidence it will. Much of the disagreement may well center on what is the appropriate standard to use in assessing these risks, as different federal agencies use different standards. The EPA Inspector General office appears to have assessed the appropriateness of the press release edits based on EPA's benchmarks, and to have found the EPA standards to have limitations. The standard that informed the press release edits, however, was an OSHA standard.

There may be no "right answer" in this type of situation. Judgment calls were made, and there are differences of opinion as to the quality of those judgment calls. It is important to note, however, that the OSHA and CEQ officials involved in the interagency discussions were very experienced in matters of asbestos exposure and risk. In fact, the only existing asbestos standard that was applicable to ground zero was an OSHA standard. When asked during this review to compare the statements in the final press releases to those in the draft releases, the OSHA official in every instance believed the changed or added language more clearly communicated the real risks of asbestos exposure than the draft.

Although the OIG concluded that EPA could have acted in a more proactive manner on indoor air issues, EPA did not in fact have authority for indoor air until February 2002. This responsibility resided with the City of New York until that time. The OIG found that, while New York City was lead, EPA could have done more to alert the public. For instance, EPA was criticized for referring to the New York City website for information. The OIG criticism is unfounded. EPA was not lead agency. The agency reported to FEMA and New York City. An agency has a duty to "stick with the decision made by the incident commander" and not to "free-lance."

The OIG report makes many helpful suggestions to prepare EPA for any other potential disasters in the future and the entirety of the report should be viewed as a very valuable learning tool. EPA has, separately, engaged in a fairly robust review of "lessons learned." The lessons learned from the World Trade Center was already put to the test and assisted in the federal response to the Columbia Shuttle disaster. It is important to put in perspective that the ability to look back and make improvements in the way federal agencies respond to emergencies should not be construed as an indictment of past performance. It is possible both to have done well in the past and to do better in the future.

Recommendations:

Many lessons have been learned from the terrible events of 9-11. Among the lessons is the enormous challenges posed to all levels of government concerning communication of health risks to the public. Risk communications have been a challenge for decades, and the level of that challenge was raised significantly by the events of 9-11. The

communication of health risks was a major challenge during Love Canal in the 1970's and remains so today. The Nation would greatly benefit from a more systematic approach to risk communications, especially during times of crisis. Therefore, though this investigation finds absolutely no evidence of wrongdoing, the Committee urges the Department of Homeland Security to develop a task force to work with the various federal agencies (including, but not limited to, EPA and OSHA) and state and local governments to develop a uniform and coordinated system of risk communications.

ATTACHMENT

The *New York Times*, September 8, 2003, pg. 22
Editorial

E.P.A. in the Cross Hairs

The Environmental Protection Agency and the White House Council on Environmental Quality have been sharply criticized for playing down the potential dangers of exposure to ash, smoke and dust generated by the collapse of the World Trade Center. The inspector general of the E.P.A. has criticized the agency for making overly reassuring statements that could not be supported by any evidence in hand, and blamed the environmental council for pushing the E.P.A. to eliminate caveats and accentuate the positive. Our own sense is that much of the criticism is retrospective nitpicking of decisions made in the midst of a crisis, but it does seem clear that federal and local agencies could have better informed residents of any hazards they would face when they returned to work or live in the area.

Even so, it is important to understand that the major victims of exposure to pollutants were workers at the site or cleaning up buildings who failed to use respirators. Many of them are now being treated for continuing respiratory ailments, and some may well face lifelong disability. The broader public faced little or no risk from breathing the outdoor air once the initial cloud settled. An unpublished E.P.A. risk analysis found that people were unlikely to suffer adverse health effects from the outdoor air they breathed. Outside experts told the inspector general's office that levels of airborne asbestos, the most feared contaminant, posed no significant long-term risk.

The main issue is whether apartments and offices have been adequately cleaned and tested to ensure that no toxic dust remains to cause a long-term risk to inhabitants. The inspector general's report faults both the E.P.A. and, by implication, New York City's Health Department for failing to press residents and businesses to seek professional cleaning in contaminated apartments instead of doing the cleaning themselves. Only 4,100 apartments have been cleaned or tested under a program eventually established by the city and federal government. Some 18,000 residential units were not tested or cleaned through the program, but many were presumably cleaned and tested before the program started. Nobody knows how many buildings might still have dust lingering in rugs, furniture or air vents that could emerge to cause a hazard. That suggests the need for one final testing program.

The real long-term health effects, if any, will not be known for decades. City and federal health officials started an ambitious tracking project on Friday that will try to follow the health histories of up to 200,000 people exposed to the pollutants. It behooves all who fear for their health or want to contribute to important research to participate.

Mr NADLER. I will now recognize Ms. Kreisher for 5 minutes.

TESTIMONY OF TINA KREISHER, COMMUNICATIONS DIRECTOR, U.S. DEPARTMENT OF THE INTERIOR

Ms. KREISHER. Chairman Nadler, Ranking Member Franks and Members, my name is Tina Kreisher. I serve as Director of Communications at the Department of the Interior. I've been at Interior since February 2002 and have served two secretaries, Gale Norton and now Dirk Kempthorne.

In September it will be a full 6 years since the events of 9/11 and the time I worked at the Environmental Protection Agency. More than 3 months after that catastrophic event, I left EPA for extensive foot surgery and then moved to a new position at Interior. I left behind all of my files and have had only the August 2000 report—2003, excuse me—report by the EPA's Inspector General to refresh my memory. Excuse me.

Much has been said about the adequacy of the processes being used by EPA to test for air quality after the monumental destruction of the terrorist attack. Yet the tests are the same as those used by the Clinton administration and for a few months by the Bush administration to test for daily air quality in the City of New York and elsewhere. It was the standard being used by EPA.

As a political appointee, I was not and others were not scientists. We relied on the professionals to guide us through the testing procedures and processes. When we were told the test showed air quality within normal range, we accepted those findings. My memories are of our New York office located just blocks from Ground Zero and the stories of our staff members literally scooping up dust samples as they ran away from the maelstrom on that day, and of their returning to work there just a few short weeks after the attack.

There seems to be a perception by some that we accepted these test results because we had a disregard for the people living in the city. There is no basis to that perception.

I remember being in the office as Administrator Christine Todd Whitman heard from her son, who was in one of the buildings at the World Trade Center. He called, and she told him to get out of the building, which he did; but then it was agonizing hours before he called to tell her he was safe.

My oldest daughter was an attorney in New York at the Cravath law firm, and she lived near the theater district. She was there on 9/11 and breathed the air for 2 years before she moved from the city.

There was no disregard for the people who had suffered and were suffering either on a personal or on a professional level. Administrator Whitman wanted complete transparency for the test monitoring, and it was at her suggestion that we put the testing results online for the press and the public and other scientists to see and evaluate.

She also wanted more press releases, which brings me to the section of the IG report that is critical of the press releases. I've been writing press releases in this town for more than 18 years, and it has always been a cumbersome process. In my experience, when the release has a Congressman's or Senator's name at the top, usu-

ally he or she has edited it. At Interior, we have an approval process that can sometimes take minutes if I can get to the Secretary, or hours and days for a detailed review process involving many people.

The press release approval process that was set up after 9/11 was taking days and sometimes a week. There were many considerations and many questions being asked, and debates swirled on conference calls set up, at least in part, by the Council on Environmental Quality under the auspices of the National Security Council.

Questions were: Could EPA speak to health risks? Who was the lead for getting the information out? What was our statutory obligation? The IG's report, in fact, said, and I quote, "These statutes and regulations do not obligate EPA to respond to a given emergency, allowing for local agencies to lead a response; and New York City, in fact, exercised a lead role regarding indoor air," unquote.

We were told on conference calls that EPA should continue testing and let the Occupational Health and Safety Administration, the City and State of New York, the Department of Health and Human Services discuss human health. I understand that OSHA did provide guidance at Ground Zero.

The point has been made many times that there are more effective ways to get information to the press than by press release. In fact, I rarely see the content of press releases in actual press reports. Reporters prefer to do their own reporting and not copy what is being given to everyone.

Because of the cumbersome approval process, I opted to do fewer releases and, instead, spoke personally to almost every reporter who called during those days. This meant 20 to 30 interviews a day just for information from me and then a number of requests for live interviews with Administrator Whitman. I think reporters would confirm that we were forthcoming with information during that period if we had the information to give them.

I will add one other thing. In all of the years I've been writing press releases, I've never knowingly put false information into a release. While editing changes were made, based on recommendations by the Council on Environmental Quality, I believe those changes to be upsetting in some cases but not false.

I still believe that to be true. The IG's report, in fact, had this to say, and I quote, "We spoke to a number of experts in the field of environmental monitoring, including physicians, industrial hygienists and researchers. These experts generally agreed that the levels of airborne asbestos detected in the air outside the perimeter of Ground Zero in Lower Manhattan did not present a significant increase in the long-term health risks imposed on the public," end quote.

I will be happy to take your questions.

Mr. NADLER. I thank the witness.

[The prepared statement of Ms. Kreisher follows:]

PREPARED STATEMENT OF TINA KREISHER

Chairman Nadler, Ranking Member Franks, members of the subcommittee, my name is Tina Kreisher and I serve as Director of Communications at the Department of the Interior. I have been at Interior since February, 2002 and have served two Secretaries, Gale Norton and now Dirk Kempthorne.

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tected in the air outside the perimeter of Ground Zero in Lower Manhattan did not present a significant increase in long-term health risk to the public."

I will be happy to take your questions.

Mr NADLER. We'll now recognize Mr. Newman for 5 minutes.

TESTIMONY OF DAVID M. NEWMAN, NEW YORK COMMITTEE OF OCCUPATIONAL SAFETY AND HEALTH

Mr. NEWMAN. Good afternoon, Chairman Nadler, Ranking Member Franks and other Subcommittee Members.

The attacks of September 11, 2001, produced not only an initial catastrophic loss of life, but also a lingering environmental disaster with adverse health consequences for responders as well as for area workers and residents. Toxic contaminants were dispersed at Ground Zero, throughout Manhattan, parts of Brooklyn and possibly beyond.

Prior to and on 9/11 EPA and OSHA had credible data that indicated the presence at the World Trade Center site of an extensive list of toxic materials which, if released, could pose a risk to human health. Government databases documented reportable quantities of stored hazardous materials at the WTC site, including barium, lead, chloroform, chlordane, carbon tetrachloride, cadmium, chromium, mercury, hydrogen sulfide, arsenic, tetrachloroethylene, PCBs and ethane. The agencies were most assuredly also aware of the danger posed by the presence of several hundred thousand pounds of asbestos in World Trade Center fireproofing.

EPA's and OSHA's public statements mischaracterized the available data. Sampling results obtained by EPA and OSHA after 9/11 indicated the presence of toxic substances at levels of concern at Ground Zero and at other locations in Lower Manhattan, both outdoors and indoors.

Asbestos was detected by EPA in 76 percent of 143 bulk samples collected outside the 16-acre collapsed site; 26 percent of these samples contained 1.1 to 4.49 percent asbestos, that is, levels 110 to 449 percent of the level at which legal requirements for asbestos are triggered.

At least 25 12-hour air samples obtained at 10 separate locations exceeded the clearance standard of the Asbestos Hazard Emergency Response Act, the benchmark EPA was using. Fifty-seven percent of personal air samples obtained in September 2001 by the U.S. Public Health Service exceeded the OSHA permissible exposure limit for asbestos. Sixty percent of asbestos air samples collected at Ground Zero by the operating engineers exceeded the EPA clearance standard. Twenty-seven percent of 177 bulk samples initially collected by EPA and OSHA at Ground Zero were greater than 1 percent asbestos.

Independent air monitoring in two Lower Manhattan apartments found significantly elevated levels of asbestos, including results up to 151 times the EPA clearance level. The U.S. Geological Survey reported as early as September 18 that asbestos could be present in concentrations of 20 percent or more at distances greater than one-half mile from Ground Zero.

EPA detected benzene at Ground Zero in 57 of 96 air samples at levels from 5 to 86 times the OSHA PEL. Benzene results as late as January were five times the PEL.

EPA test results through November for dioxin several blocks from Ground Zero indicated that workers and residents who returned to areas reopened as safe were potentially exposed to concentrations of dioxin nearly six times the highest dioxin level ever recorded. Workers at Ground Zero were potentially exposed to dioxin levels 100 to 1,500 times higher than is typical in urban air. EPA did not release this information for more than a year.

EPA's unsupported reassurances of lack of risk had the unfortunate effect of giving a green light to employers and workers not to use respiratory protection, and to landlords, employers and government agencies that cleanup was not necessary. Because EPA contended for 8 months that it had no legal responsibility for addressing indoor contaminants, sampling and remediation efforts occurred only on a limited, haphazard and ineffectual basis. EPA's indoor cleanup efforts, to date, exclude all 1,500 commercial and government buildings in Lower Manhattan and are of questionable scientific merit and technical effectiveness.

Within days of the attacks, EPA declared Lower Manhattan's air safe to breathe. OSHA announced that it is safe for New Yorkers to go back to work. EPA maintained until fairly recently that, quote, "There is little concern about any long-term health effects," unquote. Unfortunately, there's considerable evidence to the contrary.

It is now well established that a large and increasing number of people who were exposed to 9/11 contaminants, primarily rescue and recovery workers, but also area workers and area residents, are suffering serious and persistent adverse health outcomes. We now know that those caught in the dust cloud and/or those responding at the WTC site in the first hours and days have higher incidences and greater severities of health impacts. Presumably, the intensity and duration of exposure and the lack of respiratory protection were significant factors. These early exposures were unavoidable; however, the failure of OSHA to ensure the use of respiratory protection and the failure of OSHA to enforce legal standards subjected workers to unnecessary and avoidable exposures with the result that many are now experiencing persistent disabling respiratory illnesses, and some are dying.

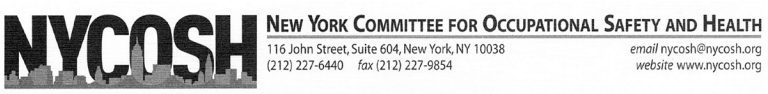
Similarly, the failure of EPA to provide, require or even encourage indoor environmental assessments and cleanup, where warranted in commercial and government buildings, coupled with EPA's inadequate sampling and cleanup in residences is likely to have subjected area workers and residents to additional unnecessary and avoidable exposures.

Thank you very much for your concern on these issues.

Mr. NADLER. I thank the gentleman.

[The prepared statement of Mr. Newman follows:]

PREPARED STATEMENT OF DAVID M. NEWMAN



Oversight Hearing on The U.S. Environmental Protection Agency's Response to Air Quality Issues Arising from the Terrorist Attacks of September 11, 2001: Were There Substantive Due Process Violations?

testimony of
David M. Newman, M.A., M.S.
New York Committee for Occupational Safety and Health

before
United States House of Representatives

Committee on the Judiciary

Subcommittee on the Constitution,
Civil Rights, and Civil Liberties

June 25, 2007

Good afternoon Chairman Nadler, Ranking Member Franks, and other members of the Constitution, Civil Rights, and Civil Liberties Subcommittee. Thank you for this opportunity to present testimony. My name is David Newman. I am an industrial hygienist with the New York Committee for Occupational Safety and Health (NYCOSH). NYCOSH is a non-governmental, non-profit organization that has provided technical assistance and comprehensive training in occupational safety and health to unions, employers, government agencies, and community organizations for over 25 years

The attacks of September 11, 2001 produced not only an initial catastrophic loss of life at the World Trade Center (WTC) site, but also a lingering environmental disaster, with adverse health consequences for responders at Ground Zero as well as for workers and residents in a much larger geographic area. Because we may unfortunately be faced with a similar situation again, it is imperative to examine and learn from government efforts to protect public and worker health in 9/11 response efforts.

Since the tragic events of September 11, 2001 and continuing to this day, NYCOSH, in partnership with the National Disaster Ministries of the United Church of Christ, has worked closely with unions, employers, and community and tenant organizations at Ground Zero and throughout Lower Manhattan. This work has included outdoor and indoor environmental sampling, technical assistance with the design or evaluation of sampling, cleanup, and re-occupancy protocols, and with mechanical ventilation and filtration issues. Within days of 9/11, NYCOSH produced and distributed the first fact sheets describing respiratory hazards at Ground Zero and outlining appropriate respiratory protection. We provided technical assistance to unions at, under, and around Ground Zero. NYCOSH, in collaboration with the Queens College Center for the Biology of Natural Systems and the Latin American Workers Project, operated a mobile medical unit near Ground Zero which provided medical

screenings to hundreds of immigrant day laborers engaged in the cleanup of contaminated offices and residences. We also provided respirators to these cleanup workers, along with changeout filter cartridges, fit-testing, and training proper respirator use. NYCOSH also trained additional hundreds of Lower Manhattan workers about 9/11-related occupational and environmental health issues. NYCOSH continues to work closely with the medical centers of excellence and with unions, employers, and tenant and community organizations to ensure that their constituents are informed about and have access to appropriate health care for 9/11 health conditions.

In addition, I had the privilege of serving on the U.S. Environmental Protection Agency (EPA) World Trade Center Expert Technical Review Panel. I also served on the Exposure Assessment Working Group of the World Trade Center Worker and Volunteer Medical Screening Program and on the Advisory Board of Columbia University's Mailman School of Public Health World Trade Center Evacuation Study. I currently serve on the Community Advisory Committee of the World Trade Center Environmental Health Center at Bellevue Hospital and on the Labor Advisory Committee of the New York City Department of Health and Mental Hygiene's World Trade Center Health Registry.

My testimony will focus on three issues:

1. Whether the data available to EPA and the Occupational Safety and Health Administration (OSHA) at the time of the 9/11attacks and during subsequent recovery operations indicated a potential for elevated risk to human health from environmental exposures;
2. Whether the actions of EPA and OSHA were consistent with regulatory requirements for risk assessment and protection of human health; and
3. Whether harm to human health occurred, and whether this harm was avoidable.

NYCOSH is well situated to comment on these issues. In addition to our 9/11 efforts, we have provided training and technical assistance on respiratory protection, hazard

assessment and control, confined space entry, and hazardous waste operations and emergency response, among other topics, to employers, unions, government agencies, and community-based organizations for several decades, often in collaboration with OSHA, the National Institute for Occupational Safety and Health (NIOSH), the National Institute for Environmental Health Sciences (NIEHS), the New York State Department of Labor, the New York City Department of Environmental Protection, and the New York City Department of Health and Mental Hygiene.

1. What data were available to EPA and OSHA at the time of the 9/11 attacks and during subsequent recovery operations? Did these data indicate a potential for elevated risk to human health from environmental exposures?

Although the chemical composition and extent of dispersion of WTC dust remain poorly characterized, the current scientific literature is unambiguous as to its general character and scope. Contaminants were dispersed over a wide area of Lower Manhattan and Brooklyn, and for "miles beyond." Hundreds of contaminants have been identified in air, dust, and bulk samples.[1,2,3] Toxic contaminants of concern include asbestos, PCBs (polychlorinated biphenyls), PAHs (polycyclic aromatic hydrocarbons), manmade vitreous fibers, dioxins, volatile organic compounds, crystalline silica, pulverized glass shards, highly alkaline concrete dust, and lead, mercury, and other heavy metals.

The question, however, is what did EPA and OSHA know and when did they know it?

1.A. Credible, substantive data that indicated the presence of toxic substances in significant quantities at the WTC site were readily available to government agencies prior to and on September 11, 2001.

Prior to and on 9/11, information on the documented presence of toxic substances at the WTC site was available in government databases that itemize storage of hazardous raw

materials, as per the hazardous chemical storage reporting requirements of the federal Emergency Planning and Community Right to Know Act.[4] These data, readily available at the time, indicated at a minimum the probable presence of barium, lead, chloroform, chlordane, carbon tetrachloride, cadmium, chromium, mercury, hydrogen sulfide, arsenic, and other toxic raw materials at the offices of the United States Customs Service, 6 World Trade Center, and of mercury, tetrachloroethylene, PCBs, arsenic, ethane, and other toxic raw materials at the offices of the Port Authority of New York and New Jersey, 1 World Trade Center. The purpose of the hazardous raw materials databases is precisely to facilitate safe emergency response and effective containment and cleanup in the event of an unanticipated chemical release.

Additional information on hazardous in-place building materials and office furnishings was widely known in the regulatory and public health communities. Knowledge and use of this information was a prerequisite to appropriate preliminary risk assessment, design of safe and effective work methods, and selection of protective equipment, including respirators.

An estimated 400 or more tons of asbestos had been utilized in sprayed-on fireproofing during the construction of the WTC towers.[5,6] Additional unknown amounts of asbestos-containing material were used in pipe insulation. The extensive use of asbestos at the WTC site was well documented prior to September 11, 2001. In 1971, while the WTC was still under construction, New York City passed Local Law 49, which banned the use of sprayed-on fireproofing that contained asbestos, effective February 25, 1972. Application of structural fireproofing at the WTC continued with non-asbestos-based materials.[7] The 1993 bombing of the WTC again raised the issue of inadvertent releases of WTC asbestos during disaster events, and some WTC asbestos was abated (removed). Thus, the regulatory agencies were without doubt cognizant of the potential for the release of hundreds of thousands of pounds of asbestos into the ambient air during the collapse of the WTC towers on September 11, 2001.

Further essential, albeit imprecise, information about the potential for the release of additional toxic substances should have been intuitive to any environmental or occupational health professional.

For example, computers and computer components contain significant amounts of lead.[8] It can be conservatively estimated that there were greater than 10,000 personal computers in the WTC complex, each containing four or more pounds of lead, as well as numerous mainframe computers and servers. Consequently, it is likely that at least 40,000 pounds of lead were released into the general environment on 9/11, and very possibly a substantially larger amount.

Similarly, fluorescent light bulbs contain tiny but environmentally significant amounts of mercury.[9] Estimates of the amount of mercury in a single bulb range from 3 milligrams to 21 milligrams. The Port Authority acknowledges the presence of 500,000 fluorescent light bulbs in the WTC complex.[10] It is therefore possible that the amount of mercury released from fluorescent light bulbs only (and not including additional sources of mercury such as electric switches) ranged from 3 to 23 pounds. This is the approximate equivalent of 8% of the total daily mercury emissions from all coal-fired utility boilers in the United States or 26% of the daily mercury emissions from all municipal waste incinerators.[11]

1.B. Environmental sampling results obtained by government agencies subsequent to September 11 indicated the presence of toxic substances at levels of concern at Ground Zero as well as at other locations in Lower Manhattan, both outdoors and indoors.

Early environmental sampling data obtained by EPA confirmed that asbestos was a constituent of WTC dust, at levels of concern. The EPA website posted data for 143 bulk samples of dust collected in Lower Manhattan, outside of the 16-acre collapse site. Asbestos was detected in 76% of the samples. Twenty-six percent of the samples contained asbestos

at levels between 1.1% and 4.49%, i.e., at levels between 110% and 449% of the level at which legal requirements are triggered. Most of EPA's outdoor air samples found relatively low concentrations of asbestos or no asbestos above the detection limit of the sampling, but the EPA website listed at least 25 12-hour samples, obtained at 10 separate locations, that exceeded the EPA clearance standard established under the Asbestos Hazard Emergency Response Act, the benchmark that EPA was using for 9/11 asbestos measurements.

Additionally, 12 of 21 personal air samples obtained in September 2001 by the U.S. Public Health Service from workers sifting WTC debris at the Staten Island landfill exceeded the OSHA Permissible Exposure Limit for asbestos.[12] Sixty percent of asbestos air samples collected at Ground Zero by the International Union of Operating Engineers' National Hazmat Program exceeded the EPA clearance standard established under the Asbestos Hazard Emergency Response Act, the benchmark that EPA was using for 9/11 asbestos measurements.[13] Twenty-seven percent of 177 bulk samples initially collected by EPA and OSHA at Ground Zero were greater than 1% asbestos, the level at which legal requirements are triggered.[14] Early independent air monitoring in two Lower Manhattan apartments found significantly elevated indoor levels of asbestos, including results 2 to 5 times the EPA 9/11 asbestos clearance level in one apartment and 89 to 151 times the clearance level in the other apartment.[15]

EPA test results for outdoor sampling for dioxin showed "unambiguous elevation" when compared to typical urban background levels. An EPA report noted:

> the concentrations to which individuals could potentially be exposed . . . within and near the WTC site found through the latter part of November are likely the *highest ambient concentrations that have ever been reported.* [emphasis added][16]

These findings indicated that workers and residents who returned to areas that were reopened to the public as safe one week after 9/11 were potentially exposed to concentrations of dioxin "nearly 6 times the highest dioxin level ever recorded in the U.S." The findings also indicated that the dioxin concentrations to which rescue and recovery

workers were potentially exposed were between 100 and 1,500 times higher than the levels of dioxin typically found in urban air.[17]

In another example, benzene was detected at Ground Zero in 57 of 96 air samples, at levels from 5 to 86,000 parts per billion (ppb). (The OSHA permissible exposure limit (PEL) for benzene exposure averaged over 8 hours is 1,000 ppb. The OSHA short term exposure limit (STEL) for benzene exposure averaged over a 15 minute period is 5,000 ppb.)

> Even during November, readings exceeded the OSHA levels in half the tests conducted. . . . On November 8, an EPA grab sample at the North Tower plume detected 180,000 ppb of benzene–180 times above [sic] the OSHA limit. Even as late as January 7, benzene readings were as high as 5,300 ppb.[18]

The United States Geological Survey (USGS) reported the results of its WTC environmental studies to government response teams as early as September 18, 2001. USGS found that steel beams from the WTC site were coated with fireproofing containing chrysotile asbestos at concentrations up to 20%. It reported that in the "area around the WTC . . . potentially asbestiform minerals might be present in concentrations of a few percent to tens of percent" and may occur "in a discontinuous pattern radially in west, north, and easterly directions perhaps at distances greater than 3/4 kilometer from ground zero." USGS also found that WTC dusts "can be quite alkaline," reaching a pH of 11.8. The agency warned government response teams that "cleanup of dusts and the WTC debris should be done with appropriate respiratory protection and dust control measures."[19]

2. *Were the actions of EPA and OSHA consistent with regulatory requirements for risk assessment and protection of human health?*

Multiple federal statutes have applicability to the protection of public health and occupational health during catastrophic environmental emergencies. The applicability of statutory requirements to disaster response efforts and to subsequent cleanup operations and the uses of agency discretionary power in the application of legal standards are central to

assessing governmental response to 9/11.

2.A. EPA is clearly required to protect the public health against exposure to toxic environmental contaminants associated with catastrophic disasters.

EPA has legal authority and responsibility to respond to a hazardous substance release that presents or has the potential to present an imminent and substantial danger to public health. EPA is required to assume lead authority with regard to issues of environmental health by the National Contingency Plan, the National Response Plan, and Presidential Decision Directive 62 of 1998.

The National Emissions Standards for Hazardous Air Pollutants (NESHAPS), section 112 of the Clean Air Act, establishes standards for air pollutants that may cause fatalities or serious, irreversible, or incapacitating illness.[20,21] Hazardous air pollutants regulated under the Clean Air Act are also regulated as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), known as Superfund. The National Contingency Plan (NCP), part of CERCLA, is the federal plan for responding to hazardous substance releases. The NCP assigns the authority to respond to the release of hazardous substances to EPA. In the event of a hazardous release, the NCP requires that the release site be assessed to characterize the source and type of the release, the pathways of exposure, and the nature and magnitude of the threat to public health. In addition, EPA is authorized to "enter any vessel, facility, establishment or other place, property, or location . . . and conduct, complete, operate, and maintain any response actions. ..." Further, "the NCP applies to and is in effect when the Federal Response Plan and some or all of its Emergency Support Functions (ESFs) are activated." [22]

The National Response Plan (NRP) mandates a comprehensive response to terrorism incidents. (The Federal Response Plan[23] preceded the National Response Plan, was in effect on September 11, 2001, and was substantively similar to the NRP.) The NRP establishes

protocols to protect the health and safety of the public, responders, and recovery workers. National Response Plan Emergency Support Function #10, the Oil and Hazardous Materials Response Annex, assigns explicit responsibility to EPA as both the primary agency and the emergency support function coordinator in response to an actual or potential discharge or uncontrolled release of hazardous materials.[24]

Presidential Decision Directive (PDD) 62 names EPA as the lead agency for responding to the release of hazardous materials in a terrorist attack and gives EPA specific responsibility for indoor remediation.[25,26] Shortly after 9/11, then–EPA Administrator Christine Whitman confirmed EPA's responsibility under PDD 62: "Under the provisions of PDD 62 . . . EPA is assigned lead responsibility for cleaning up buildings and other sites contaminated by chemical or biological agents as a result of an act of terrorism."[27]

2.B. EPA's response actions were not consistent with its legal obligations to protect the public health against exposure to outdoor and indoor toxic environmental contaminants associated with a catastrophic disaster.

EPA's 9/11 response efforts were predicated on the agency's contention that environmental regulations were not applicable to natural or technological disasters or to terrorist incidents.[28] EPA minimized the issue of hazardous waste and chose not to consider the WTC site as either a Resource Conservation and Recovery Act (RCRA)[29] hazardous waste site or a Superfund site, even though the collapse and combustion of the WTC "must have released chemicals orders of magnitude times the reporting thresholds."[30,31] According to an EPA senior policy analyst, this was the first major chemical or hazardous waste release in 20 years for which EPA did not conduct a site characterization for environmental hazards and risks.[32] In addition, the agency did not ensure that clearance tests were conducted at the conclusion of the waste and debris removal project to confirm that environmental contaminants had been effectively removed from the WTC site, and no such tests were conducted.[33]

For eight months after 9/11, EPA contended that it had no legal responsibility for assessing or addressing indoor environmental contamination.[34,35] Indoor environmental testing and remediation in common spaces were left to building owners; testing and remediation of private spaces were left to commercial and residential tenants.[36,37] Because government financial assistance, reoccupancy guidelines, oversight, and enforcement were not provided, private environmental sampling and remediation efforts occurred only on an occasional, haphazard, limited, and often ineffectual basis. The single government-sponsored indoor cleanup effort that ultimately took place, EPA's 2002-2003 "test or clean" program, was modest, non-mandatory, limited to residences, and of questionable effectiveness and scientific and technical merit. Only 18% of eligible downtown apartments were cleaned or tested.[38] Approximately 1,500 Lower Manhattan buildings were excluded, including all schools, hospitals, firehouses, workplaces, businesses, and commercial and government buildings—even City Hall. Most of Chinatown and other impacted communities were also excluded. The failure of EPA to require or even encourage indoor environmental assessments, and cleanup where warranted, in commercial and government buildings, coupled with the agency's limited and inadequate sampling and cleanup in residential spaces, is likely to have subjected area workers and residents to unnecessary and avoidable exposures.

EPA provided limited, and sometimes incorrect and hazardous, technical guidance to the impacted public. EPA press releases counseled residential and business tenants to clean their indoor spaces using "appropriate" equipment, following "recommended" and "proper" procedures, without defining these terms.[39] EPA's technical advice sometimes contradicted regulatory requirements and even common sense. In one instance EPA advised that "if dust or debris from the World Trade Center site has entered homes or offices, people should be sure to clean thoroughly and avoid inhaling dust while doing so."[40] The same press release referred readers to the website of the New York City Department of Health for further technical guidance. That website advised "residents and workers returning to homes and offices in Lower Manhattan" to clean up WTC dust (i.e., asbestos and other toxic substances,

in many cases) with wet rags and HEPA vacuum cleaners, in violation of federal and city regulations. It further advised that respiratory protection was not necessary so long as these "guidelines" were followed.[41] The report of the EPA Inspector General ultimately concluded that advice such as this "may have increased the long-term health risks for those [tenants] who cleaned WTC dust."[42]

EPA's public statements mischaracterized or ignored sampling results. Its September 18 announcement that the "air is safe to breathe"[43] was not supported by the available data.[44] EPA risk communication statements were altered to conform to political directives from the White House. "Guidance for cleaning indoor spaces and information about the potential health effects from WTC debris were not included in EPA's issued press releases. . . . Reassuring information was added . . . and cautionary information was deleted" after intervention by the White House Council on Environmental Quality.[45] Other government agencies also issued inaccurate risk communication statements. EPA's unsupported assurances of lack of risk had the unfortunate effect of giving a green light to employers and workers not to use respiratory protection and to landlords, employers, and government agencies that remediation of contaminants was not necessary.

2.C. OSHA is clearly required to ensure that workers are protected against avoidable harmful exposures at their places of employment, including workers engaged in disaster rescue and recovery efforts.

OSHA in general is legally mandated to "assure safe and healthful working conditions for working men and women," in part by "providing an effective enforcement program."[46] Specifically, OSHA is legally mandated to enforce standards that limit worker exposure to toxic and hazardous substances;[47] afford workers workplaces "free from recognized hazards";[48] require assessment of the hazards to which workers may be exposed;[49] require the use of appropriate respiratory protection against "occupational diseases caused by breathing air contaminated with harmful dusts, fogs, fumes, mists, gases, smokes, sprays, or

vapors;"[50] protect worker safety and health at cleanup operations involving hazardous substances at uncontrolled hazardous waste sites;[51] and protect the health of workers' families by preventing transport home of hazardous chemicals and substances on workers' clothing.[52]

2.D. OSHA's response actions were not consistent with its legal obligations to protect workers against avoidable harmful exposures at their places of employment, including disaster and recovery efforts.

The OSHA Respiratory Protection Standard requires that employers provide respirators, training, fit-testing, and medical evaluation when "necessary to protect the health of the employee."[53] OSHA did not enforce the Respiratory Protection Standard, nor was it able to assure effective respiratory protection for workers in the absence of enforcement. The percentage of workers "on the pile" observed to be wearing respirators ranged from 20 to 50 percent; the percentage of immigrant day laborers and unionized building maintenance workers who wore respirators while cleaning up dust and debris outside Ground Zero was virtually zero.[54,55] As a result, tens of thousands of workers suffered avoidable and illegal exposures to highly toxic contaminants, including a robust array of carcinogens. Many are today experiencing persistent, disabling respiratory illnesses, and some are dying.

The OSHA Hazardous Waste Operations and Emergency Response (Hazwoper) Standard is "arguably the most proactive standard for protecting workers during disasters."[56] Hazwoper provides an integrated framework for chemical spill and disaster response through requirements for site characterization and analysis, worker training and qualification, worker protection, environmental and medical monitoring, handling of hazardous waste, and emergency preparedness and response. Hazwoper is routinely invoked in less hazardous situations. For example, EPA-required removals of leaking underground fuel storage tanks are conducted in accordance with Hazwoper.[57] Even though the WTC site contained leaking fuel storage tanks, as well as myriad additional chemical releases, the Hazwoper standard

was "purposely and thoroughly avoided during the rescue and recovery operations at Ground Zero."[58]

OSHA and other agencies allowed the rescue phase to be artificially prolonged for 10 months[59] even though building collapse victims who are not extricated within 12 to 48 hours have a very low survival rate, which declines to virtually zero after 4 days.[60,61] The inappropriately extended rescue phase facilitated government avoidance of responsibility and enforcement.

OSHA asserted that the Federal Response Plan required it to emphasize "consultation, guidance, and technical assistance."[62] However, the FRP did not exclude enforcement. The problem with the consultation approach was not that it was inappropriate but rather that it was ineffective. OSHA chose to operate under a zero enforcement policy which ultimately facilitated rapid debris removal at the expense of protection of worker health. At no time did a collaborative approach preclude enforcement where appropriate, apart from the initial hours and days when rescue of live victims was theoretically possible. In fact, as EPA has pointed out, OSHA standards are "applicable in catastrophic emergencies. . . . There are no exemptions for emergencies in the [OSH] Act."[63] Moreover, because the inadequacy of respiratory protection at the site was self-evident and prolonged, federal and city agencies, including FEMA and NYC Department of Health, as well as unions, repeatedly requested OSHA enforcement, to no avail.

(Although OSHA has argued that it used discretionary authority when it opted for non-enforcement at Ground Zero, automatic non-enforcement in disaster response is now official OSHA policy, as codified in its 2003 National Emergency Management Plan.[64])

3. Did exposure to WTC-derived contaminants result in harm to human health, and was this exposure and harm avoidable?

Within days of the attacks, EPA declared Lower Manhattan's air "safe to breathe"[65] and OSHA announced that "it is safe for New Yorkers to go back to work."[66] EPA maintained until recently that "short-term health effects dissipated for most once the fires were put out [and] there is little concern about any long-term health effects."[67] Unfortunately, there is considerable evidence to the contrary. It is now well-established that a large and increasing number of people who were exposed to 9/11 contaminants, primarily rescue and recovery workers but also area workers and residents, are suffering serious and persistent adverse health outcomes.

The incidence and persistence of 9/11-induced respiratory illness among response workers and area workers is extensively documented in the scientific literature, including among rescue, recovery, and service workers,[68,69] firefighters,[70,71,72,73] transit workers,[74] and immigrant day laborer cleanup workers at buildings outside Ground Zero.[75] Although there is no question that, in general, those working on the pile experienced more severe exposures and health impacts than did community residents, students, and workers, it is of note that adverse health impacts have also been documented among these latter groups.[76,77,78,79,80]

Because Ground Zero workers and other exposed populations may have been exposed at varying levels to a robust array of carcinogens, including asbestos, dioxins, silica, benzene, PAHs, and PCBs, there is concern for the potential development of late-emerging cancers.[81] It as yet unknown whether or when 9/11-derived exposures will produce late-emerging diseases, but it is prudent and scientifically appropriate to anticipate the possibility. While the latency period for solid tumors is 10 to 50 years, the latency period for hematolgic and lymphatic malignancies can be as short as 4 to 5 years.[82] Although neither the World Trade Center Medical Monitoring Program nor the scientific literature has yet reported the occurrence of 9/11-related cancers, the Monitoring Program has begun the process of verification of self-reported cases among responder and recovery worker patients.[83]

We now know that there is an association between the chronology of firefighters' 9/11-related exposures and the severity of their adverse health effects; i.e., those caught in the dust cloud and/or those responding at the WTC site in the first hours or days tend to have higher incidences and greater severities of health impacts. Presumably, the intensity and duration of exposure and the lack of access to appropriate respiratory protection were significant factors in this association. These early exposures were unavoidable. However, the failure of OSHA to effectively require the use of respiratory protection by recovery and cleanup workers at and around Ground Zero, and the failure to enforce clearly applicable OSHA standards, such as the Respiratory Protection and the Hazwoper Standards, subjected workers to unnecessary and avoidable exposures, with the result that many are now experiencing persistent, disabling respiratory illnesses. Similarly, the failure of EPA to provide, require, or even encourage indoor environmental assessments, and cleanup where warranted, in commercial and government buildings, coupled with the agency's limited and inadequate sampling and cleanup in residential spaces, is likely to have subjected area workers and residents to additional unnecessary and avoidable exposures.

Thank you for your concern about these issues.

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Mr NADLER. Ms. McGinnis is now recognized for 5 minutes.

TESTIMONY OF EILEEN McGINNIS, SENIOR VICE PRESIDENT, WHITMAN STRATEGY GROUP

Ms. MCGINNIS. Thank you, Mr. Chairman and Members of the Subcommittee. I appreciate the opportunity to appear before you this afternoon to share my thoughts and perspectives on the response of the USEPA to the terrorist attacks of September 11, 2001. By way of introduction, I served as Chief of Staff to EPA Administrator Christine Todd Whitman from January 2001 to June of 2002. Prior to that, I served as Chief of the Governor's Office of Policy and Planning for 6 years. I have served most of my career in government service.

Hours after the terrorist attacks on 9/11, I received a phone call from EPA's Regional Administrator in New York City, informing me that EPA employees were out in the field installing air monitors. I was proud, although they had just witnessed the horrors of the attacks a few blocks from their office, these very brave and courageous employees quickly put aside their personal and emotional reactions to the tragedy and were already on the job in pursuit of the Agency's mission to protect the environment and human health.

On September 11, a dedicated team of EPA employees collected air samples for the presence of lead, asbestos and VOCs which were the contaminants of initial concern. Samples for other contaminants were added in the days and the weeks after the attack. In truly EPA fashion, experts from all over the country came together to help form a monitor network to assess the ambient air conditions in Lower Manhattan. EPA employees worked around the clock in makeshift offices since their offices in Lower Manhattan were closed as a result of the tragedy.

The emphasis in those early days after the attack was to provide as much information as possible to the public and to make sure that information was as transparent as possible. Data from the air and water monitoring was put up on the EPA's Website for everyone to see and track.

It is important to note today that the Inspector General's report being discussed at today's hearing verified the accuracy of the information posted and found no evidence the EPA attempted to conceal data from the public. In all, EPA took nearly 25,000 samples and conducted a quarter of a million measurements.

Mr. Chairman, your press advisory about today's hearing states, quote, "Now is the time for the truth," end quote. I believe the ultimate truth is that the leadership and staff of the EPA did the very best they could under very difficult circumstances to meet the Agency's obligation to help protect the lives and health of all those affected by the attacks. EPA, along with other agencies with whom we worked, acted to provide the best possible information based on available data and using our collective professional judgment under extraordinary circumstances.

Looking back, one can always find things that could have been done better. That's why, within weeks of the terrorist attacks, we launched a comprehensive review of the actions we took in response. As a result, we developed clear recommendations as to how

the agencies could better respond to any future attacks, should they occur.

On the whole, however, I remain confident that we've discharged our duties with integrity, professionalism and commitment to our mission; and those EPA employees who were in the field in the hours, days and weeks following the tragedy, with courage and bravery.

Thank you, and I would be glad to answer any questions.

Mr. NADLER. I thank the gentlelady.

Ms. Horinko is recognized for 5 minutes.

TESTIMONY OF MARIANNE L. HORINKO, EXECUTIVE VICE PRESIDENT, GLOBAL ENVIRONMENT & TECHNOLOGY FOUNDATION

Ms. HORINKO. Good afternoon, Mr. Chairman, distinguished Members of the Committee. I appreciate your invitation to be here this afternoon, because I am convinced the more the public understands about EPA's actions after September 11, 2001, the more everyone will understand what I know, that the women and men of EPA were then and are now an amazing group of professionals dedicated to protecting the health of every person in this country.

In New York, in the weeks following September 11, it was not business as usual. EPA employees from all over the country rushed to New York to provide their assistance in cleaning up the aftermath of the terrorist attack and to gather and analyze the data required to answer questions that everyone who lived and worked in Manhattan were asking.

We had to find creative ways to place monitors and to gather the data, since there was little monitoring infrastructure and, for quite some time, no electricity. EPA employees had difficulty getting permission to get near Ground Zero in the areas where monitoring was most critical. But somehow the monitors went up.

Once we started gathering data and consistent with our overall mission as an agency, we were determined to share information with the public as quickly as we could and in a manner that was easily accessible. Public officials and citizens were clamoring for information. We felt we owed them a duty to get the data out as fast as we could. We posted the data from our monitors on the Internet, accessible to anyone. Anyone who wanted to look at the same data we were reviewing could.

We gathered the experts of the Agency and in other agencies to review this data to help determine potential impacts to residents and workers in New York. We provided our best information as frequently as we could to the public.

We also worried a lot about the first responders and all the people who worked at Ground Zero. We told the workers in every way we could imagine to do it that they needed to protect themselves even while they were trying to save others. We gave them equipment and taught them how to use it. We even set up tents with food to encourage the workers to come in and decontaminate their clothing and ensure that their protective equipment was functioning properly.

Did we learn some lessons from this experience? Of course we did. Within a matter of weeks, we worked to memorialize those les-

sons so that our next response to any significant disaster would be better.

I find it very affirming to know that the Inspector General, looking dispassionately at our actions with the benefit of hindsight, concluded that we acted responsibly and that our statements to the public reflected the facts as we knew them then and as we still know them today.

To suggest that anyone at EPA was ever motivated by anything less than a complete focus on protecting the public does those individuals a terrible disservice. Governor Whitman, whom I admire greatly, sought out the opinions of experts and listened to what they had to say. She kept the Agency on course when it would have been easy to lose direction.

EPA has an important mission in responding to any disaster like the collapse of the World Trade Center. But EPA was never intended to do everything for everyone. In this case, we worked effectively with all the other agencies that also had expertise and an important role to play, including OSHA, the Centers for Disease Control, ATSDR and the City of New York. That is the way the system is designed, and I feel comfortable that it worked as planned. As I said at the beginning, I thank you for inviting me here and I will be happy to answer any questions.

Mr. NADLER. I thank the gentlelady.

Ms. Mattei is recognized for 5 minutes.

TESTIMONY OF SUZANNE Y. MATTEI

Ms. MATTEI. Good afternoon. My name is Suzanne Mattei. I am the former Sierra Club, New York City, executive and author of its Pollution and Deception at Ground Zero report on our Federal Government's failure to provide a proper response to the 9/11 pollution. The report also warns that our Federal Government's new disaster policies perpetuate its failures at Ground Zero.

Most Americans know more about Paris Hilton than about what happened in New York City after September 11. They don't realize that the community district that included the Towers was home to over 2,700 children under age 10 at the time of the attack. Most Americans also don't realize how long Ground Zero burned. The fires were not declared out until 3 months after the attack, and even after that as debris removal opened up new areas the site emitted smoke for at least 6 months after the attack. The exposures were much more extensive and prolonged than most Americans know.

In the aftermath of the attack, our government should have warned people against exposure and reduced exposure through proper cleanup. Instead, it did the opposite. It encouraged people to ignore their own common sense.

The air looked bad and smelled bad. Many people would have guessed that the air was unsafe for themselves and their children, but EPA's broad, unsupported assurances of safety interfered with that commonsense reaction. I recall people saying, It smells awful, but EPA says it's not really that bad. The sad irony is that if EPA had said nothing at all, the public probably would have been better off because more people probably would have used their own common sense.

While the September 11 attack was unprecedented, there was no excuse for failure to warn about known hazards. The event's physical effects on the environment were not completely without precedent. Planes have crashed and burned before. Buildings have caught fire before. Buildings have even collapsed before. We actually know quite a bit about what happens when uncontrolled fires burn mixed materials and when buildings collapse.

EPA's been studying the products of uncontrolled incineration for decades, and is knowledgeable about demolition as well. It did not have to take a single test to know that the 9/11 cloud of dust was harmful. It should have issued a health warning right away.

Even if dust contains no toxic chemicals, it's a respiratory hazard. EPA had the expertise to know that people with asthma and respiratory conditions needed to avoid exposure. EPA knew the Towers contained not only asbestos but also thousands of computers, plastics and electrical equipment, all of which would emit toxic chemicals when burned.

Think of your own computer on your desk. If that caught fire, would you want to breathe in those fumes? Our Federal experts knew all these things before taking a single test.

There can be no excuse for issuing broad assurances of safety when two 110-story office towers burn and collapse. So the concern is not just the EPA lacked the test results to justify its early assurances of safety, it's worse. Our government issued those safety assurances even though EPA's own vast body of knowledge built up over three decades of research indicated that the pollution would be harmful.

EPA also should have changed its assurances when new information on health risk emerged. It didn't do so when tests showed the presence of toxic hazards. It didn't do so when it became apparent that people were getting sick. The Federal administration failed to issue a press release, for example, when the U.S. Geological Survey shared with other agencies on September 27 its proof that the 9/11 dust was highly caustic. The public didn't hear about this until over 4 months later from a St. Louis Post Dispatch article. That's not how we should find things out.

Among those expressing surprise were some of the leading doctors treating the already ailing Ground Zero workers.

EPA's responses to the disclosure of hazards tended to be defensive, not corrective. When environmental attorney Joel Kupferman's research published by Daily News journalist Juan Gonzalez revealed that an air sample at the pile surface showed a high level of benzene, a cancer-causing chemical, EPA argued there were lower levels in what it called the breathing zone, 5 to 7 feet above the debris pile. The Ground Zero workers were reaching in and pulling out debris and human remains by hand. Their breathing zone was not 5 or 7 feet above the pile.

Our Federal Government's stonewalling continued as study after study documented health impacts not only among workers from the pit but also area cleanup workers, building cleanup workers and residents. I want to recognize Alex Sanchez and Manuel Checo, who are here today, building cleanup workers suffering severe health effects from their exposures.

Six years later, denial is still the order of the day. The assurances of safety have never been retracted, and this has had consequences.

Consider the government's weak response to 9/11 health impacts which Jonathan Sferazo, a Ground Zero iron worker and founder of the Unsung Heroes Helping Heroes, calls an "epidemic." The Government Accountability Office's report on the government's slipshod work to assess those impacts reveals that the Federal Government didn't really bother to find out how many people were sick. They don't know, perhaps because these people are not supposed to exist.

They do exist.

Five years later, only limited Federal money for treatment; it's inadequate, it doesn't begin to touch the devastating economic impacts that many of these hard-working people and their families now face.

This hearing is a historic step to investigate what happened after the attack. We need action to right at least some of the wrongs that occurred and to ensure that these missed steps don't ever happen again.

Unfortunately, our Federal Government hasn't learned from this debacle. Under its national response plan, OSHA will not enforce worker health and safety standards in national disasters. The plan centralizes press statements, as occurred after 9/11, without a strong precautionary policy to err on the side of protecting human health when full data is missing.

Finally, the Department of Homeland Security's new guidance document on cleanup after a dirty bomb or other terrorist nuclear attack encourages consideration of economic factors, even impacts on tourism in managing the public health risks.

Some people may be suffering from media fatigue, tired of hearing about Ground Zero. They may wonder why New York City residents don't just get closure and move on. The answer is, we can't. We still live with the toxic aftermath of the attack. We still haven't had a proper cleanup. Until our government does the right thing, we will never be able to have closure.

And until our government takes action to make sure that the failed response at Ground Zero never happens again in any future disaster, no American can truly have closure.

[The prepared statement of Ms. Mattei follows:]

PREPARED STATEMENT OF SUZANNE Y. MATTEI

Good afternoon. My name is Suzanne Mattei. I am the former Sierra Club New York City Executive and author of its *Pollution and Deception at Ground Zero* series of reports on the harmful impacts of the 9/11 pollution and our federal government's failure to warn the public and provide a proper response. The reports also urge that our federal government's new disaster response policies perpetuate its failures at Ground Zero.

Most Americans know more about Paris Hilton than about what happened in New York City after the terrorist attack of September 11, 2001. They do not understand that it happened in a residential area. Lower Manhattan looks like a commercial zone, but people live there. The community district that includes the World Trade Center was home to over 2,700 children under age 10 at the time of the attack. Most Americans also do not understand how long Ground Zero burned. The fires were not officially declared out until three months after the attack. And even after that, as debris removal opened up new areas, the site emitted smoke. One resident living

nearby recalls the weekend of St. Patrick's Day, in 2002, when she looked out the window and saw smoke from the pit—half a year after the attack.

So the exposures were much more extensive and prolonged than most Americans realize.

The deaths on September 11th were devastating, but our government could have and should have done much more to control the lingering harm. It should have warned people against exposure and reduced the duration of exposure through proper cleanup.

Instead, it did the opposite. It encouraged people to ignore their own common sense. The air looked bad and smelled bad. Using common sense, many people would have guessed that the air was unsafe for themselves and their children. But EPA's broad, unsupported assurances of safety interfered with that common sense reaction. I recall people saying, "It smells awful, but EPA says it's not really that bad." The sad irony is that if EPA had said nothing at all, the public probably would have been better off, because more people probably would have heeded their own common sense.

Calling the September 11th attack "unprecedented" can be misleading. There was no excuse for failure to warn about known hazards. Yes, the terrorist attack itself, causing widespread destruction on American soil, was unprecedented. But the event's physical results on the environment were not truly without precedent. Planes have crashed and burned before. Buildings have caught fire before. Buildings have even collapsed before. We actually know quite a bit about what happens when uncontrolled fires burn mixed materials, and when buildings collapse.

EPA has been studying the products of uncontrolled incineration for decades and is very knowledgeable about demolition as well. It did not have to take a single test to know that the massive amount of dust released by the towers was harmful. It should have issued a health warning right away.

- Even if dust contains no toxic chemicals at all, it irritates the human respiratory system. EPA should have immediately warned the public—especially people with asthma and respiratory conditions—to avoid exposure, before any test results for toxic chemicals came back.
- EPA knew that the towers contained asbestos—this had become widely known after the first attack on the World Trade Center in 1993.
- EPA knew that the towers contained thousands of computers, plastics and electrical equipment, all of which would emit toxic chemicals when burned. It did not have to consult any existing database on storage hazardous materials at the site to take cognizance of this.

Our federal experts knew all these things before taking a single test. There can be no excuse for issuing broad assurances of safety when two massive office towers burn and collapse.

So the concern is not just that EPA lacked the test results to justify its early assurances of safety—as noted in the Inspector General's 2003 report. It is worse than that. Our government issued those safety assurances even though EPA's own vast body of knowledge, built up over three decades of research, indicated that the pollution would be harmful.

Also, EPA should have changed its safety assurances when new information on health risks emerged. It did not do so. It did not do so when tests showed the presence of toxic hazards, and it did not do so even when it became apparent that people were getting sick.

The first *Pollution and Deception at Ground Zero* report contains a table entitled, "What Was Known, What Was Said." The table documents at least a dozen instances in which EPA had information indicating health risks yet failed to correct its assurances of safety. Despite early dust tests indicating the presence of asbestos, for example, a sentence stating concern for workers who might be returning to their offices on or near an area with asbestos-containing dust was deleted from EPA's September 14 draft press release. Also, the federal administration failed to issue a press release when the U.S. Geological Survey sent test results to its sister agencies on September 27, 2001, documenting that the 9/11 dust was highly caustic. The public did not hear anything about this until over four months later, when the *St. Louis Post Dispatch* released an article about the data. Among those expressing surprise at the time was one of the leading medical doctors who had been screening the already ailing Ground Zero workers.

EPA's responses to the revelation of hazards tended to be defensive rather than corrective. Perhaps the worst example is its response to a disclosure of benzene pollution on the pile. Research by environmental attorney Joel Kupferman, published in the *Daily News* by journalist Juan Gonzalez, revealed tests showing elevated levels of certain pollutants from Ground Zero. One of them was benzene, a known

human carcinogen that can cause leukemia. EPA argued that while a benzene sample at the surface of the pile had a high reading, EPA had found lower levels in what it called the "breathing zone," five to seven feet above the debris pile. The rescue and recovery workers were reaching in and pulling out debris and human remains by hand. Their breathing zone was not between five and seven feet above the debris pile.

Our federal government's inaction in the face of new information continued as study after study documented health impacts not only among workers from the pile but also area clean-up workers and even residents. Today, over five and a half years later, denial is still the order of the day. The assurances of safety have never been retracted, and this has had consequences.

Consider the federal government's weak response to the health impacts from 9/11 pollution, which Jonathan Sferazo, a Ground Zero ironworker and President of the Unsung Heroes Helping Heroes, calls an "epidemic." The General Accounting Office issued a report on the government's slipshod approach to assessing those health impacts. In plain language, the conclusion is this: The federal government has not even bothered to find out how many people are sick. Why? Perhaps because these people are not supposed to exist. But they do exist, and they are suffering. Only now, five years later, are we beginning to see some federal money for medical treatment, but it is terribly inadequate and does not begin to touch the demoralizing economic impacts that many of these hard-working people and their families now face.

This hearing is a historic step to investigate what really happened after the September 11th attack. We cannot control everything, but our federal government certainly could have controlled this attack's toxic consequences far better than it did. We need action, to right at least some of the wrongs that have occurred. Also, we must prevent such harms from happening in future disasters.

Unfortunately, our federal government has not learned from its Ground Zero debacle. Under its National Response Plan, worker health and safety standards will not be enforced in national disasters. Also, the Plan centralizes and controls the release of information, which can facilitate politicization of health warnings, as occurred after 9/11, without a strong precautionary policy to err on the side of protecting human health in the absence of full information. Finally, the Department of Homeland Security's new guidance document on radiological cleanup would encourage consideration of economic factors, even impacts on tourism, in determining public health risks from a dirty bomb or other terrorist-wielded nuclear device.

Some people may be suffering from media fatigue. They may be tired of hearing about Ground Zero. They may wonder why New York City residents don't just "get closure" and "move on." The answer is, we cannot. We are still living with the toxic aftermath of the attack. Until our government does the right thing, we will never be able to have "closure." And until our government takes the proper steps to make sure that the failed response at Ground Zero never happens again, in any future national disaster, no American can truly have "closure."

Mr. NADLER. I thank the witnesses. I will begin the—please, we're not supposed to have any demonstrations. It's against the rules of the House, even approval. It may not seem political, but that's the rules of the House.

I will begin the question period—oh, I should say. I will begin the questioning by yielding myself 5 minutes.

Mr. Thernstrom, who designated you to be the conduit or communications liaison between the EPA and NSC?

Mr. THERNSTROM. Honestly, I believe that system was set up by Deputy Chief of Staff Josh Bolten, but I couldn't say for sure. I was told to assume that responsibility by my boss, Chairman———

Mr. NADLER. Who at the NSC did you report to on EPA communications clearance activities?

Mr. THERNSTROM. I don't frankly remember the NSC press person who———

Mr. NADLER. You don't remember who you reported to?

Mr. THERNSTROM. I reported to Chairman Connaughton. I sent the press releases over to the NSC and received approval for them.

But, no, I don't actually remember the name of the person I was dealing with there.

Mr. NADLER. Who at the NSC did you send those papers to?

Mr. THERNSTROM. I sent them to a fax number that was assigned. I don't know who was reviewing them at the NSC. It was 6 years ago.

Mr. NADLER. I understand that.

Who made the decision to have the NSC approve all the EPA statements? Do you know that?

Mr. THERNSTROM. I don't know.

Mr. NADLER. Who at the White House did you speak to about EPA's public statements?

Mr. THERNSTROM. Chairman Connaughton in my office was my primary contact. I also consulted occasionally with perhaps another staffer on the CEQ staff.

Mr. NADLER. No one above Chairman Connaughton in the organization?

Mr. THERNSTROM. No, sir.

Mr. NADLER. Did you ever speak with Ms. Whitman about EPA's public statements?

Mr. THERNSTROM. I don't believe that I had any direct personal conversation with Ms. Whitman. I participated in daily conference calls with Ms. Whitman. But I don't think we had any one-on-one conversations about these things.

Mr. NADLER. Now, Ms. Kreisher told the Inspector General that you worked directly with the NSC Press Secretary on clearance for EPA communications. That is Condoleezza Rice's Press Secretary. She was head of NSC at the time; is that correct?

Mr. THERNSTROM. Like I said, I sent them to the NSC and I assumed that, yes, it was the Press Secretary. I don't actually recall.

Mr. NADLER. You didn't work with that person?

Mr. THERNSTROM. I do remember speaking to that person at one point. Like I said, I don't even recall her name. This was a———

Mr. NADLER. Now, EPA Chief of Staff McGinnis, who is sitting here, was asked by the EPA IG whether she could claim ownership of EPA's early WTC, World Trade Center, press releases. She replied that she was not able to do so, quote, "because the ownership was joint between the EPA and the White House," unquote, and that, quote, "final approval came from the White House," unquote.

She also told the IG, quote, "If Sam"—that is you, sir—"If Sam okayed it, then it was issued." The IG also noted that Ms. McGinnis, quote, "understood that Sam Thernstrom provided draft press releases to other government officials, but she does not know who these other government officials were."

Were you, sir, the final decision maker for the public statements?

Mr. THERNSTROM. No. I wouldn't put it that way.

Mr. NADLER. If not, who had the final approval in the NSC for EPA public statements?

Mr. THERNSTROM. Like I said, I sent them to the NSC and I received approval from the NSC.

Mr. NADLER. Someone you were dealing with in the NSC had final approval, but you don't know who it was?

Mr. THERNSTROM. Six years after the fact, I honestly do not remember the name of the person I dealt with.

Mr. NADLER. Okay.

Ms. McGinnis, Ms. Kreisher told the IG that all press releases pertaining to the World Trade Center disaster were always approved by the Administrator's Chief of Staff, Eileen McGinnis. Now you have said that you never approved the press releases either verbally or in writing.

Did you have the final okay on EPA 9/11-related communications within EPA?

Ms. MCGINNIS. Tina would keep me informed throughout the day on the interagency process that was going on and the types of discussions that were going on. But as I said in my testimony, the CEQ, as our conduit to NSC, had the final sign-off on———

Mr. NADLER. They had the final sign-off. But within EPA you were the final sign-off?

Ms. MCGINNIS. Yes.

Mr. NADLER. Okay. Thank you.

Now, you received an e-mail on 9/12, that is, on September 12, from EPA Deputy Administrator's Chief of Staff Claudia McMurray, stating that all statements to the media should be cleared through the NSC before they were released.

You stated you cleared all statements through the NSC.

Ms. MCGINNIS. I did not, sir. CEQ was our conduit to the NSC. I had no contact———

Mr. NADLER. They were all sent to the CEQ and then the NSC?

Ms. MCGINNIS. Correct.

Mr. NADLER. Okay. Did you tell Ms. Whitman to clear all statements with the NSC.

Ms. MCGINNIS. I recall a memo coming over to all agency heads.

Mr. NADLER. That would have been the Claudia McMurray memo?

Ms. MCGINNIS. No. I think it was from Andy Card.

Mr. NADLER. From whom? Andrew Card?

Ms. MCGINNIS. Andrew Card. I recall them saying that all communication needed to be reviewed by NSC, and then that was followed by the e-mail that was in the IG's report by the Deputy Administrator.

Mr. NADLER. Okay. What expertise does the National Security Council have that the EPA doesn't have with respect to the risks from environmental contamination on public health?

Ms. MCGINNIS. I can't answer that question about what excuse they have. I have never been in contact with NSC. I stated in my testimony to the IG that I thought the White House played an appropriate coordinating role, given the national emergency.

Mr. NADLER. And do you know who made the decision to have the NSC approve all EPA statements?

Ms. MCGINNIS. I do not.

Mr. NADLER. Do you know who would know that?

Ms. MCGINNIS. I do not.

Mr. NADLER. Okay.

Well, final question, when you were asked by the EPA IG whether you could claim ownership of EPA's early World Trade Center press releases, you replied you couldn't do so "because the ownership was joint between EPA and the White House" and then "final

approval came from the White House." You also told the IG, "If Sam okayed it, it was issued."

The IG also noted that you understand that Sam Thernstrom provided draft press releases to other government officials, but she doesn't know who those other government officials were, as you just said.

Was it your understanding that Mr. Thernstrom was the final decision maker for EPA public statements within the White House?

Ms. MCGINNIS. I really did not know what happened—who Sam communicated with at the White House.

Mr. NADLER. So you don't know who the final decision-making authority———

Ms. MCGINNIS. I do not.

Mr. NADLER. Okay. Thank you very much.

My time has expired, and I yield 5 minutes to the gentleman from Arizona.

Mr. FRANKS. Well, thank you, Mr. Chairman.

Mr. Chairman, it seems to me that the main question that is being asked here today is if, indeed, there was a deliberate attempt on the part of the EPA to conspire with the White House to send people, to convince people to go into an unsafe environment. And, you know, the motivations to that end elude me completely.

But, Ms. McGinnis, I would like to ask you, do you think that there was a deliberate conspiracy within the White House and the EPA to convince people to go into an unsafe environment?

Ms. MCGINNIS. I do not, sir.

Mr. FRANKS. What was the main—the Agency's goal as far as the press releases that you sent? What was your main goal? What was your desire?

Ms. MCGINNIS. The public was very hungry for information, and our desire was to produce information as soon as possible with—emphasizing quality and timeliness.

Mr. FRANKS. Was it appropriate in your mind for the NSC and CEQ to have the final sign-off on these press releases?

Ms. MCGINNIS. Yes, given the national emergency that had just occurred.

Mr. FRANKS. Were press releases your only form of communication? Was it your main form of communication? What———

Ms. MCGINNIS. As Governor Whitman and Ms. Kreisher have testified, I have supervised over the years many press offices, both on the State and in the Federal level. Press releases, I think, have become increasingly less important, and other forms of communication have become more important.

Mr. FRANKS. All right. Thank you, Ms. McGinnis. Mr. Thernstrom, the Office of the Inspector General report stated, quote, "Responding to this crisis required organizations from all levels of government to coordinate their responses and their efforts, and to make critical public health and safety decision quickly and without all the data the decision makers would normally desire," unquote.

Do you agree that in this case the EPA had to make statements regarding its judgment in emergency circumstances in which it could not possibly have had perfect information?

Mr. THERNSTROM. Absolutely, Congressman. In fact, I was quite struck by the fact that when the EPA Inspector General was interviewed by, I believe it was MSNBC, after her report was issued and she was asked whether she believed that the air after 9/11 was safe, she said that even 2 years after the fact, she wasn't certain what the answer to that was.

Now, I don't think it's the appropriate response for the Federal Government to tell the people of New York, Gee, we're taking all the tests, but we don't really know. Hold your breath and just—you know, we'll get back to you in a couple of years if we have an answer then.

I think the best response of the Federal Government, who employs the Nation's best experts on these questions, was to assess the data as best it could, make its best judgment about the significance of that data and speak to the public in this time of terrible national emergency. And I think EPA did that very responsibly.

Mr. FRANKS. You don't think there was any hint of conspiracy between EPA and the White House to convince people to go into an unsafe area?

Mr. THERNSTROM. I think nothing could be further from the truth, Congressman.

We were very concerned about the potential environmental hazards related to September 11, and we were very reassured by the information that we saw. And as Governor Whitman said, we spoke—we had a thrice daily conference call originally, later twice daily, speaking with all of the staffers who were working on this issue. They were looking at the data.

The things that Governor Whitman said, the things that Ms. Kreisher and I put in the press releases that were issued were based strictly upon what we were told by all of the scientists, who reviewed the data, was the correct way to characterize those risks.

I can't say that their assessment was infallible, but I am quite confident they were doing the best job they could under the circumstances, and we were listening to them very carefully.

Mr. FRANKS. Mr. Chairman, I guess I can only add that, you know, there is no way to overstate the tragedy that this 9/11 incident caused America and so many people both on that day and in subsequent days and some of the ancillary areas that have occurred since. And I don't know that anyone in this room would ever want to minimize that tragedy, anyone.

And I guess I just would suggest that this Committee's energies might be better spent trying to make things better for those victims that were in 9/11, and doing what we can to have policies that would prevent such a tragedy from occurring again.

And deliberately trying to somehow insinuate that there was a conspiracy between the EPA and the White House to convince people to go into unsafe areas, that's a preposterous notion; and I think the Committee's energy is ill spent in this regard, and I think we have to work toward making this never happen again. I thank the panel members.

Mr. NADLER. The gentleman's time has expired.

The gentleman from Virginia, Mr. Scott———

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. NADLER.—is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, we're inquiring whether or not there are any failures in government processes that might have unnecessarily exposed people to health risks. Just because we're doing that, that doesn't suggest necessarily that we are trying to find a conspiracy to intentionally endanger people. We're trying to see if government worked or it didn't work. And I think there's plenty of evidence here that people have been exposed to toxic materials unnecessarily. Now, let me ask a couple of questions.

Mr. Thernstrom, you were doing press releases? You were doing press releases in the White House at the time?

Mr. THERNSTROM. I was the Associate Director of Communications for the CEQ, yes, and I worked closely with Ms. Kreisher and other EPA staffers on these press issues.

Mr. SCOTT. Did you make any changes in these press releases that were presented to you that made a substantive difference in the science? One that was suggested is, you took professional cleaning—it's been suggested that you took quote, "professional cleaning," as a recommendation out. Is that true?

Mr. THERNSTROM. That is correct, Congressman. That was not based upon a difference in the science, though—however. That was a jurisdictional question involving which agency had responsibility for providing New Yorkers with guidance on that issue. That was not based upon my reading of the science so—whatsoever.

Mr. SCOTT. Well, the EPA Director suggested that that was a substantive difference. Were there any other changes that were made that constituted a substantive difference?

Mr. THERNSTROM. I can say—you know, "substantive difference" is in the eye of the beholder, Congressman. But I can say every change I made was a matter of consensus between me and the EPA staffers who I worked with. There was no disagreement about the substance of them and that, in fact, the changes I made were based upon my daily conversations with all of the EPA staffers.

So we all worked together in this very fast-moving, very chaotic, dynamic environment to try to understand all of the information that was coming in, to listen to the staff that we were talking to and to correctly reflect what they were telling us.

Mr. SCOTT. Thank you.

Ms. Kreisher, did you feel any political pressure in the way press releases should be written?

Ms. KREISHER. I didn't feel political pressure. Mr. Thernstrom and I sometimes disagreed, and that's reflected in some of the edits we see in the press releases. I would agree with Governor Whitman that the only substantive change had to do with the cleaning. And as Sam just said, that press release referred you to the City of New York.

Mr. SCOTT. The question was, did you feel any political question to write press releases in a certain way?

Ms. KREISHER. No.

Mr. SCOTT. Mr. Newman, I've got two versions of an answer to a question I asked Mr. Henshaw, about what was going on at Ground Zero. The first go-around was that people were there not wearing respiratory equipment and there was nothing he could do about it because it was New York City's problem.

The second time he answered the same question, he said that any time they notice someone not wearing the equipment, they were down there on the spot and corrected it right then and there.

Can you tell me what you thought was going on in terms of OSHA enforcement? People are obviously in a dangerous situation involving the equipment they should be wearing.

Mr. NEWMAN. Thank you for that question. There was no OSHA enforcement at Ground Zero. That was a deliberate, conscious policy. That policy was done on—was implemented at that point in time on a discretionary basis.

It has since then been incorporated into OSHA policy officially, and OSHA's official policy as of 2003, going forward, is automatic nonenforcement in disaster response situations, which of course I disagree with that policy. I think it's an incorrect policy.

The contention that OSHA had no authority to enforce, I think is also fallacious. There is absolutely nothing, at least insofar as I'm aware, in either the National Contingency Plan or Presidential Decision Directive 62 which addresses the issue of OSHA enforcement; and OSHA not only is free to enforce, but is obligated to enforce in my opinion.

Mr. SCOTT. What was going on at Ground Zero? Were the people wearing the equipment or not?

Mr. NEWMAN. Well, the answer to that is "no." There was no enforcement, and people were not wearing their equipment. Whatever policy OSHA adopted, whether it was enforcement or nonenforcement, that policy was ineffectual.

Mr. SCOTT. Was there any question that the people not wearing the appropriate equipment were in danger?

Mr. NEWMAN. Well, I don't think there was any question among the regulatory agencies or among the people in the industrial hygiene or public health communities.

There was certainly some question among responders themselves, given the lack of clarity and reassurances from EPA and OSHA that the air was safe to breathe.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. NADLER. I thank you. I now recognize for 5 minutes the gentleman from New Jersey, Mr. Pascrell.

Mr. PASCRELL. Thank you, Mr. Chairman. In the 9/11 report, since, Mr. Thernstrom, you are such an expert on 9/11, there's a statement by the Committee that says, we do not have the expertise to examine the scientific accuracy of the pronouncements in the press releases. The issue is the subject of pending civil litigation.

How do you interpret that?

Mr. THERNSTROM. I'm not quite sure how to answer the question, Congressman. It seems it's a self-evident statement———

Mr. PASCRELL. What does it mean to you?

Mr. THERNSTROM.—in its entirety.

Mr. PASCRELL. What does it mean to you, Mr. Thernstrom? What does it mean to you?

Mr. THERNSTROM. Simply that there are complex scientific questions involved which are hotly disputed and that that was not an issue that the 9/11 Commission had the expertise to examine, nor was it an issue that I feel I have any expertise to comment upon.

Mr. PASCRELL. So, therefore, we can't make a conclusion or a judgment that the 9/11 Commission cleared anybody, because they didn't have the scientific evidence, because they weren't tuned to that. Is that an accurate statement?

Mr. THERNSTROM. Congressman, the 9/11 Commission looked at one question specifically, which was whether or not———

Mr. PASCRELL. It is only a short period within that report; is that correct? It is about 12 footnotes.

Mr. THERNSTROM. The question the 9/11 Commission was looking at was whether or not the White House influence upon EPA's press releases was improper. And on that question, their answer was unambiguous; its answer was "no."

Mr. PASCRELL. It's not a conclusion. It's not a conclusion if you read this report.

But I want to ask another question.

Mr. THERNSTROM. But I don't understand that.

Mr. PASCRELL. I would like to ask another question.

Mr. THERNSTROM. Sure.

Mr. PASCRELL. What you call "preposterous," you said that would be so preposterous in your answer to the question. Why would it be so preposterous?

This is an Administration that paid journalists to clear the air. They also had the chief procurement officer out of the White House so he couldn't be arrested in there, first time an employee—why would it be so preposterous to change—excuse me, sir. I'm not finished.

Why would it be so preposterous to change the words within a press release so that people's fears could be assuaged?

Mr. THERNSTROM. Congressman, I don't believe I used the word "preposterous."

Mr. PASCRELL. You used the word "preposterous."

Mr. THERNSTROM. I believe Congressman Franks———

Mr. FRANKS. Actually I, did, sir.

Mr. PASCRELL. Well, you used it then. There's no difference. There's no difference because this is—you know, how did Andy Card show up in the middle of this thing? How did Andy Card show up in the middle of this thing?

Ms. Mattei, I want to ask you a question.

Ms. MATTEI. Yes.

Mr. PASCRELL. What are the shortcomings of the various indoor cleanup plans that the EPA has conducted so far? What should they have done? What should be done now?

And my final question to you is this: Has the EPA ever called for an examination, a physical examination, of those people who were in the zone long beyond which they shouldn't have been in that zone? Had they ever asked you or anybody else, first responders, to definitely get a physical examination to see what might affect you and you personally? Have they ever done that?

Ms. MATTEI. I certainly did not experience that. And I'm not aware of them ever having done that. I didn't see anybody monitoring the air on the street where I worked. And I can tell you that I smelled Ground Zero for months, and I was about seven blocks away. This "on-the-pile" versus "off-the-pile" thing is a little bit of

nonsense. There was no glass bubble over Ground Zero. The air blew that stuff into the———

Mr. PASCRELL. All over the place.

Ms. MATTEI.—into the surrounding community. It definitely did. And while there may have been some dissolution, there were a lot of toxic chemicals for which there is no safe level of exposure.

Mr. PASCRELL. Speak the truth.

Ms. MATTEI. And the nonsense about—well, the high levels were in the dust, not in the air, that's just out of touch with reality. People coming back to their homes, people coming back to their work sites, there was dust. And what did people do? They cleaned up the dust. Small business people cleaned up their own businesses. People cleaned up their own offices.

Have you ever dusted a book shelf?

Mr. PASCRELL. That's a good idea.

Ms. MATTEI. Where was your nose? Where was your nose when you dusted that book shelf?

Thank you.

Mr. PASCRELL. I just have one more question. I want to ask that question to Ms. Kreisher.

Ms. Kreisher, you told the Inspector General that you felt extreme pressure when the White House was changing your drafts of the EPA press releases. And you said in your testimony today that those changes were upsetting in some cases. Who upset you?

Ms. KREISHER. As I said, Sam and I didn't always agree. The pressure was from Sam. A lot of times tempers flew.

Mr. PASCRELL. Was he applying pressure to you?

Ms. KREISHER. I wouldn't call it "pressure." Any point, Sam would always say, this is your press release.

Mr. PASCRELL. So your statement to the Inspector General wasn't really what you felt?

Ms. KREISHER. Well———

Mr. PASCRELL. You used the term—correct me if I'm wrong—"extreme pressure."

Ms. KREISHER. I was referring words—to the wordsmithing, not some big policy somewhere.

You've got to put this back in context. The IG inspector came to see me. I was at Interior. I was being asked about what my press releases looked like and whether the words in the press release were all mine.

Mr. PASCRELL. So the pressure—the pressure was basically whether we should use a comma or colon—I'm exaggerating right now; I'm using hyperbole right now—and not really whether or not we were communicating to the folks out there what was really going on? That wasn't ever a question in your mind, right?

Mr. NADLER. The gentleman's time has expired.

Ms. KREISHER. Of course it was a question.

Mr. PASCRELL. It was a question in your mind?

Mr. NADLER. The gentleman's time has expired.

The witness may answer the question.

Ms. KREISHER. We always cared what the content was. And as I said, we had a lot of conference calls. We had a lot of discussion before these press releases were ever issued. And we usually came to consensus before that happened.

Mr. SCOTT. Mr. Chairman.

Mr. NADLER. Yes, sir.

Mr. SCOTT. I don't mean any harm, but I thought I asked the same witness if she was receiving any political pressure, and she told me "no."

Mr. NADLER. I will yield the gentleman, with unanimous consent, 1 minute; and the witness may answer the question.

Ms. KREISHER. Okay. To me, political pressure is, here is the message. You will make sure that this is the message that goes out, crafted accordingly. It was not done like that. The scientists gave us the message. We always listened to the scientists.

Mr. NADLER. If the gentleman would yield, so what pressure were you referring to?

Ms. KREISHER. Sam and I didn't always agree. And there was pressure between us on, you know, was this the right wording? Was this the right wording?

I got a lot of pressure from———

Mr. NADLER. So it was interpersonal pressure, not political pressure?

Ms. KREISHER. Yes.

Mr. NADLER. Thank you.

The gentleman from Tennessee is recognized for 5 minutes.

Mr. COHEN. Thank you, Mr. Chairman. Well, I was with some folks in the back, and I hate to go over———

First thing, all politics is personal. My protection on October-something in 2001. The EPA document labeled Attachment 4 and produced by Ms. Whitman says that paper filament masks would provide sufficient protection under minimal exposure conditions.

Mr. Newman, this mask—is this a paper filament mask?

Mr. NEWMAN. I'm sorry. I can't see it from here. Does it say NIOSH on the front?

Mr. COHEN. It sure does.

Mr. NEWMAN. Does it say N95?

Mr. COHEN. It says N95.

Mr. NEWMAN. Well, that's not the paper mask that is being referred to in this case.

Mr. COHEN. What would this one be? Is this better or worse?

Mr. NEWMAN. That is not—despite the fact that that's not the paper dust mask to which you were referring, that mask is not acceptable under OSHA legal standards for exposure to asbestos.

Mr. COHEN. This one isn't.

Mr. NEWMAN. You need a halfface air purifying respirator with screw-in HEPA particulate filters, which that is not.

Mr. COHEN. So when I was on that location, right down there somewhere around this fence, or right down inside the—just outside the pile, this was show business?

Mr. NEWMAN. That would be a fashion accessory, yes.

Mr. COHEN. You do know I was wearing—how about the paper filament masks; they were not sufficient either?

Mr. NEWMAN. Paper dust masks provide zero protection under any circumstances, zero health protection, that is.

Mr. COHEN. Was there any reason why the people at the Twin Towers should have been allowed to—should the EPA have en-

forced their regulations that those folks use their respirators, as apparently they did at the Department of Defense?

Mr. NEWMAN. That's directed to me?

Mr. COHEN. Yes, sir.

Mr. NEWMAN. Neither EPA or OSHA enforced their regulations, as we know, at Ground Zero. I think that was absolutely inappropriate and possibly criminal.

I'm shocked to hear here that we're talking about an extraordinary—we're talking about extraordinary circumstances as though EPA did not have, frankly, quite a stellar—in general, stellar track record, the expertise, the staffing, the funding and the track record to respond to incidents like this.

Yes, the scope of this was somewhat unusual. However, there was nothing unusual here. I mean, what's unusual is the lack of enforcement of applicable standards. That's the most unusual thing in this case.

What's unusual is not the hazards to which people were potentially exposed. The issue was that we didn't protect people against those hazards. That was the unusual part here.

Mr. COHEN. Is there anybody on the panel that would like to respond to that? Nobody wants to respond to that? Do you all agree with that? Everybody agrees?

Ah, a volunteer.

Ms. HORINKO. I will, because I feel that the agencies, working collectively, used their best judgment to get the responders to wear their gear as quickly as we could. There was discussion with the city and OSHA of how, daily, to get the responders to wear their gear.

EPA, the first weekend, at OSHA and FEMA's behest, provided, I believe, thousands of respirators and cartridges and set up washing stations, and eventually set up the food stations to get the—a condition of which was to decontaminate and make sure your gear was working properly.

There was discussion about whether the city or OSHA should step in and start fining the responders and take them to court. It seemed inconceivable that we would do so while they were trying to still save fallen comrades. So given the situation at the time———

Mr. NADLER. Would the gentleman yield for a moment on that point?

Mr. COHEN. Yes.

Mr. NADLER. Everybody who was going to be saved was saved by the third day. After that it was simply a recovery operation. So why was it inconceivable in the next 50 or 60 days?

Ms. HORINKO. In the next 50 or 60 days we didn't have to because by then people were wearing their gear.

Mr. NADLER. It's your testimony everybody, almost everybody, wore their protective gear after the first 3 three or 4 days?

Ms. HORINKO. Not after the first 4 or 4 days but certainly 50 or 60 days.

Mr. NADLER. I yield back.

Mr. COHEN. Ms. Kreisher, if you have answered this, let me know, but Mr. Thernstrom said your work quality wasn't good, or something to that effect.

Ms. KREISHER. I don't recall him saying that. We had our differences but we did respect one another.

Mr. COHEN. In Mr. Thernstrom's written testimony he stated that his job was to make it clear and to the point, and stated because—in his words—the complete conflict between you and he was only about your work quality.

Ms. KREISHER. Well, the wordsmithing that went on, we disagreed on some of the———

Mr. COHEN. Work quality is wordsmithing?

Ms. KREISHER. In a press release, sir.

Mr. COHEN. I guess it is.

Mr. THERNSTROM. Since you're characterizing my words here, I did not say the conflict with Ms. Kreisher was about our work quality, I did say that we sometimes—I worked to try to improve the press releases because I had concerns about the quality of them. I thought they were sometimes vague and incomplete. Where I said that they conflict with Ms. Kreisher was in fact about process questions involving the clearance procedures with the NFC. I thought it was important that the NFC have an opportunity to sign off on everything that went out the door before it went out the door, and Ms. Kreisher understandably was frustrated with the clearance process. It wasn't something she was accustomed to. That, to the best of my recollection, was the source of conflict between us.

Mr. COHEN. Thank you.

Mr. PASCRELL. Mr. Chairman, can I have 1 minute?

Mr. NADLER. The gentleman from New Jersey is recognized for 1 minute.

Mr. PASCRELL. Let's look at exactly what was changed in the September 14th draft release. The original statement was this. This is the sentence before it gets to our friends. "the concern raised by these samples would be for the workers at the cleanup site and for those workers who might be returning to their offices on or near Water Street on Monday, September 17th 2001."

The samples that were taken they are talking about here. That sentence was deleted. It goes away. Instead the release quotes OSHA saying this: Our tests show that it is safe for New Yorkers to go back to work in New York's financial district.

Let me tell you something, Ms. Kreisher, I don't see a technical change in the sentences, I see—I can only tell you what I see and you tell me what you see, although you change your mind but that's okay, you can change your mind around here—you trying to convince me and the panel that the sentence that was replacing the original sentence, the former sentence that I read, there is some technical changes? That is night and day.

Ms. KREISHER. Congressman, Sam has gotten kind of a heavy rap here as being the only editor of these press releases. As we explained we were on conference calls with OSHA, CEQ, with sometimes the State of New York, with a lot of different people who had input into this. The thought was that OSHA had better and more complete data at that point than the———

Mr. PASCRELL. So you let it go through your hands that the air is really clear and forget about the original statement that would have gone in there.

Mr. NADLER. The gentleman's time has expired.

Mr. PASCRELL. Give us a break.

Mr. NADLER. We will now begin the second round of questions. I will pick up where Mr. Pascrell was leaving off.

Mr. Thernstrom, you have stated in your testimony that your basic job is to make—or one of your jobs is to make EPA's written statements clear and to the point. Now the IG details in its report, tables 2.4 and 2.5 over there, changes you made to several press releases. On September 13 you took out the statement: "even at low levels EPA considers asbestos hazardous." You substituted for that warning a quote from Mrs. Whitman: "EPA is greatly relieved to have learned that there appears to be no significant levels of asbestos dust in the air in New York City." Do you consider that simply making something clear and to the point or isn't that clearly changing the meaning from a warning to a reassurance?

Mr. THERNSTROM. Congressman, as Ms. Kreisher just explained, we had———

Mr. NADLER. Is this changing only stylistic or changing a warning to reassurance?

Mr. THERNSTROM. Congressman, that change reflected our conversations.

Mr. NADLER. I'm not asking that.

Mr. THERNSTROM. It accurately reflected it.

Mr. NADLER. It accurately reflected what you thought, but does it change EPA'S original suggestion of a warning to a reassurance; yes or no?

Mr. THERNSTROM. I don't believe that EPA was originally trying to warn the public.

Mr. NADLER. Even at low levels EPA considers asbestos hazardous is not a warning?

Mr. THERNSTROM. You opened this hearing by showing a video clip on the monitors of Governor Whitman telling the people of New York that she believed the air was safe. I think that the revisions that we made to the press releases were in light of that, Governor Whitman's assessment.

Mr. NADLER. Going to the next one, you change the original EPA language stating dust samples showed levels of asbestos ranging from 2.1 to 3.3 percent. EPA views 1 percent levels of asbestos as a definition of asbestos- containing material, to final language deleting reference to 1 percent level being dangerous and characterizing sample results 200 to 300 percent over the 1 percent level as, quote, "slightly above the 1 percent level."

I have the same question. Don't you think that is slightly misleading, to characterize something 200 to 300 percent above a level as slightly above?

Mr. THERNSTROM. Congressman, all I can tell you, the language in those press releases was considered accurate by the scientists who reviewed them.

Mr. NADLER. Ms. Kreisher told the IG that there was a conscious effort to reassure the public and that it came from the White House and the Administration; do you agree?

Mr. THERNSTROM. We all, including EPA and at the White House, found that the data we were looking at was reassuring; and so we felt it was appropriate to reassure the public. That was what

the scientists who reviewed the data told us and we were greatly relieved to hear that.

Mr. NADLER. Finally, Mr. Thernstrom—Ms. Kreisher, rather—Mr. Thernstrom e-mailed you on the 25th of September '01 about your desire to put raw monitoring results on the EPA Website. He wrote that raw, quote, "raw data alone is easily misunderstood and mischaracterized by political candidates in a city who have an ax to grind. I think you will leave yourself more open to their attacks by giving them more ammunition," close quote.

Do you agree that denying the public the right to see raw testing data is an appropriate approach to communicating risk, Ms. Kreisher?

Ms. KREISHER. I agreed with Governor Whitman that that data needed to be out there as quickly as possible. The discussion came in, if you have no context for the data, does it make sense to the public, and at that point the raw data was just that, raw data.

Mr. NADLER. Mr. Newman, was there—did this seem to be a pattern of EPA not posting relevant data on its Website for months at a time?

Mr. NEWMAN. There was certainly delays and omissions in what we saw posted on the EPA Website. Additionally, there was information of the sort that I believe Ms. Kreisher is referring to, that is characterization of the data as distinguished from the raw data, and it is my opinion that the characterization of the data was used at times to obfuscate or to hide the raw data. Specifically, as an example, are the dioxin data.

Mr. NADLER. Ms. McGinnis, earlier in your testimony you mentioned Andrew Card's name. I think you mentioned Andrew Card, Josh Bolton.

Ms. MCGINNIS. Andrew Card.

Mr. NADLER. Is there anyone else at this level, and did you say that he was involved in issuing or approving statements about the World Trade Center?

Ms. MCGINNIS. I didn't say that. I raised his name in the context of I believe on September 12 a memo came over from Andy Card to all agency heads, the whole Cabinet, mentioning the need to coordinate communications. I think it was like a two- or three-sentence memo.

Mr. NADLER. Okay. Mr. Thernstrom, did you ever speak to Andy Card about any of these statements?

Mr. THERNSTROM. No, sir.

Mr. NADLER. Or anybody in his office?

Mr. THERNSTROM. No, sir. Not to the best of my recollection.

Mr. NADLER. Very good. Okay. The time of the Chairman has expired. I now recognize the Ranking Member Mr. Franks for 5 minutes.

Mr. FRANKS. Thank you again, Mr. Chairman. Thank all of you again for being here.

Ms. Horinko, I know that many times we are asking questions on subjective statements here today. When you say "safe," I'm not sure this hearing room is entirely safe. There's a lot of subjective statements.

But let me just ask you, has there been any scientific showing that any long-term health risks have been presented by contamination to the residents of lower Manhattan?

Ms. HORINKO. No, Congressman, I'm not aware of any peer-reviewed studies where scientific experts have found any long-term risks to the public.

Mr. FRANKS. So essentially we're dealing with kind of the individual reports and things of that nature and not able—when we talk about science here, that has been mentioned several times—we don't really at this point have any science that indicates even specifically, much less incontrovertibly; correct?

Ms. HORINKO. Not that I am aware of, Congressman.

Mr. FRANKS. There has also been some criticism regarding uneven enforcements of procedures used in the debris removal. Didn't the IG report find it was New York City that was responsible for the debris removal as well as the demolition of that debris?

Ms. HORINKO. That I am not specifically aware of, Congressman.

Mr. FRANKS. Do you know if the IG found that FEMA agreed to fund indoor cleanup programs, something that FEMA normally does not do, because the EPA provided FEMA with justification for such a program, and could you elaborate if you know anything about that?

Ms. HORINKO. Yes, indeed, Congressman, I know a bit, although I was not involved a whole lot. But I do recall the region II folks coming to me saying that they needed some help with FEMA Headquarters securing funding. In fact, I believe they went over to the White House and met with some staff who were very helpful with FEMA.

Mr. FRANKS. Isn't it also true that the IG has found contemporaneous documents showing that New York City told EPA it did not want EPA's assistance with the indoor cleanup program?

Ms. HORINKO. I believe that was the case in the beginning, but they came to agree that that would be a good way.

Mr. FRANKS. So why didn't EPA simply push New York City aside and take charge of the indoor cleanup program themselves?

Ms. HORINKO. We enjoyed a very collaborative relationship with the city. Within the national response plan EPA works under FEMA's direction, under the city's leadership, and so we wanted to make sure that we followed the established procedures in any disaster.

Mr. FRANKS. So I might ask you, Ms. Horinko, before my time is up here, a question that I have asked a couple of other panel members. Do you know or believe that there was ever any conspiracy between EPA and the White House to deliberately convince people to go into unsafe areas?

Ms. HORINKO. No.

Mr. FRANKS. Mr. Chairman, I guess I'll yield back what time I have.

Mr. NADLER. Thank the gentleman. Mr. Scott is recognized for 5 minutes.

Mr. SCOTT. Thank you. Ms. Mattei, if you had gotten better information, what could the public have done different?

Ms. MATTEI. I think people could have done a lot to avoid exposure, people could have had professional cleanings of their home,

they might not have had to fight with their insurance companies over that. I work in my office, but if I had to work at home for a while, I could. We're living in the 21st century and there are many alternative ways to get things done. So people could have protected themselves quite a bit.

If I could just take a moment, I'd also like to point out that there have been peer-reviewed scientific studies on health impacts from the Ground Zero contamination, both a survey that was published in the American Journal of Epidemiology about residents, 43.7 percent of 2,362 surveyed residents had new onset upper respiratory systems that persisted a year after the attack. There have been studies on newborns of women who were exposed to the dust cloud, smaller birth weight than normal. And also a very disturbing study about genetic mutations, procarcinogenic DNA level at a higher level in women who were exposed to the dust cloud and also in their newborns.

So I think there is some peer-reviewed information out there now about health risks from the 9/11 contamination to the residents in the area.

Mr. SCOTT. Do any of those studies speak to the allowable exposure risk of asbestos?

Ms. MATTEI. I have been hearing today that there are safe levels of exposure to asbestos. I have to say that's kind of news to me. If you float around on EPA's Website you'll find statements that there's no safe level of exposure to asbestos, and there is new information that's come out that asbestos not only causes cancer but also can wreak havoc to the immune system.

So I'm finding those statements very questionable today.

Mr. SCOTT. Thank you.

Mr. Newman, you served on the EPA World Trade Center Expert Technical Review Panel. Can you give us information about what you did on that panel and what the conclusions were?

Mr. NEWMAN. The panel was charged with assessing the extent, if any, of residual indoor contamination from 9/11, with identifying and proposing methods for addressing unmet public health needs stemming from 9/11. We engaged in extensive discussion on some of these issues, particularly an attempt to devise a sampling and cleanup plan for Lower Manhattan residences and workplaces over the course of a year and a half or so. Ultimately with regard to that issue, EPA chose to ignore or reject all of the panel's proposals, recommendations, and concerns and disbanded the panel.

In regard to our attempt to address issues of broader—issues of public health, as we were mandated to do at the implementation of the panel, those attempts to engage in those broader discussions were largely thwarted by EPA.

Mr. SCOTT. Who were the members of the panel and how did they get appointed?

Mr. NEWMAN. It was a rather unique construction for the panel. At least initially there was equal representation from government agencies such as OSHA, EPA, FEMA and New York City Department of Health, New York City Department of Environmental Protection, Coast Guard Strike Force, et cetera, along with academics and technical experts, including nongovernment technical experts, including myself.

Mr. SCOTT. Were the conclusions a consensus? I mean were there differences of opinion?

Mr. NEWMAN. There were continual differences of opinion. There was no mechanism in the panel process for votes or consensus reaching. Nevertheless, there was on certain issues and at certain times fairly robust discussions, at which points of agreement were readily apparent and those points of agreement ultimately were ignored in the sampling plan that EPA———

Mr. SCOTT. Did you issue a report with this consensus?

Mr. NEWMAN. There was no mechanism in the panel process for the panel or panel members to issue reports. There were a large———

Mr. SCOTT. How did you communicate a consensus?

Mr. NEWMAN. Through discussion at panel meetings.

Mr. NADLER. Thank you. I will now yield myself 5 minutes.

Ms. McGinnis, you were asked—before I get to that, the Inspector General reported that the so-called EPA cleanup of 2002 to which I think you referred to a few minutes ago, was against scientific standards, totally inadequate, and essentially useless. The Inspector General reported that the site, namely the whole downtown Manhattan, Brooklyn, maybe Jersey City, had not been properly characterized as normal procedures say it should be, and that what should be done in order to assess indoor contamination is that you should take several hundred inspections of indoor spaces and concentric circles out from the World Trade Center, find out where in fact the contamination indoor is, maybe three blocks in one direction, maybe three miles in another direction and wherever that was found, whatever geographic area, every building in that area must be cleaned.

That was the IG's recommendation. I think most scientists who have looked at that have concurred with that. Nothing like this was done, obviously. Given that fact, Ms. Horinko, can you say with assurance that thousands of indoor spaces today are not contaminated?

Ms. HORINKO. Obviously, I don't have data on every house or every apartment.

Mr. NADLER. I didn't ask about every—talking about large numbers.

Ms. HORINKO. I believe that large numbers of the homes in lower Manhattan are safe.

Mr. NADLER. On what basis do you say that?

Ms. HORINKO. I relied upon the experts in EPA region II who designed the program.

Mr. NADLER. But everyone, the IG, et cetera, says that program was nonsense, it wasn't based on scientific standards.

Ms. HORINKO. I can tell you the program was design———

Mr. NADLER. Do you believe there was a 30,000-high-foot wall at Canal Street and therefore they didn't have to look north of Canal Street all along the East River; therefore they didn't have to look at Brooklyn?

Ms. HORINKO. I relied on the professionals' expertise.

Mr. NADLER. Well, using common sense, could any professional in his right mind say that you have to inspect below Canal Street but not above Canal Street?

Ms. HORINKO. All I can say, Congressman, is you have to draw a line somewhere.

Mr. NADLER. Mr. Newman, would you comment on that, please?

Mr. NEWMAN. In our discussions at the EPA World Trade Center Technical Review Panel, EPA presented as a basis for its determination of geographic boundaries for the sampling plan aerial photographs from the EPA EPIC study. Those aerial photographs showed deposition of visible dust and debris in areas of Lower Manhattan and some areas in Brooklyn. However, I believe and the panel believed strongly that geographic boundaries needed to be expanded beyond what EPA proposed, and we believed there is no scientific basis for utilizing visible dust and debris as the basis for the extent of the geographic dispersion of particulates, in particular, because the particulates of most concern to health are not visible, they are invisible. Those asbestos fibers and other particulates will not show up on those photographs.

Mr. NADLER. Are you aware of any respected scientific authority who will be willing to testify that the EPA so-called cleanup plan in 2002 was scientifically valid?

Mr. NEWMAN. EPA certainly has some.

Mr. NADLER. Outside EPA?

Mr. NEWMAN. No, I'm not.

Mr. NADLER. You're not. Okay.

Ms. McGinnis, you were asked by the IG whether the EPA had considered putting qualifications in the press releases and whether there was resistance to putting in such qualifications. You replied that you would not call it resistance but would call it competing priorities. You stated that opening Wall Street was one of the major competing priorities.

Is it your testimony today that considerations than public health were considered when preparing EPA's early press releases?

Ms. MCGINNIS. Economic security, national security, were certainly considerations but health concerns were never sacrificed because of those considerations.

Mr. NADLER. Do you believe that economic factors ought to be considered in a health-based determination?

Ms. MCGINNIS. No, sir.

Mr. NADLER. Who discussed these competing priorities with you?

Ms. MCGINNIS. I don't recall any specific conversations about it. I do recall general conversations about whether the Wall Street area was cleaned sufficiently for its

reopening.

Mr. NADLER. Thank you.

Ms. Horinko. Two more questions, one for Ms. Horinko. Ms. Horinko, were White House officials involved in the decisions on funding or cleaning up indoor spaces?

Ms. HORINKO. I have no direct knowledge.

Mr. NADLER. You have no direct knowledge. Thank you.

I see my time has expired. I will recognize the gentleman from Virginia—I am sorry, the gentleman from Arizona.

Mr. FRANKS. Thank you, Mr. Chairman.

Ms. Kreisher, thank you very much, again, for being here. I wanted to ask you, the indications were that maybe somehow the pressure that people speak of, that you had complained to Ms.

Whitman that—about the changes that the White House requested. Is that true that you ever complained to her about specific changes that the White House had requested?

Ms. KREISHER. I don't believe I ever went directly to the Governor with anything like that. Eileen and I had discussions. Again, you get your ego and all kinds of things involved when you are having a dispute with someone, and I would go in and say, Eileen, you have got to change this or call them or something, and those things happened; but, no, I never went directly to Governor Whitman.

Mr. FRANKS. I think every Member of Congress identifies so much with that when we have discussions with our press secretaries and there is always—of course, Members of Congress are superior in every way in terms of what words to use. But it's an ongoing situation. I have hit on a central theme here throughout this entire Committee and that is simply: Was there any conspiracy between the White House and the EPA to deliberately convince people to go into unsafe areas? Was there any effort like that, Ms. Kreisher?

Ms. KREISHER. No. In fact, this is very interesting to me from my existing job at Interior, because we are being often criticized that we did not listen to the scientists; that in some way policymakers are changing what the scientists are telling us—and that is the subject of other congressional hearings—yet I seem to be getting overtones here that we shouldn't have been listening to our scientists and should have come up with another policy. It's just an observation that I'll make.

Mr. FRANKS. Let me just ask the question a little broader. Do you know of any instance in which the leadership of the EPA or the White House deliberately acted in a way to subordinate people's health to political considerations?

Ms. KREISHER. No, sir.

Mr. FRANKS. Even carelessly?

Mr. KREISHER. Not that I'm aware of.

Mr. FRANKS. Thank you, Ms. Kreisher.

Mr. Thernstrom, let me just ask you a kind of open-ended question. Is there anything here that you think hasn't been covered that you think that you would like to specifically bring out? Again, along the lines that I talked about with Ms. Kreisher, do you think there is any conspiracy here or any deliberate effort or even any just blatantly careless effort on the part of the White House or the EPA to subordinate the lives and health of people for political reasons?

Mr. THERNSTROM. No, sir; to the contrary. I think we made great efforts under very difficult circumstances, as I mentioned, constantly changing information, many different Federal agencies working together. We made great efforts to try to make sense of that information, to listen to the scientists and to most accurately characterize the information that was being given to us. So I don't think anything of the sort was going on.

If you don't mind, I wouldn't mind taking this opportunity just very briefly—I'm sorry that Congressman Pascrell from New Jersey has left. He was quite exorcised about one particular point in the September 14th press release, and if you don't mind———

Mr. FRANKS. He was also exorcised about me calling some of his ideas preposterous.

Mr. THERNSTROM. I would like to correct this point for the record. He said that in the draft press release from September 14th, that I struck the sentence that said the concern raised by these samples would be for workers at the cleanup site and for those workers who might be returning to their offices on or near Water Street on Monday, September 17th. And he's correct that I did strike that sentence.

But I think everyone in this room should listen to the sentence that immediately followed that in the original draft press release which was: OSHA Director John Henshaw emphasized that the level found, even if resuspended in the air, does not violate OSHA standards.

And so the context in the original press release that is very clear, is that the press release spoke of a concern and then it spoke of the fact that that was not a concern. And so the appropriate editorial process was to clarify that, in fact, the overall message from this press release was that there was not a concern.

The original language was confusing and the language was revised in a way that more clearly communicated the correct language.

That's exactly the sort of type of thinking through these draft press releases when we're working very quickly under a great deal of pressure. That is the editing process we went through collaboratively to try to best express to the people of New York the information that they needed to know. And I have, in all of the time that has elapsed, I have never heard that any EPA scientist object to anything that we said to any way of characterizing their reports to us. We had daily conversations with them and to the best of my knowledge we accurately characterized what they told us.

Mr. NADLER. The gentleman's time has expired. The gentleman from Virginia.

Mr. SCOTT. Thank you.

Mr. NADLER. Is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Thernstrom, in your testimony you stated that you were not at liberty to talk to the Inspector General when you were at the White House.

Mr. THERNSTROM. Correct.

Mr. SCOTT. Who told you not to talk to the Inspector General?

Mr. THERNSTROM. White House counsel's office. I asked them to try to make arrangements to have that interview happen and those arrangements were not made, ultimately. I was never given the go-ahead.

Mr. SCOTT. The White House counsel's office.

Mr. THERNSTROM. Correct.

Mr. SCOTT. Who was the White House counsel at the time?

Mr. THERNSTROM. That would be Mr. Gonzales.

Mr. SCOTT. Mr. Newman, we've heard suggestions that we needed to listen to the scientists. What were the scientists saying this time about the health concerns that people should be aware of right after—on 9/11 and right after 9/11, while the EPA was sug-

gesting—as the public statements were being made that things were safe.

Mr. NEWMAN. I think as a number of witnesses have already pointed out, scientists look to the data for their answers. And so the question is the quality of the data and what data are available. I think what many folks were confronted with were the fact that—many scientists were confronted with was the fact that, number one, we had inconsistent data. We had a large body of data that indicated low or no exceedances. We had a much smaller body that indicated fairly high exceedances under certain conditions and certain circumstances.

The question then becomes which—and that's not unexpected. In a circumstance like this where conditions change daily or hourly in terms of fires and in terms of emissions, we would expect to find inconsistent data. The question then becomes politically and from a public health perspective how do you interpret that data.

One approach would be to take the most reassuring data and emphasize that. And another approach would be to take the worst-case scenario and emphasize precautionary measures until such time as we're comfortable and confident that hazards don't exist.

Mr. SCOTT. With the dangers, with the potential dangers, if you're not sure what to do, which way should you lean?

Mr. NEWMAN. That also goes to the issue of enforcement. We had applicable standards such as the OSHA hazardous waste operations and emergency response standard, which basically is the most effective, proactive, and protective—or standard for workers engaged in hazardous waste operations, and we had OSHA's decision not to enforce that standard or any other standard.

Those standards essentially call for precautionary approaches; that is, assume the worst and as the data become available and become more credible, if appropriate, we can scale down our levels of respiratory protection, our levels of safe work practices, our levels of personal protective equipment. But start off with the worst data, assume workers are going to be exposed at that level, and assess the situation in an ongoing fashion.

Instead, we had the opposite. We assumed the best and not the worst and the consequences—the bottom line here is not the data either way; the bottom line is that people are ill, regardless of what the data show or don't show and regardless of what our interpretation of the data is. I have to strongly disagree with my esteemed colleagues from EPA. There is a considerable body of data in the peer-reviewed literature, in fact. It's unambiguous and non-controversial and I'm amazed people haven't read it. There is a considerable body of evidence that indicates both Ground Zero responders as well as area workers and residents are ill at alarming rates with clinically diagnosed persistent respiratory illness and other medical conditions, and the bottom line is if the data don't show that, there's something wrong with either how we're interpreting the data or with how we obtained the data—because the bottom line is that if people are sick, we have a problem.

Mr. SCOTT. Ms. Mattei, if people are sick, as they are, how can that possibly be consistent with the message that was being given out?

Ms. MATTEI. Well, it certainly was not. And that's why I wrote the reports that I did, because you can't have it both ways. You can't have it's safe, and thousands of people are sick. We're talking about thousands of people, not 50 or 100. Thousands of people are sick. Children of people exposed are at risk. That's what procarcinogenic damage is. It makes a person more vulnerable to cancer. That's what's happened to some of these newborns. So it's a really serious situation.

I would also point out that, repeatedly, when private tests were conducted, when elected officials paid for private tests, when other people conducted private tests, they were finding much higher levels of asbestos than EPA was. And I also want to point out that the constant emphasis on asbestos was very disingenuous.

I never heard EPA talking about the polycyclic aeromatic hydrocarbons carbons. Thousands and thousands of pounds of that went into the air. It was discovered on window films within a kilometer of the site at high levels. Polycyclic aeromatic hydrocarbons are a very toxic group of chemicals. And they never talked about it, they never talked about a number of the other pollutants from Ground Zero that we should have been concerned about and watching for. It was easier to just focus on one chemical, and that's what they did. But that was wrong. It was definitely a wrong thing to do.

Mr. SCOTT. If you could just respond———

Mr. NADLER. The gentleman is granted an additional 30 seconds, without objection.

Mr. SCOTT. Was that message coming from the scientific community?

Ms. MATTEI. David, do you want to respond to that, because I'm trying to remember who said what, when. I knew there was a fairly significant amount of research from data sources other than EPA or other government resources that indicated the possibility, the likelihood, and in some cases the reality of a variety of a robust range of contaminants. However, that data was not large in quantity, so there were a number of scientists who have expressed concern through their research as the possibility of the presence or exposure to other contaminants. However, the data upon which most scientists relied, either because they were in the Agency, such as EPA, or because they were—or the only data they had available to them if they were outside EPA, was the EPA and OSHA data that was publicly shared. That data, by and large, at least the data that was publicly shared was, as EPA correctly said, reassuring. The data that was not necessarily shared was less reassuring.

Ms. MATTEI. I just want to add to that, that we're not just talking about what science would indicate but the regulations on dealing with hazardous releases calls for that kind of a comprehensive assessment. You're not just supposed to look at one chemical when you have a release, a hazardous release; you're supposed to find out what's in it, where did it go and who was exposed? That didn't happen here.

Mr. NADLER. Thank you. The time of the gentleman has expired and I'll grant myself 5 minutes. I recognize myself, I should say, for 5 minutes.

First of all, let me ask Mr. Thernstrom, an EPA press release from September 13 says that the collapse of the World Trade Center buildings is unlikely to cause significant health effects.

From September 2002 to September 2003, the CDC, Centers for Disease Control, New England Journal of Medicine, Mount Sinai School of Medicine, all issued reports demonstrating that rescuers, cleanup workers and office workers, were sick as a result of their exposure to WTC dust. And yet the White House Council of Environmental Quality asserted in October of 2003 that quote, "We continue to stand by the information distributed in press releases regarding the potential long-term health risks," close quote.

There have been a myriad of subsequent peer-reviewed studies documenting chronic health effects, as has been mentioned.

Do you still stand by the information distributed in the press releases regarding lack of potential long-term health risks in spite of all what we know today?

Mr. THERNSTROM. Congressman, I don't actually recognize the October quote that you are reading to me. That certainly was not something I wrote. I'm sorry if———

Mr. NADLER. First of all, it's a September quote. But forget that quote. There are a whole bunch of quotes we've been talking about all afternoon here saying in effect that things are safe, things are good, things are reassuring, we're not going to have health problems from the World Trade Center.

We now know that that wasn't—I think we know from all the studies and from the reality, that that wasn't correct; and yet the White House in its latest pronouncement, which was 3 years ago, said they stood by it. Do you still think they ought to stand by those?

Mr. THERNSTROM. I wasn't working for the White House 3 years ago so I can't speak to what they said then. Honestly, I really don't feel like I have the expertise to speak to the health effects of the World Trade Center.

Mr. NADLER. You're still not willing to say that all these people who are sick, a lot of them are sick because of the World Trade Center.

Mr. THERNSTROM. Congressman, I simply don't have an expertise on that subject. All I can say, what we———

Mr. NADLER. Let me ask Ms. Mattei and Mr. Newman. You mentioned, Ms. Mattei, I think, that there was—I think you said a paucity of data with respect to asbestos and so forth. There is one thing I wanted to get in the record here. The EPA was using PLM test methodology all over New York City except in its own building. Now, in 1994 the EPA said the PLM test methodology was old-fashioned, not accurate, not up to date, and they ought to use the TEM methods. We know that the TEM methods will detect small asbestos fibers that are produced by the pulverization such as occurred at the World Trade Center, that the PLM method will not.

Do you think that most of the, or many—much of the EPA asbestos readings taken with PLM methodology was simply not reliable for that reason?

Ms. MATTEI. Certainly the TEM tests revealed higher levels. Joel Cutherman worked with both BEP and EPA staff at one point to test a split sample and found that there were much higher read-

ings of asbestos fibers using the TEM method than the PLM. It is not only better at identifying short fibers, but also the very thin fibers because it tends to produce thin fibers.

I would point out it wasn't EPA that tested. It was actually the General Services Administration. Pretty much everybody else was using—everybody was using TEM except the EPA. Kind of baffling.

Mr. NADLER. Why was that not done?

Ms. HORINKO. We relied upon the folks from region II and thought we should use———

Mr. NADLER. Ms. McGinnis, your September 13 press release said—well, and also Governor Whitman earlier today kept talking about the distinction between the quality air on the pile and off the pile; on the pile you kept saying it was bad and all the assurances that we were hearing that everything was fine didn't relate to the pile, it related to off-the-pile. That's the testimony we heard earlier today.

Now, September 13 EPA put out a press release that said quote: Sampling of ambient air quality found no asbestos or very low levels; tests have been reassuring of rescue crews and the public to environmental contaminants. Obviously if it's talking about rescue crews, you're talking about on the pile, not off the pile.

So it is not true that at least some of the very reassuring statements were dealing with off-the-pile only, and in fact you're talking here giving reassuring statements about on the pile. Is there any other way of reading this?

Ms. MCGINNIS. Could you say that again? I didn't follow.

Mr. NADLER. I will give myself another minute to repeat that.

Ms. MCGINNIS. I understood everything except the sentence itself.

Mr. NADLER. The question is: Is there any way of reading that press release, or the part of it that says the tests have been very reassuring about potential exposure of rescue crews and the public, as meaning anything other than that that press release refers to the wonderful air quality on the pile, not just off the pile, and that everything we've heard today about the reassurances not referring to conditions on the pile are not quite true, or at least not completely true?

Ms. MCGINNIS. I'm reluctant to say yes or no on that without looking at the context, and I don't have—haven't looked———

Mr. NADLER. You will agree you have to be talking about rescue crews, you have to be talking about on the pile.

Ms. MCGINNIS. I have no recollection.

Mr. NADLER. It's in tab 3 of your binder is the entire quote.

Ms. MCGINNIS. What paragraph are you referring to?

Mr. NADLER. The sentence: Sampling of ambient air quality found asbestos. Tests have been very reassuring about potential exposure of rescue crews and the public to environmental contaminants. This would imply rescue crews should not even be concerned about air quality.

Do you want to comment, Ms. Kreisher?

Ms. KREISHER. I think it would be an error that I probably made. At the time we were only 2 days out from the blast, and I could have added that without thinking in terms of the distinction between the———

Mr. NADLER. You're saying that all the reassurances were not still on the pile, and that including that reference was probably a mistake.

Ms. KREISHER. The same day, September 13, I can quote from ABC News.com quoting me saying, "It's one of those cases of don't be stupid. If there's a chance, why not put on the mask?" We're talking to rescue workers at that point. Governor Whitman was much more strident than I was about making sure that there was a distinction.

Mr. NADLER. My time has expired. The gentleman from Arizona.

Mr. FRANKS. Thank you.

Ms. Horinko, did you have anything that you wanted to add as far as being able to answer any of the questions prior?

Ms. HORINKO. I just wanted to add that I think all the agencies involved worked as hard as they could to get the information out in the hands of people who needed it, to make sure that responders were able to develop standards under an unprecedented situation, using their best professional judgment. We will continue to monitor the studies that are taking place in New York. People that are becoming ill, if the study shows that it is the fault of the World Trade Center exposures that they received, I think should get the best possible access to health care and treatment they possibly should. But at the end of the day, I think everyone involved did their very best to get the information out as quickly as we could.

Mr. FRANKS. Thank you.

Mr. Thernstrom, you have testified that you tried the best you could to disseminate information based on what you thought the science showed and that was reported to you, and that's still your testimony essentially.

Mr. THERNSTROM. Absolutely, sir.

Mr. FRANKS. I think the reason I mention that is the Bush administration has been criticized sometimes for their, quote, "lack of using scientific bases," and yet when they do so then they are criticized for that as well.

I happen to be the grandson of a man who died of black lung from exposure to a toxic substance and I know that that's a heartbreak for families that begs my ability to describe or articulate today. So I want to make sure that any people in this room or under the sound of my voice know that I identify and care very much about any illness that they have faced.

But the reality remains that when we talk about safe levels of asbestos, there is asbestos in this room; it might be measured in parts per quadrillion instead of parts per million, and yet 6 years from now there may be people in this room will come down with some type of sickness that would be impossible to relate to that. I don't know what the ultimate effect—cause and effect has been in these illnesses, I really don't know. But my point is this: The overwhelming testimony that I have heard today indicates to me that there was no deliberate effort on the part of the EPA or the Administration to do anything but the best they could to try to serve the country in a horrifying tragedy, and I believe that they tried to serve both the future and the people that were being—not only the ones that were victims at the moment, but potentially victims in the future.

It again seems astonishing to me that we spend the time of this Committee trying to punish those who are doing the best they could.

Mr. NADLER. If the gentleman will suspend, please, we have come almost to the end with proper decorum. Let's continue that.

Mr. FRANKS. Just for the record, I understand the comment. But for the record, I believe with all my heart that you were trying to protect the American people, from what I have heard today. So for that I commend you and hope that somehow we can all work together to make sure this never happens again, and we can help the people who are sick try to get better and prevent this tragic situation.

But we need to remember—my last word—that it was not you, the EPA or the Administration, that did this to the American people; it was jihadist terrorists that continue to plot against America.

Mr. NADLER. The gentleman's time has expired. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, I hope we wouldn't set as our standard that there is nothing at all if you can't find a potential conspiracy between the EPA and the White House to intentionally victimize people. I mean the evidence is clear that people are sick. There is something we could have done to have prevented it. You don't have to find a potential conspiracy to improve things so that it doesn't happen again.

I want to thank all the witnesses for their testimony. They have been here a long time, and I appreciate their patience, and just ask any of them if they have any final comments, particularly on indoor cleanup. If anyone wants to make a final comment.

Ms. MATTEI. Well, I was—just on the issue of the kind of information that has been put out about indoor pollution. There was something that I think was significantly misleading, and that was a letter from the White House Council on Environmental Quality to Senators Hillary Clinton and Joseph Lieberman, stating that of the 4,100 residential units examined as part of EPA's indoor program, only about 1 percent were found to have asbestos at levels exceeding the health-based standard.

What that letter didn't say was that they didn't test most of those apartments before cleaning them. They tested most of them after cleaning them. So the data was significantly misused. And it is hard for me to understand how anybody could have misused the data in that way, because it was obvious what the data was. And the way that it was presented in the letter was so obviously misleading. So that is of great concern.

I am concerned about Ground Zero dust remaining in buildings in Lower Manhattan. And until we have a proper testing and cleanup program in Lower Manhattan, I consider the Lower Manhattan residents—and I am also concerned about Brooklyn, as is Jenna Orkin, who is here today, I consider people to be at risk. And in particular toddlers who roll around on carpets and bounce on soft furniture, where the dust is likely to be trapped and can't get picked up by an ordinary vacuum cleaner. That is my primary health concern for Lower Manhattan and the parts of Brooklyn affected by the dust cloud. It is not over for us.

Mr. NEWMAN. Let's be very clear here that when we talk about indoor cleanup, there fundamentally has been none. The single EPA program from 2002 to 2003 was limited in scope. Anything that was not a residence was excluded, or businesses, workplaces, schools, firehouses, City Hall, hospitals, were excluded and are excluded again in the current program.

The participation rate in 2002-2003 was only approximately 4,000 apartments. The efficacy of environmental cleanup in those apartments was inadequate. Fundamentally, the same methodology will be used in the current program, only I believe the number is 295 apartments are enrolled in the current program. So what we have, approaching the sixth anniversary of the events of 9/11, is virtually zero testing and cleanup of indoor spaces in Lower Manhattan.

Mr. SCOTT. Thank you, Mr. Chairman. And I want to thank all of our witnesses for their patience. This has been a long hearing.

Mr. NADLER. Would the gentleman yield?

Mr. SCOTT. I yield the balance of my time to the Chairman.

Mr. NADLER. I thank the gentleman. Let me simply say, before I go through the rigamarole for closing the hearing, and before I thank the witnesses, let me just say that I hope that we have learned something at this hearing. I think we have learned some things. But I think it is very clear that much of the discussion that we were having about those press releases, et cetera, was what was known then, and whether people should have put out those reassurances then.

Looking backward—and my opinion is obvious. Looking backwards now, it is very clear that whatever their intentions, whatever their reliances, they were wrong; 70,000 first responders are sick—10,000 first responders; 70,000 people are getting sick. Of the 10,000 first responders tested, 70 percent. So 70 percent of the first responders are sick, probably more of the people in the plume, and others. That didn't happen because everything was safe and because the air was safe. And Lower Manhattan and Brooklyn, and maybe Jersey City, hasn't been cleaned up, as Ms. Mattei said.

And I hope that this hearing, which may be followed by others, will begin the process of getting more of this out into public view so that we can set the case for changing our policies, which are still based on the same policies that got us into this mess.

And by the way, the terrorists caused a terrible mess, but an additional mess—I don't want to confuse that—an unnecessary mess, with people unnecessarily sick, that we are in.

With that I yield back my time. And I want to thank the witnesses. I want to—with unanimous consent, I ask unanimous consent to place the EPA Inspector General's report in the record.[1] Without objection.

I want to thank all of our witnesses. I want to also thank the many people who came here today from New York. I want to thank the Members for their participation.

Without objection, all Members will have 5 legislative days to submit to the Chair additional questions for the witnesses, which

[1] *See* report entitled *EPA's Response to the World Trade Center Collapse: Challenges, Successes, and Areas for Improvement,* by the Office of the EPA Inspector General at http://www.epa.gov/oig/reports/2003/WTC__report__20030821.pdf.

we will forward and ask the witnesses to respond as promptly as you can so that your answers may be made part of the record.

Without objection, all Members will have 5 legislative days to submit any additional materials for inclusion in the record. With that, this hearing is adjourned.

[Whereupon, at 6 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Printed Hearing Record

MATERIAL SUBMITTED BY THE HONORABLE JERROLD NADLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

NYC Health

THE NEW YORK CITY DEPARTMENT of HEALTH

Memorandum

To: File

Subject: Environmental Issues Related to WTC Disaster

Date: October 6, 2001

The following is a report of critical environmental issues related to the WTC disaster.

Staten Island landfill evidence gathering site

All health and safety issues at the Staten Island Landfill evidence-gathering site are now coordinated through an inter-agency Health & Safety meeting held every morning at 11am. Present at the meeting are representatives of NYPD, FBI, Secret Service, DOS, EPA, contractors, etc. A company called Phillips & Jordan (P&J) has a contract with the US Army Corps of Engineers and is assuming overall control of health and safety issues at the site. They have drafted a H&S plan that incorporates elements of existing agency site H&S plans. The final plan is due to be implemented at 1800 hours Sunday 10/06/01. P&J will have 5 H&S field personnel on the ground 24 hours a day, 7 days a week starting today. In addition, P&J has subcontracted to an environmental consulting firm (EE&C) to perform ongoing worker exposure monitoring and recommend activity specific PPE and administrative controls. EPA has installed two personnel wash stations and one vehicle wash station, all of which will be fully operational by COB today. Unfortunately, the evidence gathering operation is located on top of the largest municipal landfill in the world. The Incident Commander is Dep Inspector James Luongo of NYPD. According to DOS, this location is not habitable. DEC landfill experts are concerned about human impacts from landfill gases (CO_2, H_2S, methane, etc.), slope stability, capping, etc. Unfortunately, the site is occupied by as many as 900 law enforcement officers and contractor personnel on a 24 hour a day basis. Evidence gathering at this location is a monumental task with no foreseeable end. In addition (although I have zero expertise in this issue) the emotional impact of this operation on the participants could be significant. The costs of this operation appear to outweigh the benefits.

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WTC site control

The major issues related to site control at ground zero are worker enforcement and site security.

Worker enforcement: Bechtel is the site safety contractor for the Department of Design and Construction. Bechtel has drafted a site health and safety plan and has had teams of up to twelve (12) site safety experts on the ground since September 25th. Since that time, worker compliance with health and safety protocols (wearing of personal protective equipment, or PPE, worker washdown, etc.) has increased, but remains inadequate. Bechtel is responsible for health and safety issues at the WTC site, but in reality has jurisdiction only over DDC contractor (i.e., Turner Construction, Tully, Bovis and Amec and their subcontractors.) Bechtel has no authority over FDNY, NYPD, civilian visitors or outside contractor personnel. An EPA letter (Bruce Sprague to Kelly McKinney, dated Oct 5 01) indicates that responders are not complying with H&S protocols on the ground. I want to explore for site inspections by DOH personnel who could issue NOVs for non-compliance. Since NYC Health Code does not address this issue, can we issue Commissioners Orders?

Site Security: Visitor's (family members of missing persons, VIPs, tourists, etc.) continueto access the red zone and ground zero and place themselves in harms way. Several groups (e.g., FDNY, NYPD, Mayor's Office of Community Relations, etc.) have been contacted by DOH and asked to require PPE use to visitors and to restrict routes. These directives have been ignored to date. Port Authority construction unit (SEMAC) has built a viewing stand on the SW corner of Liberty and West Street but it is not being utilized and civilians continue to walk beneath damaged buildings with falling glass anddebris, and on roads and access pathways with heavy equipment. On October 5th, a large piece of concrete fell from a rooftop in the World Financial Center and landed within 15 feet of an unprotected visitor. The risk of serious injury or death to civilians in high. NYPD is responsible for site security (access at perimeter and movement within red zone)and continues to fail to prevent unauthorized access to, and free movement within, the red zone.

Site control has been further compromised by the withdrawal of NYS Department of Environmental Conservation police, or ENCON. From the first day of this crisis, Captain Terry Ravella and the ENCON force took the lead in enforcing site safety and health and environmental compliance issues. ENCON played a key role in establishing vehicle washdown and construction site safety controls at the site. The absence of ENCON at ground zero and Staten Island landfill will significantly compromise our efforts to increase the safety and security of these sites.

Reoccupancy.

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. In an October 5th Meeting, DEP Commissioner Miele indicated that, although data shows two consecutive days of fiber counts below the DEP level of concern (0.01 fibers/ cubic centimeter of air) in the target areas, extenuating circumstances (e.g., truck routes, existing debris pile at ground zero, etc.) make DEP "uncomfortable" with opening the target areas. Miele indicated that the final decision about opening rested with DOH. Following the meeting, I was told that the Mayor's Office was directing OEM to open the target areas next week. OEM apparently want to force DEP and DOH to define opening criteria in any objection that they may have to next weeks opening of target areas.

Environmental Assessment

Many agencies (and private groups) are conducting air (and other environmental) sampling in, and around, the red zone. A groups of agencies, led by Jessica Leighton and cited the Environmental Sampling and Assessment Workgroup (ESAW) is charged with disseminating all data and coordinating the environmental

assessment effort. Since the first week of the crisis, EPA has been charged with leading the air quality sampling effort. It is collecting data at 16 stationary stations throughout lowerManhattan. In addition, it is gathering and interpreting data collected from all agencies in the ESAW and communicating results to the public. EPA has been very slow to make data results available and to date has not sufficiently informed to the public of air quality issues arising from this disaster. Recently, an occupational exposure specialist from US PHS in Denver CO expressed in the 6pm Environmental Meeting at Pier 92 that the EPA air quality assessment was "inadequate." He indicated 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. A recent Newsweek article on called "Is GroundZero Safe" addresses this issue. It indicates that very small fibers (those less than .5 microns in length) are not found in the EPA analysis and that the levels of asbestos in the outdoor and indoor air are higher than previously reported. In addition, a recent USGS study indicates elevated levels of metalloids (bioavailable heavy metals) and a high dust pH. The PHS representative transmitted a Sampling and Quality Assurance Plan along with SOPs (to arrive Monday morning) which I will review and transmit to EPA for review and implementation.

Please contact me with questions or comments.

NYC Health

TOTAL P

SUPPLEMENTAL SUBMISSION FROM THE HONORABLE CHRISTINE TODD WHITMAN, WHITMAN STRATEGY GROUP

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September 26, 2007

OUR FILE NUMBER
0929,825-00002

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BY HAND DELIVERY

The Honorable John Conyers, Jr.
Chairman, Committee on the Judiciary
United States of House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jerrold Nadler
Chairman, Subcommittee on the Constitution,
Civil Rights, & Civil Liberties
Committee on the Judiciary
United States House of Representatives
B-353 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairmen Conyers & Nadler:

On behalf of my client, Christine Todd Whitman, please accept this supplemental submission regarding her recent testimony before the Subcommittee on the Constitution, Civil Rights and Civil Liberties ("Subcommittee") of the Committee on the Judiciary ("Committee"). On June 25, 2007, Governor Whitman testified at the Subcommittee's hearing titled "Oversight Hearing on the U.S. Environmental Protection Agency's Response to Air Quality Issues Arising from the Terrorist Attacks of September 11, 2001: Were There Substantive Due Process Violations?" On August 21, 2007, after a review of the transcript of her testimony prepared by the commercial service Federal News Service Inc., we requested correction and supplementation of the transcript pursuant to Rule III(e) of the Rules of Procedure of the Committee. It has since come to our attention that the commercial transcript upon which we based our submission differs significantly and materially from the official Committee transcript ("official transcript").

Unfortunately, neither the official transcript nor the commercial transcript seems to be entirely correct and thus controlling. There appear to be significant errors and omissions in each of these transcripts, though the official transcript contains by far the larger number of errors. We have therefore analyzed the differences between these transcripts and attached a chart summarizing the material differences between the two transcripts. We have also enclosed for your reference a copy of the commercial transcript with the highlighted differences. A good

illustration of how substantial the discrepancies are is the following statement by Governor Whitman in response to questioning by Representative Ellison:

1. Questioning by Representative Ellison (commercial transcript):

Rep. Ellison: And you gave them reassurances about the quality of the water and the air being okay. I mean, now today you --

Ms. Whitman: **Based on the science, on the data that we were getting from the scientists.**

2. Questioning by Representative Ellison (official transcript):

Rep. Ellison: You gave them reassurances about the quality of the water and the quality of the air being okay.

Ms. Whitman: *(Missing Testimony)*

Consequently, we request correction and/or supplementation as appropriate and permitted by Rule III(e) of the Committee's Rules of Procedure in the column of the attached chart bearing the notation "Action Requested." We also request that this letter be included as part of the official hearing record.

Should you have any questions regarding this matter, please contact me at your earliest convenience.

Very truly yours,

K. Lee Blalack/prs

K. Lee Blalack, II
of O'Melveny & Myers LLP

KLB:PRS
Enclosures

Cc: The Honorable Lamar S. Smith (via hand-delivery)
Ranking Minority Member, Committee on the Judiciary
The Honorable Trent Franks (via hand-delivery)
Ranking Minority Member, Subcommittee on the Constitution, Civil Rights & Civil Liberties, Committee on the Judiciary
David Lachmann (via hand-delivery)
Chief of Staff, Subcommittee on the Constitution, Civil Rights & Civil Liberties of the Committee on the Judiciary
Paul Taylor (via hand-delivery)
Chief Counsel, Subcommittee on the Constitution, Civil Rights & Civil Liberties, Committee on the Judiciary

DC1:721698.3

CTW June 25, 2007 Testimony Transcript Discrepancies

Official Transcript	Commercial Transcript	Status
p. 28, line 581: … extreme critics …	p. 11: … most extreme critics …	
p. 28, line 599: … water posed …	p. 12: … water proposed …	
p. 38, line 807: No transcript writing regarding the videotape		
p. 39, line 827: There is a significant difference, the readings that we were getting at the time.	p. 16: And that -- but there's a significant difference. The readings we were getting on air quality at the time in general.	Action Requested
p. 42, missing Whitman testimony before line 906	p. 18: There's a difference between the air and the --	
p. 43, line 917: We would go over what the dust -- what the samples they were getting in those days …	p. 18: We would go over what the samples they were getting in those days.	
p. 43, line 920: There's no doubt about that .	p. 18: There's no question about that.	
p. 44, line 945: Missing Whitman testimony	p. 19: … but I will tell you --	
p. 44, line 949: Missing Whitman testimony	p. 19: … of the time, Mr. Chairman.	Action Requested
p. 60, line 1354: Missing Whitman testimony	p. 27: … had curtains that they would get --	
p. 61, line 1378: Missing Whitman testimony	p. 28: Based on the science, on the data that we were getting from the scientists.	Action Requested
p. 62, line 1396: And I'm not sorry if that was not what people now looking back on see …	p. 28: And I'm sorry if that was not what people, now looking back, want to see.	
p. 63, line 1410: Every test that we have --	p. 29: Every test that we had gotten back --	Action Requested
p. 63, line 1412: Missing Whitman testimony	p. 29 tabbed: All the data indicated -- well,	Action Requested
p. 63, line 1418: Missing Whitman Testimony.	p. 29: … and I would never have lied to the public, ever.	Action Requested
p. 63, line 1427: My actions were not criminal	p. 29: And my actions might have been criminal	Action Requested
p. 65-66, lines 1480-1481: … website as fast as we could get that.	p. 31: … website as fast as we could get it up.	
p. 71, line 1630 Missing Whitman testimony	p. 33: And we never --	
p. 74, line 1694: Rep. Cohen references press releases	p. 35: Rep. Cohen references **draft** press releases	Action Requested
p. 74, line 1701 Missing Whitman testimony	p. 35: I don't. I assumed …	
p. 78 Missing Whitman testimony after line 1789	p. 37: From everything that I have seen -- (inaudible) -- yes.	

CTW June 25, 2007 Testimony Transcript Discrepancies

p. 79, line 1821 Missing Whitman testimony	p. 38: … in Ms. Kreisher's statement, she'll say that everything was accurate.	
p. 81, line 1869 Missing Whitman testimony	p. 39 tabbed: That's why we repeated it over and over again.	
p. 81, line 1870 Missing Whitman testimony	p. 39: No, they did not.	
p. 83, line 1922 Missing Whitman testimony	p. 40: We always did that.	
p. 95, line 2226-2228 Whitman testimony missing from the rush transcript "… dispose of dust."	p. 46: Missing Whitman testimony	
p. 102 line 2381 Missing Whitman testimony	p. 49: …--there are those--…	
p. 103, line 2422 … mornings …	p. 50: … warnings …	Action Requested
p.103, line 2429 Missing Whitman testimony	p. 50: … that aren't hot…	
p. 105, line 2477 I don't think …	p. 51: I don't believe necessarily that he …	
p. 118, line 2784 … ambient air quality in lower Manhattan in general …	p. 57 tabbed: … ambient air quality around lower Manhattan in general…	
p. 118, line 2787 Whitman testimony missing	p. 57: … we didn't see …	
p. 123, line 2910 Missing Whitman testimony	p. 60: … we could certainly produce that.	
p. 125, line 2963 Missing Whitman testimony	p. 61 tabbed: To the best of my recollection, we talked …	Action Requested
p. 126, line 2992 Missing Whitman testimony	p. 62 tabbed: I think that goes more than one way.	
p. 126, line 2997 Missing Whitman testimony	p. 52 tabbed: … us…	

RESPONSE TO POST-HEARING QUESTIONS FROM THE HONORABLE CHRISTINE TODD WHITMAN, WHITMAN STRATEGY GROUP

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October 10, 2007

BY HAND DELIVERY

The Honorable John Conyers, Jr.
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2138 Rayburn House Office Building
Washington, D.C. 20515

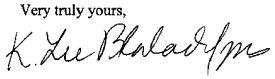
The Honorable Jerrold Nadler
Chairman, Subcommittee on the Constitution,
Civil Rights, & Civil Liberties
Committee on the Judiciary
United States House of Representatives
B-353 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairmen Conyers & Nadler:

On behalf of my client, Christine Todd Whitman, please accept this letter in response to your letter of September 19, 2007, which enclosed supplemental questions from the Subcommittee on the Constitution, Civil Rights and Civil Liberties ("Subcommittee") of the Committee on the Judiciary ("Committee") in connection with its hearing titled "Oversight Hearing on the U.S. Environmental Protection Agency's Response to Air Quality Issues Arising from the Terrorist Attacks of September 11, 2001: Were There Substantive Due Process Violations?" Enclosed for your reference, please find responses to the supplemental questions which we are submitting to the Subcommittee on behalf of our client.

Should you have any questions regarding this matter, please contact me at your earliest convenience.

Very truly yours,



K. Lee Blalack, II
of O'Melveny & Myers LLP

KLB:PRS
Enclosures

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Paul Taylor (via hand-delivery)
Chief Counsel, Subcommittee on the Constitution, Civil Rights & Civil Liberties, Committee on the Judiciary

Subcommittee on the Constitution, Civil Rights & Civil Liberties
Committee on the Judiciary
United States House of Representatives
Responses to Supplemental Questions

1. *Do you believe that paper filament masks provide adequate protection against asbestos or ultrafine particulates?*

A precise answer to this question is difficult because the question is vague and ambiguous. For instance, the question does not identify the specific "paper filament masks" at issue and it does not define the term "adequate." "Adequate", as you know, is a relative term that is susceptible to different meanings. It is therefore difficult to provide a complete answer to this question beyond the testimony that Governor Whitman already provided in the Subcommittee's hearing.

Further, Governor Whitman is neither a scientist nor an expert on the protective qualities of paper filament masks. Accordingly, the Subcommittee should consult with experts about the protective value of paper filament masks for more authoritative information. However, based on the Governor's second-hand knowledge of this subject, while paper filament masks are not optimal, they do provide some short term protection from asbestos exposure. Respirators provide more effective protection than paper filament masks and that is why the Environmental Protective Agency ("EPA") provided both masks and respirators to rescue and recovery workers at Ground Zero.

2. *Did EPA provide paper filament masks in NYC after 9/11/1?*

To the best of Governor Whitman's knowledge, EPA provided paper filament masks to rescue and recovery workers at Ground Zero after September 11, 2001, as well as approximately 12,000 air purifying respirators. However, a precise answer to this question is difficult because the question is vague and ambiguous. For instance, the question does not identify the specific "paper filament masks" at issue. The question also calls for speculation by Governor Whitman to the extent that it asks her to confirm the actions of others within the EPA who worked at or around Ground Zero after September 11, 2001. She was not physically present at Ground Zero every day after September 11, 2001 and thus, in answering this question, Governor Whitman can only relate what others reported to her.

3. *Did anyone tell you that it might not be safe to send workers back to work in the financial district on September 17, 2001? If so, who cautioned you?*

Governor Whitman does not have any present recollection that her advisors and subordinates informed her that it was unsafe for workers in Manhattan's financial district to return to work on September 17, 2001. However, this question is vague and ambiguous because it does not define the term "safe", which is a subjective term susceptible to differing interpretations. It is therefore difficult to provide a complete answer to this question beyond the testimony that Governor Whitman already provided in the Subcommittee's hearing.

4. *Are OSHA standards for asbestos protective of children, pregnant women, the elderly and people with asthma?*

This question is difficult to answer because it is vague and ambiguous. It does not identify the precise OSHA standards that are the subject of the question. The question also fails to define the term "protective", which is a subjective term that is susceptible to differing interpretations. Thus, it is difficult to provide a complete answer to this question beyond the testimony that Governor Whitman already provided in the Subcommittee's hearing. Moreover, Governor Whitman is not an expert on OSHA standards. Nor has she ever been employed by the Occupational Safety and Health Administration. Accordingly, this question is better directed to a representative of OSHA.

5. *Are you aware that EPA concluded in 1986, under the Reagan Administration, that there are no safe levels of asbestos? Did EPA ever change that policy? If so, please provide the date and citation for the Federal Register announcement by EPA of this change.*

This question is difficult to answer because the question is vague and ambiguous. The question does not identify the precise EPA policy at issue. It is therefore difficult to provide a complete answer to this question beyond the testimony that Governor Whitman already provided in the Subcommittee's hearing. To the best of her recollection, Governor Whitman is not familiar with the 1986 policy to which this question refers. While Governor Whitman served as EPA Administrator, she properly and necessarily relied at all times upon the expertise of EPA's scientists and experts, including those who enforce regulations pertaining to asbestos exposure and abatement. To the extent that there is such an EPA policy, others at EPA could confirm its existence, its scope and methods of application.

6. *In your testimony, you stated that "the City of New York had assumed the responsibility for indoor air cleaning. They had asked us not to participate in that but we worked together collegially to help them with it, but they were doing it." Who asked the EPA not to participate in indoor cleaning?*

Governor Whitman's best recollection is that officials in EPA's Region 2 had direct communications with officials from New York City and those Region 2 officials would be in the best position to identify those City officials who made the above-referenced request.

7. *Did you comply with White House Chief of Staff Andrew Card's requirement that all statements to the media about 9/11 be cleared through the National Security Council? If not, why not? If you did, were any statements altered or not made following this review? If so, which statements and what were the changes?*

A precise answer to this question is difficult because it is vague and ambiguous. The question does not define the term "statements", which is a subjective term susceptible to differing meanings. The question also calls for speculation about what various EPA personnel did or did not do with regard to press statements and compliance with Mr. Card's directive about coordination with the National Security Council. Thus, it is difficult to

provide a complete answer to this question beyond the testimony that Governor Whitman already provided in the Subcommittee's hearing.

Moreover, Governor Whitman was not intimately involved in the day-to-day discussions with the White House about press strategy. Those matters were, for the most part, delegated to EPA's press office. To the best of her recollection, Governor Whitman recalls that EPA's press office cleared all press releases, as distinguished from press statements, with the Council on Environmental Quality at the White House but she cannot confirm that this clearance occurred in every instance.

8. *You stated that, in consultation with counsel, you considered whether EPA had the authority to take over the site. You stated that "[w]e did look at it and didn't feel the legal basis for exerting [Federal control of the site] existed. That's what I was told." Who told you that the EPA did not have a legal basis to take over the site? What was the basis for this opinion?*

To the best of her recollection, Governor Whitman recalls discussions with counsel at EPA Headquarters and in EPA's Region 2. She does not recall having had personal knowledge of the exact basis for this legal interpretation.

9. *Did you ever ask an Incident Commander to downplay or not report the environmental hazards from the 9/11 WTC attack? Are you aware of anyone who did?*

Governor Whitman does not have a present recollection of asking an Incident Commander to "downplay" or not "report" any environmental "hazards" arising from the terrorists attacks on the World Trade Center. Nor does she recall anyone advising her that others had made such a request. However, this question is vague and ambiguous because it does not define the terms "downplay", "report" or "hazards", all of which are subjective terms susceptible to differing meanings.

10. *Did you ever ask any EPA official to not mention contamination readings after the 9/11 WTC attack? Are you aware of anyone who did?*

Governor Whitman does not have a present recollection of asking any EPA official to "not mention contamination readings" after the terrorists attacks on the World Trade Center. Nor does she recall anyone advising her that others had made such a request. However, this question is vague and ambiguous because it does not define the phrase "contamination readings", which is a subjective phrase susceptible to differing meanings.

11. *At the hearing, you presented EPA's "Lessons Learned in the Aftermath of September 11, 2001" Final Report dated February 1, 2002, that you prepared. That report states "EPA's mission was to protect frontline responders and residents from dust and contaminants released when commercial aircraft were deliberately crashed." It goes on to say "mission accomplished." Do you believe today that EPA accomplished its mission of protecting frontline responders and residents?*

Governor Whitman is neither a scientist nor a physician but she does believe that EPA officials fulfilled their statutory mission and, as the EPA Inspector General found, certainly acted in accordance with their statutory mandate.

12. *The "Lessons Learned" report documented that EPA On-Scene Coordinators "expertise was not being used." Do you agree with that conclusion today? Why wasn't their expertise used?*

Governor Whitman does not have any present recollection of what prompted that conclusion in the Lessons Learned report, which was published by EPA nearly 5 years ago. As such, she cannot answer today why the On-Scene Coordinators' expertise was not used more effectively.

13. *The "Lessons Learned" report also concluded that "upper-level managers believed overall coordination was successful, emergency response personnel believed otherwise." Do you agree with that conclusion? Were you aware that emergency response personnel believed otherwise?*

Governor Whitman does not have any present recollection of what prompted that conclusion in the Lessons Learned report, which was published by EPA nearly 5 years ago. She cannot recall today whether she was aware then of any divergent views between management and the emergency response personnel.

14. *How many EPA Ombudsman Public Hearings have been held since the Ombudsman office was transferred to the EPA Inspector General in April 2002? How many EPA Ombudsman Reports have been published since the office was transferred?*

This question is difficult to answer because it calls for speculation as to the number of public hearings held and reports issued by the EPA Ombudsman during a period of time when Governor Whitman was no longer serving as EPA Administrator. Thus, it is difficult to provide an answer to this question beyond the testimony that Governor Whitman already provided in the Subcommittee's hearing. In short, Governor Whitman has no personal knowledge about how many EPA Ombudsman Public Hearings have been held since the Ombudsman office began reporting to the EPA's Inspector General in April 2002. Nor does she have personal knowledge about how many reports have been published by the Ombudsman during that same period.

15. *On February 1, 2001 you issued a recusal letter informing the EPA staff of matters in which you could not participate in order to comply with conflict of interest laws. In that letter you referred all matters directly affecting the Port Authority of NY and NJ to the "Deputy Administrator without my participation." As you know, the Port Authority owns the World Trade Center, and yet you participated in this case. Why did you violate your February 1, 2001 recusal letter? Did anyone instruct you to do this? If so, who and when? Did the Deputy Administrator have many more years of experience dealing with environmental emergency response than you?*

This question is difficult to answer because it makes inaccurate assumptions and accusations that are not based on the facts in the record. In addition, the question calls for Governor Whitman to speculate as to how her "environmental emergency response" experience compares to that of the then-EPA Deputy Administrator. Thus, it is difficult to provide a complete answer to this question beyond the testimony that Governor Whitman already provided in the Subcommittee's hearing. However, the record is clear that Governor Whitman never violated her February 1, 2001 ethics agreement, which included the recusal referenced in this question. As the enclosed letter confirms, Governor Whitman received a waiver of her recusal pursuant to 18 U.S.C. § 208(b)(1) from EPA's Designated Agency Ethics Official, Anna L. Wolgast (Principal Deputy General Counsel).

ATTACHMENT

JUL 12 2002

MEMORANDUM

OFFICE OF GENERAL COUNSEL

SUBJECT: Waiver Under 18 U.S.C. 208(b)(1)

FROM: Anna L. Wolgast
Principal Deputy General Counsel
Designated Agency Ethics Official

TO: The Honorable Christine Todd Whitman
Administrator

This memorandum responds to your question regarding participation in matters relating to the dredging activities in New Jersey Harbor.

I understand that the Agency has recently lost a decision in the Southern District of New York in which the Army Corps of Engineers relied on EPA guidance describing appropriate levels of PCBs in sediments that may safely be placed in a remediation site in the ocean off New York/New Jersey Harbor ("the HARS") in considering a permit for such placement by U.S. Gypsum Company. The court found the application of the PCB guidance to be tantamount to a "rule" within the meaning of the Administrative Procedures Act, and remanded the case to the Army Corps to act on the proposed permit in a manner consistent with the opinion. Since this issue raises broader questions of the acceptable level of PCBs in sediments, you wish to participate in the Agency's consideration of this issue. You currently hold bonds issued by the Port Authority of New York and New Jersey.

I understand that the Port Authority operates the ports and is the landlord to all facilities with respect to the waterways of New York and New Jersey Harbor. The Port Authority charges for ships to use the harbor. I also understand that the Port Authority will likely be affected by decisions that are made with respect to the level of PCBs in sediments that may be placed in the HARS.

In your January 2001 ethics agreement, you stated that, absent a waiver under applicable regulation, you would not participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of the Port Authority of New York and New Jersey to honor their bond obligations. In other words, with bonds, as distinct from a stock interest, the matter in which you participate has to directly impact the Port Authority's ability to cover the financial interest of its bonds, not merely have an impact on the value of the

bonds. Given that, it is not clear to me that under these facts your participation in this matter would have such a "direct and predictable effect." However, out of an abundance of caution, I have analyzed whether your participation would be appropriate for a waiver in the event a conflict under 18 U.S.C. 208(a) exists.

Under 18 U.S.C. 208(b)(1) and 5 C.F.R. 2635.402(d), I am authorized to waive the prohibition of 18 U.S.C. 208(a) where the financial interest is "not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee." I understand that you currently own between $15,000-$50,000 in Port Authority of New York and New Jersey bonds. I also note that you reported that New York and New Jersey Port Authority bonds were part of the holdings of "The Whitman Children Irrevocable Trust." These bond interests constitute a very small per cent of your total holdings. Because the value of your financial interest in the Port Authority of New York and New Jersey constitutes such a minimal portion of your assets, I find that your financial interest in these bonds is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect.

A waiver under 18 U.S.C. 208(b)(1) is therefore granted, and you may participate in matters which may affect the Port Authority of New York and New Jersey. I have consulted with the Office of Government Ethics in granting this waiver.

I also understand that while you served as the Governor of New Jersey, the Environmental Protection Agency, working with the State, agreed with the Corps of Engineers that the New York/New Jersey Harbor remediation site would be available for the placement of sediments containing PCBs subject to the guideline that has now been rejected by the court. Therefore, I have considered whether your participation may create an appearance of a conflict of interest under 5 C.F.R. 2635.502 because of your financial interest in the Port Authority of New York and New Jersey and your prior position as Governor of the State of New Jersey. I have carefully considered the factors in 5 C.F.R. 2635.502(d). Specifically, the matters that you seek to be engaged in now as Administrator of the EPA - that of reviewing applicable standards for determining how best to assess specific applications for disposal at the remediation site- is related, but distinct, from your prior involvement as Governor in seeking for New Jersey port availability and environmentally sound disposal sites for dredged materials. In addition, New Jersey was not and is not a party to the litigation before EPA today. Further, the consequences of your participation in this matter are not New Jersey-specific, in that the State of New York is also directly affected, and the determination of acceptable levels of sediments containing PCBs will likely have broader effect. Finally, you have not served in a New Jersey position for more than eighteen months. Because of the important effect of this matter on the Environmental Protection Agency, it is important for you, as the Administrator, to be personally involved in this process. Therefore, I authorize you to participate in matters concerning the placement of dredged sediments in the remediation site off New York and New Jersey Harbor.

RESPONSE TO POST-HEARING QUESTIONS FROM JOHN L. HENSHAW, HENSHAW & ASSOCIATES, INC.

John L. Henshaw
461 Lighthouse Way
Sanibel, Florida 33957
239-395-2430

October 18, 2007

Congressman Jerrold Nadler
Chairman, Subcommittee on the Constitution, Civil Rights, and Civil Liberties
2138 Rayburn House Office Building,
Washington, DC, 20515

Ref: Responses to the additional questions from the committee regarding the June 25, 2007 hearing "Oversight hearing on the U.S. Environmental Protection Agency's Response to Air Quality Issues Arising from the Terrorist Attacks of September 11, 2001: Were There Due Process Violations?"

Congressman Nadler:

Enclosed you will find my responses to the additional questions members of the Subcommittee on the Constitution, Civil Rights, and Civil Liberties have raised following the June 25, 2007, hearing.

Sincerely,

John L. Henshaw

Responses to the additional questions from the committee regarding the June 25, 2007 hearing "Oversight hearing on the U.S. Environmental Protection Agency's Response to Air Quality Issues Arising from the Terrorist Attacks of September 11, 2001: Were There Due Process Violations?"

1. Do you believe that paper filament masks provide adequate protection against asbestos or ultrafine particulates?

The assumption is this question refers to disposable particulate respirators, commonly called filtering facepiece respirators. There are about nine types of disposable particulate respirators approved by NIOSH.

During the subject event, OSHA constantly and consistently recommended and instructed employers and workers on the site to wear appropriate respirators. Due primarily to the unpredictable nature of the hazards on the pile, a high level of protection was selected jointly with all the site safety and health professionals. This was a half-mask, negative pressure respirator with, high efficiency particulate, organic vapor and acid gas cartridges. These requirements were communicated through orders and notices posted throughout the sites and as well as during inspections, daily meetings and other communications.

If worker were occupationally exposed to asbestos then they were to follow the requirements of 29 CFR 1910.1001.

2. Did the Federal Government provide paper filament masks in NYC after 9/11?

As stated above, OSHA constantly and consistently recommended and instructed employers and workers on the site to wear appropriate respirators. Due primarily to the unpredictable nature of the hazards on the pile, a high level of protection was selected jointly with all the site safety and health professionals. This was a half-mask, negative pressure respirator with, high efficiency particulate, organic vapor and acid gas cartridges. These requirements were communicated through orders and notices posted throughout the sites and as well as during inspections, daily meetings and other communications.

Assuring workers had the proper respiratory protection and that they were properly fitted and trained to wear the respirator, was a challenge. Initially handing out respirators on foot, OSHA quickly opened multiple equipment

distribution locations throughout the 16 acres site including one at the Queens Marina, which was the Fire Department of New York's staging area.

Over 7,500 quantitative fit-tests were conducted for negative pressure respirators, including nearly 3,000 fit-tests specifically for the fire department. These sessions also included instructions on the proper storage, maintenance, use and use limitations of respirators.

Outside the pile and Fresh Fish Kills specifically, OSHA had no data indicating asbestos or other airborne contaminants were a hazard and/or approaching or above OSHA's permissible exposure levels and therefore assisted early on in distributing disposable particulate respirators where the data indicated a higher degree of protection was not necessary.

OSHA continued to conduct extensive risk assessments through personal monitoring to verify the selected respirators remained appropriate. When sample results indicated a higher level of protection was needed for example during jack hammering and concrete drilling operations, a full face piece respirator was required for those operations.

3. Did anyone tell you that it might not be safe to send workers back to work in the financial district on September 17, 2001?

OSHA and EPA had sufficient data to support the opening of the financial district on September 17, 2001.

4. Are OSHA standards for asbestos protective of children, pregnant women, the elderly and people with asthma?

OSHA's jurisdiction covers workers and as such, standards are set to assure workers are provided a safe place in which to work.

5. Are you aware that EPA concluded in 1986, under the Reagan Administration, that there-are no safe levels of asbestos?

Based upon the data available at that time and the quantitative risk assessment techniques performed at that time, EPA made several mathematical risk estimates extrapolating from where data existed in the early 1980s (high doses and mixed fibers) to where actual exposures might existed.

According to the 2004 EPA publication entitled - *AN EXAMINATION OF EPA RISK ASSESSMENT PRINCIPLES AND PRACTICES,* from EPA's Office of the Science Advisor, EPA staff state, "Because of data gaps, as well as uncertainty and variability in the available data, risk cannot be known or calculated with absolute certainty."

6. Has EPA ever published in the Federal Register a change to that 1986 ruling that there are no safe levels of asbestos?

Since I have no connection with either OSHA or EPA, this question is best answered by EPA.

7. Did OSHA believe the workers "on the pile" were ever in imminent danger because they were not continuously wearing respirators?

As stated above, OSHA constantly and consistently recommended and instructed employers and workers on the site to wear appropriate respirators. Due primarily to the unpredictable nature of the hazards "on the pile", a high level of protection was selected jointly with all the site safety and health professionals. This was a half-mask, negative pressure respirator with, high efficiency particulate, organic vapor and acid gas cartridges. These requirements were communicated through orders and notices posted throughout the sites and as well as during inspections, daily meetings and other communications.

OSHA continued to conduct extensive risk assessments through personal monitoring to verify the selected respirators remained appropriate. When sample results indicated a higher level of protection was needed for example during jack hammering and concrete drilling operations, a full face piece respirator was required for those operations.

8. Did OSHA have authority to shut down a work place that posed an imminent danger to workers?

Making a determination regarding imminent danger and shutting down a particular workplace under the authority granted to the U.S. Department of Labor by the Occupational Safety and Health Act of 1970, is a decision made in conjunction with the U.S. Department of Labor Office of the Solicitor. This question is best answered by OSHA and the Solicitors Office at the U.S. Department of Labor.

RESPONSE TO POST-HEARING QUESTIONS FROM SAMUEL THERNSTROM, AMERICAN ENTERPRISE INSTITUTE

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October 5, 2007

BY HAND DELIVERY

Hon. Jerrold Nadler
Chairman
Subcommittee on the Constitution, Civil Rights and Civil Liberties
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

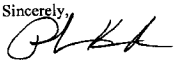
Re: Samuel Thernstrom

Dear Mr. Chairman:

In reply to your letter dated September 19, 2007, we are providing the attached responses by our client Samuel Thernstrom to the questions you posed. These responses are provided voluntarily by Mr. Thernstrom. They supplement his already extensive testimony before the Committee.

Given Mr. Thernstrom's extraordinary level of voluntary cooperation with the Committee to date, we cannot imagine any legitimate need for further information requests to Mr. Thernstrom by the Committee concerning this matter.

Sincerely,



Robert K. Kelner

Enclosure

Judiciary Subcommittee on Constitution, Civil Rights & Civil Liberties
Substantive Due Process Violations Arising from the
EPA's Handling of Air Quality Issues Following September 11, 2001

Follow-Up Questions

Samuel Thernstrom, Former White House Official

1. Who hired you for employment at the White House?
2. List all of your immediate supervisors during your tenure at the White House.
3. Who authorized you to review each and every draft EPA press release concerning the 9/11 World Trade Center matter?
4. You testified that with regard to the press releases "every change I made was a matter of consensus between me and the EPA staffers I worked with." Please list all the EPA staffers you "worked with" on this "consensus."
5. Were you involved in clearing any of Administrator Whitman's statements to the media? If you were not, who was?
6. List all scientists who, according to your testimony, "considered" the EPA press releases "accurate."
7. When you worked on the EPA press releases were you aware that EPA concluded in 1986, under the Reagan Administration, that there are no safe levels of asbestos?
8. Who gave you the fax number to which you sent the Draft EPA press releases? Who responded to your faxes with either changes or approval?
9. Are OSHA standards for asbestos protective of children, pregnant women, the elderly and people with asthma?
10. Did anyone tell you that it might not be safe to send workers back to work at the financial district on September 17, 2001? If so, who provided you with this information?

1. James L. Connaughton.

2. James L. Connaughton.

3. As my testimony before the Committee indicated, I believe the system was established by White House Chief of Staff Andrew Card and Deputy Chief of Staff Joshua Bolton. As I recall, Brian Besanceny from the Domestic Policy Council was the person who first spoke to me about assuming my responsibilities under that system.

4. Tina Kreisher was my primary contact at EPA. Ms. Kreisher and I both spoke with many EPA staffers about these issues at the time, and I have no recollection of any of them objecting to any final language in the press releases, either before or after they were issued. Six years after the fact, I cannot recall the names of the other individual EPA staffers.

5. Other than the press releases themselves, which I testified about extensively, no. I do not know the answer to your second question.

6. Again, six years after the fact, I cannot recall the names of the individual staffers who reviewed these documents. EPA issued the press releases and considered them accurate. The internal review process was conducted by EPA. I participated in daily conference calls with a large number of EPA staffers, which I believe included many EPA scientists working on this issue. To the best of my recollection, no objections to these statements were raised with me by any of those scientists, either before or after they were issued.

7. I do not recall.

8. I do not recall the names of these individuals. I believe I received approval for the press releases from at least three different people, including the National Security Council press secretary and her assistants.

9. This question should be directed to OSHA.

10. Not that I recall.

RESPONSE TO POST-HEARING QUESTIONS FROM TINA KREISHER, COMMUNICATIONS DIRECTOR, U.S. DEPARTMENT OF THE INTERIOR

September 26, 2007

Susana Gutierrez
Subcommittee on the Constitution
Civil Rights and Civil Liberties
B353 Rayburn House Office Building
Washington, D.C. 20515

Dear Ms. Gutierrez:

In answer to the question forwarded from the subcommittee by Chairman Nadler, here is my response:

When I worked on EPA press releases I was not aware of an official conclusion at EPA that: "There are no safe levels of asbestos." In the course of working with various staff, the line was repeated to me but without any official conclusion attached to it. In other words a staffer would say something like, "But you know there are no safe levels of asbestos," almost in the form of a question. Like someone asking, "You know there is no safe level of second-hand smoke?" It was not presented as an EPA conclusion, and in fact differed from the information we were given by EPA scientists and those doing the testing, who told us what we put in the press releases.

Sincerely,

Tina Kreisher

Tina Kreisher
Communications Director
U.S. Department of the Interior
1849 C. Street, NW
Washington, D.C. 20240

RESPONSE TO POST-HEARING QUESTIONS FROM EILEEN MCGINNIS, SENIOR VICE PRESIDENT, WHITMAN STRATEGY GROUP

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October 11, 2007

Honorable Jerrold Nadler
Chairman
Subcommittee on the Constitution,
Civil Rights, and Civil Liberties
B-353 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Nadler:

On behalf of my client, Eileen McGinnis, I am submitting her responses to your additional questions as a follow-up to her testimony during your hearing on "Oversight hearing on the U.S. Environmental Protection Agency's Response to Air Quality Issues Arising from the Terrorist Attacks of September 11th, 2001."

She was pleased to testify before your subcommittee and is pleased to provide the additional information you requested.

If you should have any additional questions, please contact me.

Sincerely,

Theodore J. Van Der Meid

Theodore J. Van Der Meid
Counsel to Eileen McGinnis

Eileen McGinnis Response to Additional Questions submitted by the House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties

1. *When you worked on the EPA press releases, were you aware that the EPA concluded in 1986, under the Reagan Administration, that there are no safe levels of asbestos?*

Answer: If that was the finding of the EPA under the Reagan Administration, I was unaware of it.

2. *List all the White House personnel you spoke with about the 9/11 World Trade Center case.*

Answer: I'm unclear what you mean by the World Trade Center "case." My White House press contacts about the EPA's response to the terrorist attack on the World Trade Center were Jim Connaughton and Sam Thernstrom.

3. *Did you or Administrator Whitman ever ask an Incident Commander to downplay or not report the environmental hazards from the 9/11 WTC attack? Are you aware of anyone who did? If so, please provide the name of any person who did so.*

Answer: I cannot speak for Governor Whitman so you will need to address the question to her. As for me, my answer to both parts of your question is no.

4. *Did you or Administrator Whitman ever ask any EPA official to not mention contamination readings after the 9/11 WTC attack? Are you aware of anyone who did? If so, please provide the name of any person who made such a request and the name of any person to whom the request was made.*

Answer: Again, I cannot speak for Governor Whitman. I assume you are asking her the same question and she will answer it herself. As for me, my answers to both parts of your question is no.

Response to Post-Hearing Questions from Marianne L. Horinko, Executive Vice President, Global Environment & Technology Foundation

Marianne L. Horinko
4710 Benjamin Cross Court
Chantilly, VA 20151

October 18, 2007

Chairman Jerrold Nadler
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
B353 Rayburn House Office Building
Washington, DC 20515

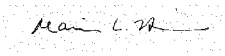
RE: Supplemental questions from the 6/25/07 subcommittee hearing

Dear Chairman Nadler:

Thank you for providing me with the opportunity to testify before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties on June 25, 2007. Please find enclosed the written responses to the additional questions from members of your Subcommittee. I hope that these responses will be helpful to the Subcommittee members in consideration of the issues presented at the hearing.

Please let me know if I can be of further assistance.

Sincerely,



Marianne Horinko

Enclosure

Judiciary Committee on Constitution, Civil Rights & Civil Liberties
EPA's Handling of Air Quality Issues Following September 11, 2001

Follow-Up Questions

Marianne Horinko, Former EPA Assistant Administrator

1. Do you believe that paper filament masks provide adequate protection against asbestos or ultrafine particulates?

Response: I am not qualified to offer an opinion on the adequacy of paper filament masks.

2. Did EPA provide paper filament masks in NYC after 9/11?

Response: To the best of my knowledge, I believe EPA provided paper filament masks to its employees in NYC after 9/11.

3. Did anyone tell you that it might not be safe to send workers back to work in the financial district on September 17, 2001? If so, who provided you with this information?

Response: No one told me that it might not be safe to send workers back to work in the financial district on September 17, 2001.

4. Are OSHA standards for asbestos protective of children, pregnant women, the elderly and people with asthma?

Response: I will defer to the experts at OSHA as to whether its own standards for asbestos are protective of children, pregnant women, the elderly and people with asthma.

5. Are you aware that EPA concluded in 1986, under the Reagan Administration, that there are no safe levels of asbestos? Did EPA ever change that policy? If so, please provide the date and citation for the Federal Register announcement by EPA.

Response: No, I was not aware of EPA's conclusion in 1986 that there are no safe levels of asbestos and I am not aware of any subsequent changes to that policy by EPA.

6. Who in the New York City government asked the EPA not to participate in indoor cleaning?

Response: I was not aware that anyone in the New York City government asked the EPA not to participate in indoor cleaning.

7. Did you comply with White House Chief of Staff Andrew Card's requirement that all statements to the media about 9/11 be cleared through the National Security Council? If not, why not? If you did, were any statements altered or not made following this review? If so, which statements and what were the changes?

Response: I was not involved and/or required by the White House to clear any media statements about 9/11 through the National Security Council.

8. Did anyone tell you that the EPA did not have a "legal basis" to take "Federal control of the site." If so, who provided you with this opinion and what was the rationale for the opinion?

Response: No one told me that the EPA did not have a "legal basis" to take "Federal control of the site."

9. Did you or Administrator Whitman ever ask an Incident Commander to downplay or not report the environmental hazards from the 9/11 WTC attack? Are you aware of anyone who did? If so, please provide the name of anyone who made this request and the names of any individuals to whom the requests were made.

Response: No, I did not ask an Incident Commander to downplay or not report the environmental hazards from the 9/11 WTC attack and I am not aware of anyone who made such request.

10. Did you or Administrator Whitman ever ask any EPA official to not mention contamination readings after the 9/11 WTC attack? Are you aware of anyone who did? If so, please provide the name of anyone who made this request and the name of anyone to whom this request was made.

Response: No, I did not ask any EPA official to not mention contamination readings after the 9/11 WTC attack and I am not aware of anyone who made such request.

11. At the hearing, Administrator Whitman presented EPA's "Lessons Learned in the Aftermath of September 11, 2001" Final Report dated February 1, 2002, that you prepared. That report states "EPA's mission was to protect frontline responders and residents from dust and contaminants released when commercial aircraft were deliberately crashed." It goes on to say "mission accomplished." Do you believe today that EPA accomplished its mission of protecting frontline responders and residents?

Response: I strongly believe that EPA accomplished its mission of protecting frontline responders and residents as much as humanly possible.

12. The "Lessons Learned" report documented that EPA On-Scene Coordinators "expertise was not being used." Do you agree with that conclusion today? Why wasn't their expertise used?

Response: The overwhelming conditions at the time made it impossible for those at the scene to employ the appropriate level of expertise.

13. The "Lessons Learned" report also concluded that "upper-level managers believed overall coordination was successful, emergency response personnel believed otherwise." Do you agree with that conclusion? Were you aware that emergency response personnel believed otherwise?

Response: Yes, I agree with the conclusion of "Lessons Learned" regarding the difference of opinion between upper-level managers and the emergency response personnel, and I was aware of this difference of opinion.

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6. EPA IG Report Executive Summary (August 21, 2003)
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12. *AP* "Clinton Troubled by 9-11 Report, to Block EPA Nominee"(September 6, 2003)
13. EPA IG Interview Notes of Eileen McGinnis, Pg 4 (February 12, 2003)
14. 9/11 Commission Report - Notes to Chapter 10, page 555
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16. Sierra Club Report, Table 1 (annotated version): Comparison of Known Information on WTC Pollution and Health Effects with Statements Made or Actions Taken by Federal Administration (August 2004)
17. EPA IG Report, Asbestos Testing Methods, Page 13.
18. EPA Draft Indoor Sampling Plan Prepared by EAWG (October 2001)
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    NYC DOH Instructions to Residents – Wet Rag Instructions
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22. *AP* "Democrats ask for investigation of ex-pollution Agency director on Sept. 11 health issues (September 13, 2006)
23. CBS News Transcripts: The Osgood File Various Times CBS – 9/11/06
24. Sierra Club Report, Page 73 Re: Richard Clarke & Bush's Instructions to Reopen Wall St.
25. *New York Times* "After the attacks: The Chemicals; Monitors Say Health Risk from Smoke is Very Small" (September 14, 2001)
26. CBS News Transcripts – *60 Minutes* (September 10, 2006)
27. EPA IG Report Table 2-2: Outdoor Sampling Timeline for Pollutants of Concern, Page 11
28. *Federal Register*Vol. 51, No. 80 4/25/1986 –EPA Asbestos Rule "No Safe Level of Exposure"
29. EPA IG Report Table 2-1: Key Air Quality Statements from EPA Press Releases (Pg 9-10) "25%"
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35. Statement of Gov. Christine Todd Whitman, Administrator U.S. EPA before the Senate Appropriations Subcommittee on VA, HUD and Independent Agencies– 11/28/01
36. New Zealand Press: "Workers at Ground Zero Should Have Been Protected: Giuliani" (9/12/06)
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39. Sierra Club Report: Pollution and Deception at Ground Zero. Page 17 (USGS)
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TAB 1

U.S. Environmental Protection Agency

EPA Response to September 11

September 18, 2001

Whitman Details Ongoing Agency Efforts to Monitor Disaster Sites, Contribute to Cleanup Efforts [En Español]

EPA Administrator Christie Whitman announced today that results from the Agency's air and drinking water monitoring near the World Trade Center and Pentagon disaster sites indicate that these vital resources are safe. Whitman also announced that EPA has been given up to $53 million from the Federal Emergency Management Agency (FEMA) to support EPA's involvement in cleanup activities and ongoing monitoring of environmental conditions in both the New York City and Washington metropolitan areas following last week's terrorist attacks on the World Trade Center and the Pentagon.

"We are very encouraged that the results from our monitoring of air quality and drinking water conditions in both New York and near the Pentagon show that the public in these areas is not being exposed to excessive levels of asbestos or other harmful substances," Whitman said. "Given the scope of the tragedy from last week, I am glad to reassure the people of New York and Washington, D.C. that their air is safe to breath and their water is safe to drink," she added.

In the aftermath of last Tuesday's attacks, EPA has worked closely with state, federal and local authorities to provide expertise on cleanup methods for hazardous materials, as well as to detect whether any contaminants are found in ambient air quality monitoring, sampling of drinking water sources and sampling of runoff near the disaster sites.

At the request of FEMA, EPA has been involved in the cleanup and site monitoring efforts, working closely with the U.S. Coast Guard, the Centers for Disease Control (CDC), the Occupational Safety and Health Administration (OSHA) and state and local organizations.

EPA has conducted repeated monitoring of ambient air at the site of the World Trade Center and in the general Wall Street district of Manhattan, as well as in Brooklyn. The Agency is planning to perform air monitoring in the surrounding New York metropolitan area. EPA has established 10 continuous (stationary) air monitoring stations near the WTC site. Thus far, from 50 air samples taken, the vast majority of results are either non-detectable or below established levels of concern for asbestos, lead and volatile organic compounds. The highest levels of asbestos have been detected within one-half block of ground zero, where rescuers have been provided with appropriate protective equipment.

In lower Manhattan, the City of New York has also been involved in efforts to clean anything coated with debris dust resulting from Tuesday's destruction. This involves spraying water over buildings, streets and sidewalks to wash the accumulated dust off the building and eliminate the possibility that materials would become airborne. To complement this clean up effort, EPA has performed 82 dust sample analyses for the presence of asbestos and other substances. Most dust samples fall below EPA's definition of "asbestos containing material" (one percent asbestos). Where samples have shown greater than one percent asbestos, EPA has operated its 10 High Efficiency Particulate Arresting, HEPA, vacuum trucks to clean the area and then resample. EPA also used the 10 HEPA vac trucks to clean streets and sidewalks in

the Financial District in preparation for Monday's return to business. The Agency plans to use HEPA vac trucks to clean the lobbies of the five federal buildings near the World Trade Center site, and to clean the streets outside of New York's City Hall.

Drinking water in Manhattan was tested at 13 sampling points, in addition to one test at the Newtown Sewage Treatment plant and pump station. Initial results of this drinking water sampling show that levels of asbestos are well below EPA's levels of concern.

While FEMA has provided EPA with a Total Project Ceiling cost of slightly more than $83 million for the Agency's cleanup efforts in New York City and in at the Pentagon site, EPA currently is working with emergency funding of $23.7 million. If costs exceed this level, FEMA will authorize EPA to tap additional funding in increments of $15 million. As part of the additional funding to be provided by FEMA, EPA will be responsible for any hazardous waste disposal, general site safety and providing sanitation facilities for many of the search and rescue workers to wash the dust off following their shifts. EPA is coordinating with both the U.S. Air Force Center for Environmental Excellence and the U.S. Coast Guard to quickly implement these additional responsibilities to ensure that search and rescue personnel are provided with the maximum support and protection from hazardous materials that may be found during their mission.

At the Pentagon explosion site in Arlington Va., EPA has also been involved in a variety of monitoring of air and water quality. All ambient air monitoring results, both close to the crash site and in the general vicinity, have shown either no detection of asbestos or levels that fall well below the Agency's level of concern. Testing of runoff water from the disaster site does not show elevated levels of contaminants. Given the large numbers of Department of Defense (DOD) employees returning to work this week, EPA has worked closely with officials from DOD and from the Occupational Safety and Health Administration (OSHA) to evaluate air and drinking water quality and to be certain that the workplace environment will be safe.

While careful not to impede the search, rescue and cleanup efforts at either the World Trade Center or the Pentagon disaster sites, EPA's primary concern has been to ensure that rescue workers and the public are not being exposed to elevated levels of potentially hazardous contaminants in the dust and debris, especially where practical solutions are available to reduce exposure. EPA has assisted efforts to provide dust masks to rescue workers to minimize inhalation of dust. EPA also recommends that the blast site debris continue to be kept wet, which helps to significantly reduce the amount of airborne dust which can aggravate respiratory ailments such as asthma. On-site facilities are being made available for rescue workers to clean themselves, change their clothing and to have dust-laden clothes cleaned separately from normal household wash.

EPA Information about the events of September 11

Last updated on Monday, March 13th, 2006
URL: http://www.epa.gov/wtc/stories/headline_091801.htm

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TAB 2

OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Evaluation Report

EPA's Response to the World Trade Center Collapse: Challenges, Successes, and Areas for Improvement

Report No. 2003-P-00012

August 21, 2003

EPA officials told us that EPA's WTC press releases issued during the weeks following September 11 were discussed in conference calls that included EPA officials, OSHA, and CEQ. Accordingly, the content of an EPA press release issued during this period could come from several different sources.

Few written records were available on the process used to prepare WTC press releases. We found draft versions for two of the press releases. However, the White House's role in EPA's public communications about WTC environmental conditions was described in a September 12, 2001, e-mail from the EPA Deputy Administrator's Chief of Staff to senior EPA officials:

> *All statements to the media should be cleared through the NSC [National Security Council] before they are released.*

According to the EPA Chief of Staff, one particular CEQ official was designated to work with EPA to ensure that clearance was obtained through NSC. The Associate Administrator for the EPA Office of Communications, Education, and Media Relations (OCEMR)[3] said that no press release could be issued for a 3- to 4-week period after September 11 without approval from the CEQ contact.

Although EPA's position has been that WTC area residents should obtain "professional cleaning,"[4] EPA's press releases did not instruct residents to do so. Instead they instructed residents to follow recommended and proper cleaning procedures and referred the public to the New York City Department of Health (NYCDOH) for recommended cleaning procedures. We asked the OCEMR Associate Administrator whether her office had considered advising the public through a press release that they needed to obtain professional cleaning for their indoor spaces. The Associate Administrator stated: "It was in a press release: it was removed by. . . [the CEQ contact]."

OCEMR's records contained a document, entitled "PM FACT SHEET," that discussed the health risk to "sensitive populations" from exposure to particulate matter. We asked the Associate Administrator whether she had considered putting any of this information in a press release. She said she had, but the CEQ official discouraged her from doing so. Her recollection was that he told her health effects information should not be included in EPA's press releases, and that anything dealing with health effects should come from New York because they were on the ground and they were already dealing with it.

---

[3] EPA's Office of Communication, Education and Media Relations (OCEMR) issued the press releases. The OCEMR Associate Administrator left the Agency in December 2001 and OCEMR was renamed the Office of Public Affairs in July 2002.

[4] In this context, professional cleaning refers to the use of a certified asbestos cleaner trained in the proper use of personal protective equipment and procedures to prevent re-contamination.

Attachment 1, page 1 of 1
Email from
Deputy Administrator's Chief of Staff

Claudia McMurray
09/12/01 07:04 PM

To: Eileen McGinnis/DC/US/EPA/US@EPA, Susan Spencer/DC/US/EPA/US@EPA, Ed Kowalski/DC/US/EPA/US@EPA, Marianne Horinko/DC/US/EPA/US@EPA, Tom Gibson/DC/US/EPA/US@EPA, Jessica Farley/DC/US/EPA/US@EPA, Tina Kreisler/DC/US/EPA/US@EPA
cc: Linda Fisher/DC/US/EPA/US@EPA
Subject: Report from Deputy Secretaries meeting

Linda asked that I provide you with the information received at today's Deputies' meeting. This information applies to attack-related activities of the Agency only. You will note as you review it that this information should be limited to your internal use.

1. All statements to the media should be cleared through the NSC before they are released.

2. Congressional contacts/responses to requests for briefings should be coordinated through White House Leg. Affairs.

3. DOT indicates that tomorrow U.S. air space will be opened for movement of passengers in planes that were diverted during the attack, and to allow the airlines to move a certain amount of their equipment to other airports. The hope is to gradually begin commercial air traffic again sometime tomorrow, although this has not been determined definitely. Resumption of international flights into the U.S.from other countries will be considered on a case-by-case basis, taking into consideration the country of origin, the airline involved and the degree of security at the originating airport.

4. DOJ is contrasting the "results" of FBI/DOJ investigative efforts to date with those related to the OK city bombing and the first World Trade Center explosions, where there were suspects within 24 hours of the crimes. All DOJ agencies, including the Bureau of Prisons, DEA and INS are involved in the investigation.

5. HHS has pulled three disaster medical teams and 3 morgue teams off of activities in D.C. and is sending them to New York and Pennsylvania. In addition, CDC is conducting "disease surveillance." At this time, they are not expecting large numbers of cases of airborne-related illnesses but will monitor for them. However, they are especially concerned about the West Nile virus spreading from mosquitoes and plague from rats. HHS also indicates that there is no blood shortage in NYC at this time, but will help arrange future blood donations down the line as they become necessary.

6. GSA is working to reopen federal buildings in NYC ASAP. Linda has alerted GSA and White House that there should be consultation with EPA before any reopenings occur to determine whether air circulation systems will pull in air from outside. Region 2 is being notified of this concern this evening.

7. OPM indicates that all but 6 or 7 federal employees have been accounted for; it is unclear whether this includes DOD, but it would appear so. Health and other insurance claims made by federal employees will be expedited by insurance carriers. The Combined Federal Campaign will provide options to contribute to a special set of nonprofits providing attack-related assistance. Federal agencies will be notified about the availability of leave for employees wishing to donate blood. Any necessary security clearances for attack response work will be expedited. The prime contact at OPM is Steven Cohen (or Paul Conway) at 606-1000.

8. Josh Bolten responded to questions about international travel. He indicated that it should go (nonconfidence international travel is permitted), but only if employees travelling are not diverted from any work related to response to the attack.

I can elaborate on some of this if you need additional information.

CMcM.

TAB 3

U.S. Environmental Protection Agency

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OSHA

September 13, 2001

EPA Initiates Emergency Response Activities, Reassures Public About Environmental Hazards [En Español]

U.S. Environmental Protection Agency Administrator Christie Whitman today announced that EPA is taking steps to ensure the safety of rescue workers and the public at the World Trade Center and the Pentagon disaster sites, and to protect the environment. EPA is working with state, federal, and local agencies to monitor and respond to potential environmental hazards and minimize any environmental effects of the disasters and their aftermath.

At the request of the New York City Department of Health, EPA and the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) have been on the scene at the World Trade Center monitoring exposure to potentially contaminated dust and debris. Monitoring and sampling conducted on Tuesday and Wednesday have been very reassuring about potential exposure of rescue crews and the public to environmental contaminants.

EPA's primary concern is to ensure that rescue workers and the public are not exposed to elevated levels of asbestos, acidic gases or other contaminants from the debris. Sampling of ambient air quality found either no asbestos or very low levels of asbestos. Sampling of bulk materials and dust found generally low levels of asbestos.

The levels of lead, asbestos and volatile organic compounds in air samples taken on Tuesday in Brooklyn, downwind from the World Trade Center site, were not detectable or not of concern.

Additional sampling of both ambient air quality and dust particles was conducted Wednesday night in lower Manhattan and Brooklyn, and results were uniformly acceptable.

"EPA is greatly relieved to have learned that there appears to be no significant levels of asbestos dust in the air in New York City," said Administrator Whitman. "We are working closely with rescue crews to ensure that all appropriate precautions are taken. We will continue to monitor closely."

Public health concerns about asbestos contamination are primarily related to long-term exposure. Short-term, low-level exposure of the type that might have been produced by the collapse of the World Trade Center buildings is unlikely to cause significant health effects. EPA and OSHA will work closely with rescue and cleanup crews to minimize their potential exposure, but the general public should be very reassured by initial sampling.

EPA and OSHA will continue to monitor and sample for asbestos, and will work with the appropriate officials to ensure that rescue workers, cleanup crews and the general public are properly informed about appropriate steps that should be taken to ensure proper handling, transportation and disposal of potentially contaminated debris or materials.

EPA is taking steps to ensure that response units implement appropriate engineering controls to minimize environmental hazards, such as water sprays and rinsing to prevent or minimize potential exposure and limit releases of potential contaminants beyond the debris site.

EPA is also conducting downwind sampling for potential chemical and asbestos releases from the World Trade Center debris site. In addition, EPA has deployed federal On-Scene Coordinators to the Washington, D.C. Emergency Operations Center, Fort Meade, and FEMA's alternate Regional Operations Center in Pennsylvania, and has deployed an On-Scene Coordinator to the Virginia Emergency Operations Center.

Under its response authority, EPA will use all available resources and staff experts to facilitate a safe emergency response and cleanup.

EPA will work with other involved agencies as needed to:

- procure and distribute respiratory and eye protection equipment in cooperation with the Dept. of Health and Human Services;
- provide health and safety training upon request;
- design and implement a site monitoring plan;
- provide technical assistance for site control and decontamination, and
- provide some 3000 asbestos respirators, 60 self-contained breathing apparatuses and 10,000 protective clothing suits to the two disaster sites.

New York Governor George E. Pataki has promised to provide emergency electric generators to New York City in efforts to restore lost power caused by Tuesday's tragedy, and EPA will work with State authorities to expedite any necessary permits for those generators.

OSHA is also working with Consolidated Edison regarding safety standards for employees who are digging trenches because of leaking gas lines underground. OSHA has advised Con Edison to provide its employees with appropriate respirators so they can proceed with emergency work, shutting off gas leaks in the city.

EPA information about the events of September 11

Last updated on Monday, March 13th, 2006
URL: http://www.epa.gov/WTC/stories/headline_091301.htm

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New York State DEC
New York City DEP
New Jersey DEP
OSHA

September 14, 2001

EPA Emergency Responses at World Trade Center and Pentagon [En Español]

After terrorists struck the World Trade Center and the Pentagon on September 11, 2001, 25 EPA specialists were on the scene within hours. Currently, more than 225 EPA experts are responding to the WTC and Pentagon disasters. EPA criminal investigators, forensic and technical specialists and emergency response experts are providing support to FEMA, the FBI and local emergency officials. EPA is one of many federal agencies responsible for responding to this national crisis.

The primary mission of EPA's Emergency Response Program is to protect the public and the environment from immediate threats posed by the release or discharge of hazardous substances and oil. Emergency response personnel are monitoring potential air quality issues; analyzing samples for asbestos and other hazardous materials and oil sampling; and disposing of biomedical waste. EPA has worked with the state of New York and Virginia to waive landfill amount requirements to expedite the removal of debris from the scenes.

EPA has initially budgeted $600,000 to provide technical assistance and response support. More than 3000 respirators, 80 self-contained breathing apparatus machines, and 10,000 specially-equipped protective suits are on the way to these disaster sites. EPA is working closely with federal, state, and local partners to ensure that all workers and volunteers involved in the rescue and cleanup efforts are properly protected.

EPA Region 2 emergency response staff are also stationed at the FBI Joint Operations Center in New York City, Trenton New Jersey Emergency Operations Center, and FEMA's office in Albany, NY. Region 2's Edison, NJ office is also providing work space for 100 FEMA employees. EPA HQ Emergency Operations Center is operating on a 24-hour basis, while R3 has emergency responders deployed to Washington, D.C., Ft. Meade and at the Willow Grove Naval Air Station in Pennsylvania.

EPA will continue to coordinate with our federal partners to ensure the health and safety of the public and the environment during this national crisis.

More information is available at:

EPA's Environmental Response Team Center

EPA's Oil Spill Program

EPA's Superfund Program

Federal Emergency Management Agency (FEMA) [Exit Disclaimer]

FEMA: Emergency Support Function #10 Hazardous Materials Annex [Exit Disclaimer]

FirstGov: U.S. Government Responds to September 11 [Exit Disclaimer]

EPA information about the events of September 11

September 16, 2001

EPA, OSHA Update Asbestos Data, Continue to Reassure Public about Contamination Fears [En Español]

The U.S. Environmental Protection Agency and the Department of Labor's Occupational Health and Safety Administration today announced that the majority of air and dust samples monitored at the crash site and in lower Manhattan do not indicate levels of concern for asbestos. The new samples confirm previous reports that ambient air quality meets OSHA standards and consequently is not a cause for public concern. New OSHA data also indicates that indoor air quality in downtown buildings will meet standards.

EPA has found variable asbestos levels in bulk debris and dust on the ground, but EPA continues to believe that there is no significant health risk to the general public in the coming days. Appropriate steps are being taken to clean up this dust and debris.

"Our tests show that it is safe for New Yorkers to go back to work in New York's financial district," said John L. Henshaw, Assistant Secretary of Labor for OSHA. "Keeping the streets clean and being careful not to track dust into buildings will help protect workers from remaining debris."

OSHA staff walked through New York's financial district on September 13th, wearing personal air monitors and collected data on potential asbestos exposure levels. All but two samples contained no asbestos. Two samples contained very low levels of an unknown fiber, which is still being analyzed.

Air Samples taken on Sept. 13th inside buildings in New York's financial district were negative for asbestos. Debris samples collected outside buildings on cars and other surfaces contained small percentages of asbestors, ranging from 2.1 to 3.3 - slightly above the 1 percent trigger for defining asbestos material.

"EPA will be deploying 16 vacuum trucks this weekend in an effort to remove as much of the dust and debris as possible from the site where the samples were obtained," said EPA Administrator Christie Whitman. "In addition we will be moving six continuous air monitoring stations into the area. We will put five near ground zero and one on Canal Street. The good news continues to be that the air samples we have taken have all been at levels that cause us no concern."

The continuous monitoring stations will augment the ambient air quality monitoring located in Brooklyn. EPA and OSHA will remain on site and continue to monitor for levels of asbestos, PCBs, lead and polycyclic aromatic hydrocarbons (PAHs) in the area throughout the long weeks of cleanup ahead. In addition, EPA will move in a bus that has the equipment to do instant analysis of volatile organic compound samples from air at the site. It is called a Total Atmospheric Gas Analyzer and is similar to a unit used during the Gulf War to sample emissions from the oil fires in Kuwait.

The Agency is recommending that businesses in the area planning to reopen next week take precautions including cleaning air conditioning filters and using vacuums with appropriate filters to collect dust. Vacuuming will reduce the chance of re-entering workers tracking dust into the buildings. This work is already underway by city agencies.

The U.S. Coast Guard will be assisting EPA in monitoring impacts, if any, of today's rainstorms on the water quality. However, most of the rainflow is expected to be handled by the City's waste water treatment facility, since there will be only limited sewage in the combined sewer system. EPA has a vessel on site in New York to handle any necessary testing.

Additional technical support has been offered to EPA in New York from the U.S. Air Force Surgeon General's Office of Environmental and Occupational Health. That support would involve five engineers and/or environmental technicians and equipment if needed.

EPA information about the events of September 11

U.S. Environmental Protection Agency

EPA Response to September 11

September 18, 2001

Whitman Details Ongoing Agency Efforts to Monitor Disaster Sites, Contribute to Cleanup Efforts [En Español]

EPA Administrator Christie Whitman announced today that results from the Agency's air and drinking water monitoring near the World Trade Center and Pentagon disaster sites indicate that these vital resources are safe. Whitman also announced that EPA has been given up to $83 million from the Federal Emergency Management Agency (FEMA) to support EPA's involvement in cleanup activities and ongoing monitoring of environmental conditions in both the New York City and Washington metropolitan areas following last week's terrorist attacks on the World Trade Center and the Pentagon.

"We are very encouraged that the results from our monitoring of air quality and drinking water conditions in both New York and near the Pentagon show that the public in these areas is not being exposed to excessive levels of asbestos or other harmful substances," Whitman said. "Given the scope of the tragedy from last week, I am glad to reassure the people of New York and Washington, D.C. that their air is safe to breath and their water is safe to drink," she added.

In the aftermath of last Tuesday's attacks, EPA has worked closely with state, federal and local authorities to provide expertise on cleanup methods for hazardous materials, as well as to detect whether any contaminants are found in ambient air quality monitoring, sampling of drinking water sources and sampling of runoff near the disaster sites.

At the request of FEMA, EPA has been involved in the cleanup and site monitoring efforts, working closely with the U.S. Coast Guard, the Centers for Disease Control (CDC), the Occupational Safety and Health Administration (OSHA) and state and local organizations.

EPA has conducted repeated monitoring of ambient air at the site of the World Trade Center and in the general Wall Street district of Manhattan, as well as in Brooklyn. The Agency is planning to perform air monitoring in the surrounding New York metropolitan area. EPA has established 10 continuous (stationary) air monitoring stations near the WTC site. Thus far, from 50 air samples taken, the vast majority of results are either non-detectable or below established levels of concern for asbestos, lead and volatile organic compounds. The highest levels of asbestos have been detected within one-half block of ground zero, where rescuers have been provided with appropriate protective equipment.

In lower Manhattan, the City of New York has also been involved in efforts to clean anything coated with debris dust resulting from Tuesday's destruction. This involves spraying water over buildings, streets and sidewalks to wash the accumulated dust off the building and eliminate the possibility that materials would become airborne. To complement this clean up effort, EPA has performed 62 dust sample analyses for the presence of asbestos and other substances. Most dust samples fell below EPA's definition of "asbestos containing material" (one percent asbestos). Where samples have shown greater than one percent asbestos, EPA has operated its 10 High Efficiency Particulate Arresting, HEPA, vacuum trucks to clean the area and then resample. EPA also used the 10 HEPA vac trucks to clean streets and sidewalks in

the Financial District in preparation for Monday's return to business. The Agency plans to use HEPA vac trucks to clean the lobbies of the five federal buildings near the World Trade Center site, and to clean the streets outside of New York's City Hall.

Drinking water in Manhattan was tested at 13 sampling points, in addition to one test at the Newtown Sewage Treatment plant and pump station. Initial results of this drinking water sampling show that levels of asbestos are well below EPA's levels of concern.

While FEMA has provided EPA with a Total Project Ceiling cost of slightly more than $83 million for the Agency's cleanup efforts in New York City and in at the Pentagon site, EPA currently is working with emergency funding of $23.7 million. If costs exceed this level, FEMA will authorize EPA to tap additional funding in increments of $15 million. As part of the additional funding to be provided by FEMA, EPA will be responsible for any hazardous waste disposal, general site safety and providing sanitation facilities for many of the search and rescue workers to wash the dust off following their shifts. EPA is coordinating with both the U.S. Air Force Center for Environmental Excellence and the U.S. Coast Guard to quickly implement these additional responsibilities to ensure that search and rescue personnel are provided with the maximum support and protection from hazardous materials that may be found during their mission.

At the Pentagon explosion site in Arlington Va., EPA has also been involved in a variety of monitoring of air and water quality. All ambient air monitoring results, both close to the crash site and in the general vicinity, have shown either no detection of asbestos or levels that fell well below the Agency's level of concern. Testing of runoff water from the disaster site does not show elevated levels of contaminants. Given the large numbers of Department of Defense (DOD) employees returning to work this week, EPA has worked closely with officials from DOD and from the Occupational Safety and Health Administration (OSHA) to evaluate air and drinking water quality and to be certain that the workplace environment will be safe.

While careful not to impede the search, rescue and cleanup efforts at either the World Trade Center or the Pentagon disaster sites, EPA's primary concern has been to ensure that rescue workers and the public are not being exposed to elevated levels of potentially hazardous contaminants in the dust and debris, especially where practical solutions are available to reduce exposure. EPA has assisted efforts to provide dust masks to rescue workers to minimize inhalation of dust. EPA also recommends that the blast site debris continue to be kept wet, which helps to significantly reduce the amount of airborne dust which can aggravate respiratory ailments such as asthma. On-site facilities are being made available for rescue workers to clean themselves, change their clothing and to have dust-laden clothes cleaned seperately from normal household wash.

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OSHA

September 21, 2001

NYC Monitoring Efforts Continue to Show Safe Drinking Water & Air [En Español]

EPA Administrator Christie Whitman announced today that the most detailed results to date of ongoing monitoring of drinking water in New York City provide additional reassurance that city residents are not being exposed to dangerous contaminants including asbestos, radiation, mercury and other metals, pesticides, PCBs and bacteria.

"As we continue to monitor drinking water in and around New York City, and as EPA gets more comprehensive analysis of this monitoring data, I am relieved to be able to reassure New York and New Jersey residents that a host of potential contaminants are either not detectable or are below the Agency's concern levels," Whitman said. "Results we have just received on drinking water quality show that not only is asbestos not detectable, but also we can not detect any bacterial contamination, PCBs or pesticides," she continued.

Whitman confirmed that EPA personnel, working in coordination with the New York City Department of Environmental Protection at and around the World Trade Center disaster site, have thus far taken a total of 13 drinking water samples from water mains in lower Manhattan. In addition to analyzing the samples for asbestos, pesticides and PCBs (polychlorinated biphenyls, which are mixtures of synthetic organic chemicals), EPA has also tested drinking water for metals (including mercury), and radioactivity (both alpha and beta). None of these contaminants exceeded EPA drinking water standards.

"In addition to carefully evaluating drinking water in the New York area, EPA has taken samples at the Newtown Creek Wastewater Treatment Plant, where runoff from lower Manhattan goes for treatment, to identify what sort of materials are leaving the disaster site," Whitman continued. "While we haven't yet gotten results for all possible contaminants, we do know that levels of metals and mercury are below permit discharge limits," she noted. However, Whitman did state that "following one rainstorm with particularly high runoff, we did have one isolated detection of slightly elevated levels of PCBs. This is something that we are continuing to monitor very closely." Other analysis of monitoring data taken at Newtown Creek treatment plant shows that total suspended solids and biochemical oxygen demand, common indicators of how well a wastewater treatment plant is operating, indicate that the plant is working within permit limits. The Agency will continue to collect water samples at storm water discharge points when it rains and to fully analyze the samples for asbestos, PCBs, metals and total suspended solids.

Whitman elaborated on the repeated monitoring of ambient air both at the World Trade Center disaster site and the surrounding area. To date the Agency has taken 97 air samples from 11 separate fixed monitoring sites in and around the "hot zone" and elsewhere in lower Manhattan, and four fixed monitoring sites located in New Jersey downwind from the blast. Only seven samples taken at or near ground zero have had marginally higher levels of asbestos that exceed EPA's level of concern. All rescue workers in this restricted-access area are being provided with appropriate safety equipment. Ambient air monitoring in the Financial District, where this week people have returned to work, show levels of asbestos that are below Agency levels

of concern. Four samples taken specifically to identify if mercury is present resulted in non-detectable readings. On Sept. 19, EPA also took readings of outdoor air at numerous locations around ground zero for chemicals including hydrogen sulfide, volatile organic compounds (VOCs), carbon monoxide and sulfur dioxide. All readings indicated that levels were normal and posed no public health concern. All air samples taken in New Jersey have shown no detectable levels of asbestos whatsoever.

EPA has set up eight air monitors at the Fresh Kills Landfill on Staten Island, where debris from the collapsed World Trade Center towers is being sent for criminal and forensic analysis, and eventual disposal. Initial results show no detectable levels of asbestos. The Agency will continue to operate these air monitors at the landfill and will test for asbestos and for particulate matter.

Whitman detailed dust sampling undertaken thus far at the World Trade Center site, and confirmed that EPA has done a total of 101 dust samples, of which 37 were slightly over the one percent asbestos (the amount above which material is considered asbestos-containing). EPA has continued to use its 10 High Efficiency Particulate Arresting (HEPA) filter vacuum trucks, especially in areas where dust samples show any elevated levels of asbestos. Of the 16 samples taken in the Battery Park City area, a residential community within two blocks of the disaster site, 12 showed slightly elevated levels of asbestos. After using the HEPA Vac trucks to clean streets and surfaces in Battery Park City, repeat sampling in the area showed asbestos levels that fall below concern amounts. EPA will continue to monitor this area. The HEPA Vac trucks were also used to vacuum lobbies of federal buildings near the disaster site prior to having workers return.

Monitoring and cleanup efforts also continue at the Pentagon crash site. To date, EPA has taken 140 total samples, including ambient air samples, bulk debris analysis, silica and water discharge samples. Monitoring samples have been analyzed for asbestos and other hazardous materials. Available results continue to show that rescue workers at the disaster site are not being exposed to hazardous materials.

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EPA DISASTER RESPONSE UPDATE NYC MONITORING EFFORTS CONTINUE TO SHOW SAFE DRINKING WATER, AIR

Release date: 09/21/2001

Contact Information:

Also available in Spanish: "ESFUERZOS DE MONITOREO EN NYC CONTINUAN PARA MOSTRAR QUE EL AGUA Y EL AIRE ESTAN LIMPIOS"

FRIDAY, SEPTEMBER 21, 2001

EPA DISASTER RESPONSE UPDATE NYC MONITORING EFFORTS CONTINUE TO SHOW SAFE DRINKING WATER, AIR

Contact: Bonnie Piper, 202-564-7836

David Deegan, 202-564-7839

U.S. Environmental Protection Agency (EPA) Administrator Christie Whitman announced today that the most detailed results to date of ongoing monitoring of drinking water in New York City provide additional reassurance that residents and people who work within the city are not being exposed to contaminants such as asbestos, radiation, mercury and other metals, pesticides, PCBs and bacteria.

AEPA has been very aggressive in monitoring for potential environmental problems in the aftermath of the World Trade Center attack, and I am very pleased by what we=ve discovered. New Yorkers and New Jersians need not be concerned about environmental issues as they return to their homes and workplaces,@ Whitman said. AAir quality monitoring data in residential areas has been consistently reassuring. More recently, we=ve also tested drinking water supplies and found no sign of asbestos bacterial contamination, PCBs or pesticides,@ she continued.

EPA personnel, working in coordination with the New York City Department of Environmental Protection at and around the World Trade Center disaster site, have taken 13 drinking water samples from water mains in lower Manhattan. In addition to analyzing the samples for asbestos, pesticides and PCBs (polychlorinated biphenyls), EPA has also tested drinking water for metals (including mercury), and radioactivity (both alpha and beta). None of these contaminants exceeded EPA drinking water standards.

AIn addition to carefully evaluating drinking water in the New York area, EPA has taken samples at the Newtown Creek Wastewater Treatment Plant, where runoff from lower Manhattan goes for treatment, to identify what sort of materials are leaving the disaster site,@ Whitman continued. AWhile we haven=t yet gotten results for all possible contaminants, we do know that levels of metals and mercury

are below permit discharge limits,@ she noted. AFollowing one rainstorm with particularly high runoff, we did have one isolated detection of slightly elevated levels of PCBs,@ stated Whitman AWe will continue to monitor this very closely.@

Other analysis of monitoring data taken at Newtown Creek treatment plant show that total suspended solids and biochemical oxygen demand, common indicators of how well a wastewater treatment plant is operating, indicate that the plant is working within permit limits. EPA will continue to collect water samples at storm water discharge points when it rains and to fully analyze the samples for asbestos, PCBs, metals and total suspended solids.

Whitman elaborated on the repeated monitoring of ambient air both at the World Trade Center disaster site and the surrounding area. To date the Agency has taken 97 air samples from 11 separate fixed monitoring sites in and around the Ahot zone@ and elsewhere in lower Manhattan, and four fixed monitoring sites located in New Jersey downwind from the blast. Only seven samples taken at or near ground zero have had marginally higher levels of asbestos that exceed EPA=s level of concern for long-term exposure. All rescue workers in this restricted-access area are being provided with appropriate safety equipment, and EPA is working closely with the Department of Labor=s Occupational Safety and Health Administration (OSHA), and local authorities to ensure the safety of crews working on the site. Extensive efforts are being made to educate crews about potential hazards, and to provide them with facilities to clean themselves, their clothes and their vehicles of any potential contaminants.

Ambient air monitoring in the Financial District, where this week people have returned to work, show mostly no detectable levels of asbestos, or in a few isolated instances, levels of asbestos that are below EPA=s levels of concern. Four samples taken specifically to identify if mercury is present resulted in non-detectable readings. On Sept. 19, EPA also took readings of outdoor air at numerous locations around ground zero for chemicals including hydrogen sulfide, volatile organic compounds (VOCs), carbon monoxide and sulfur dioxide. All readings indicated that levels were normal and posed no public health concern. All air samples taken in New Jersey and Brooklyn have shown no detectable levels of asbestos whatsoever.

EPA has set up eight air monitors at the Fresh Kills Landfill on Staten Island, where debris from the collapsed World Trade Center towers is being sent for criminal and forensic analysis, and storage while final disposal plans are being developed. Initial results show no detectable levels of asbestos. The Agency will continue to operate these air monitors at the landfill and will test for asbestos and particulate matter.

Whitman detailed dust sampling undertaken thus far at the World Trade Center site, and confirmed that EPA has done a total of 101 dust samples, of which 37 were slightly over the one percent asbestos (the amount above which material is considered asbestos-containing). EPA has continued to use its 10 High Efficiency Particulate Arresting (HEPA) filter vacuum trucks, especially in areas where dust samples show any elevated levels of asbestos. Of the 16 samples taken in the Battery Park City area, a residential community within two blocks of the disaster site, 12 showed slightly elevated levels of asbestos. After using the HEPA Vac trucks to clean streets and surfaces in Battery Park City, repeat sampling in the area showed asbestos levels that fall below concern amounts. EPA will continue to monitor this area. The HEPA Vac trucks were also used to vacuum lobbies of federal buildings near the disaster site prior to having workers return.

Monitoring and cleanup efforts also continue at the Pentagon crash site. To date, EPA has taken 140 total samples, including ambient air samples, bulk debris

analysis, silica and water discharge samples. Monitoring samples have been analyzed for asbestos and other hazardous materials. Available results continue to show that rescue workers at the disaster site are not being exposed to hazardous materials.

R-161 ###

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EPA and OSHA Web Sites Provide Environmental Monitoring Data From World Trade Center and Surrounding Areas

Data Confirms No Significant Public Health Risks;
Rescue Crews and Nearby Residents Should Take Appropriate Precautions
Data through September 30, 2001

For Release: October 3, 2001

U.S. Environmental Protection Agency (EPA) Administrator Christie Whitman and US Department of Labor Assistant Secretary for Occupational Safety and Health (OSHA) John Henshaw announced today that both federal agencies are providing the public with extensive additional environmental monitoring data from the World Trade Center site and nearby areas in Manhattan, Brooklyn and New Jersey. Both agencies have taken hundreds of samples to monitor environmental conditions since September 11, and have found no evidence of any significant public health hazard to residents, visitors or workers beyond the immediate World Trade Center area.

In response to public requests for more detailed information, EPA and OSHA are making the results of environmental and occupational sampling available on their sites on the World Wide Web (www.epa.gov and www.osha.gov), and will post additional data as it becomes available.

EPA and OSHA, working closely with other federal, state, and local agencies, have been sampling the air, dust, water, river sediments and drinking water and analyzing them for the presence of pollutants such as asbestos, radiation, mercury and other metals, pesticides, PCBs, or bacteria that might create health hazards. They have found no evidence of any significant public health hazard to residents or visitors to the New York metropolitan area.

"EPA's website now has more detailed information on environmental monitoring information in New York City that should be very reassuring to residents, tourists and workers, and we will continue to update that site with information as it becomes available" said EPA Administrator Whitman. "Our data show that contaminant levels are low or nonexistent, and are generally confined to the Trade Center site. There is no need for concern among the general public, but residents and business owners should follow recommended procedures for cleaning up homes and businesses if dust has entered."

OSHA Administrator John Henshaw confirmed that workers on the site should take appropriate steps to protect themselves, but there is no threat to public health. "We have more than 200 staffers involved in a round-the-clock effort, continually monitoring conditions to ensure the safety and health of workers," Administrator Henshaw said. "It is important for workers involved in the recovery and clean-up to wear protective equipment as potential hazards and conditions are constantly changing at the site; however, our samples indicate there is no evidence of significant levels of airborne asbestos or other contaminants beyond the disaster site itself."

On the whole, despite questions about potential contaminants from the Trade Center

site, EPA and OSHA data indicates there is no cause for general public concern. Residents and workers returning to buildings where dust from the Trade Center has entered the building should follow proper procedures in cleaning buildings, but the general public should feel very reassured about the extensive environmental monitoring data that has been collected and analyzed. Rescue and recovery crews working on the Trade Center site should take steps to protect themselves from potential exposure to contaminants by using respirators and washing stations as recommended by EPA and OSHA.

In total, EPA and OSHA have taken 835 ambient air samples in the New York City metropolitan area. EPA is currently collecting data from 16 fixed air monitors at ground zero and in the residential and business districts around the site, and both EPA and OSHA are using portable sampling equipment to collect data from a range of locations throughout the area.

Out of a total of 442 air samples EPA has taken at ground zero and in the immediate area, only 27 had levels of asbestos above the standard EPA uses to determine if children can re-enter a school after asbestos has been removed – a stringent standard based upon assumptions of long-term exposure. OSHA has analyzed 67 air samples from the same area, and all were below the OSHA workplace standard for asbestos.

All fifty-four air samples from EPA's four monitors in New Jersey found no levels above EPA's standard. Another 102 samples were taken from EPA's monitors at the Fresh Kills landfill in Staten Island, where debris from the World Trade Center is being taken; only two exceeded EPA's standard.

Of 177 bulk dust and debris samples collected by EPA and OSHA and analyzed for asbestos, 48 had levels over 1 percent, the level EPA and OSHA use to define asbestos-containing material. Although early samples from water runoff into the Hudson and East Rivers showed some elevated levels of polychlorinated biphenyls (PCBs), dioxin, asbestos and metals, recent results find non-detectable levels of asbestos, and PCBs and polycyclic aromatic hydrocarbons (PAHs) and metals below the level of concern.

EPA and OSHA have also conducted sampling for the presence of metals (lead, iron oxide, zinc oxide, copper and beryllium) at ground zero and in surrounding areas. None of the levels of these metals have exceeded OSHA limits.

Although EPA has measured dioxin levels in and around the World Trade Center site that were at or above EPA's level for taking action, the risk from dioxin is based on long-term exposure. EPA and OSHA expect levels to diminish as soon as the remaining fires on the site are extinguished.

Of the 36 samples of volatile organic compounds (VOCs) taken around ground zero to assist response workers in determining the appropriate level of respiratory protection, several samples have been above the OSHA standard for workers. None presented an immediate risk to workers, and the levels are expected to decline when the fires are out.

Fact sheets with more specific information for various parts of the New York City metropolitan area are available:

Environmental Information from Ground Zero at the World Trade Center Site
Environmental Information from Lower Manhattan for Residents, Area Employees and Local Business Owners
Other Environmental Issues Related to the Attack on the World Trade Center

Latest Available Daily Environmental Monitoring Summary

Resources on the World Wide Web:

TAB 4

Southern Audit/Evaluation Resource Center
Assignment Title: Evaluation Of EPA's Response To The WTC Collapse
Master Assignment Number: 2002 - 0000702

(Note: All information below was obtained from the Chief of Staff unless otherwise noted.)

1. Shortly after September 11, there was a daily meeting at 8:30 in the morning to discuss the crisis situation. The participants changed from day-today. This group discussed EPA's press releases along with many other topics. At the 8:30 am meeting, the Administrator set the tone for the press releases. EPA does not use nor require an approval checklist or other signature authority prior to issuing a press release; this practice did not change during the post-September 11 period of developing and issuing press releases.

2. EPA's early WTC "press releases were written by committee" (the Chief of Staff could not remember exactly when this method of writing press releases may have tapered off or ceased).

3. Many sources provided information for the press releases, including EPA Region 2 officials and Mr. Sam Thernstrom (from the Council on Environmental Quality, Executive Office of the President). Information provided included wording and sentences to be included in EPA's press releases and the deletion of wording and sentences in draft press releases.

4. The Council on Environmental Quality (CEQ) was EPA's conduit to the National Security Council NSC) and the primary mechanism used to write the press releases by committee. To her knowledge, all government entities dealt with the National Security Council through CEQ ("this was government wide"). "NSC was the final decision maker." "If Sam oked it, then it was issued." The Chief of Staff understood that Sam provided draft press releases to other government officials, but she does not know who these other goveroment officials were. All of her communications regarding incorporating the views of the NSC and any others in EPA's press releases were channeled through Sam Thernstrom in CEQ.

5. Ms. McGinnis did not approve any WTC press releases in writing or verbally. However, she indicated she was

kept informed about the content of draft press releases to the extent that she knew what was in each press release before it was released and, if there was a significant change after she saw a press release, she expected the revised press release with the significant change would be shown to her before it was released. When the press release was OK, she said Ms. Kreisher would know that it was OK and ready to be issued.

6. When asked whether this arrangement amounted to tacit approval of press releases, the Chief of Staff indicated she did not agree with this characterization of the process used to issue WTC press releases "because final approval came from the White House."

7. She does not remember if the Administrator saw any final WTC press releases prior to their issuance.

8. The Chief of Staff was asked about the statement in the press release on September 18th that the air in lower Manhattan was "safe to breathe" (see workpaper A1.a1, page 10, item number 61, and A1.a2, page 6). The Chief of Staff was asked whether there was concern about the accuracy of this statement. Her recollection was that they "did a lot of QC [quality checking] on that statement." It was supported. She further stated that "peer review later confirmed it . . . QC confirmed it." The Chief of Staff was asked whether we could see the QC data? She indicated that she didn't have the data to support the press releases. She suggested we contact Ms. Elaine Stanley's Office of Environmental Information (OEI) for the data.

9. The Chief of Staff indicated that, whereas everyone was concerned about the quality of monitoring data, there were two different viewpoints on the need to publicize monitoring results. One viewpoint was that monitoring results should not be released until they had been quality checked. The other viewpoint was that, under the circumstances, they could not wait for normal quality checks, and that the air monitoring results should be publicized as soon as possible. EPA's "culture" is "quality" not "speed," she noted. She

TAB 5

Details (information obtained from EPA's former Associate Administrator in response to the OIG representatives questions) -

1. Before September 11, OCEMR maintained continuous contact with the White House Communications Office which was headed by Karen Hughes.

2. Ms. Kreisher's contact with the White House Communications Office was Mr. Scott McClellan. Ms. Kreisher was not familiar with the organizational structure of the White House Communications Office and did not know whether he worked directly for Ms. Hughes.

3. Standard operating procedures before September 11 were for representatives from each cabinet communications office to discuss potentially significant news events during a daily morning conference call. Each communications office was given the opportunity to discuss breaking news events in their department/agency. The purpose of the conference call was to keep the White Communications Office from being surprised by a significant news event, and to allow the offices to coordinate their responses if more than one office was likely to be asked about the event.

4. After September 11, a more formal coordination structure was established.

5. This formality was reflected in an email which an OIG representative located in the files discussed in the Background Section of this work paper. The email, dated September 12, 2001, stated:

   a. "All statements to the media should be cleared through the NSC [National Security Council] before they are released."

   b. "Congressional contacts/responses to requests for briefings should be coordinated through White House Leg. Affairs."

   (See Attachment 1 to this write-up)

6. According to Ms. Kreisher, after September 11, each cabinet communications office was assigned an additional contact person (Ms. Kreisher continued to work with Mr. McClellan). Mr. Sam Thernstrom was EPA's additional contact (Mr. Thernstrom was also the contact for the communications offices of OSHA and at least one other entity).

TAB 6

OFFICE OF INSPECTOR GENERAL

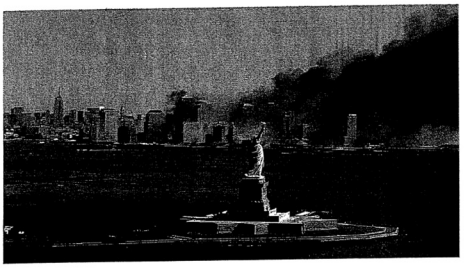
Catalyst for Improving the Environment

Evaluation Report

EPA's Response to the World Trade Center Collapse: Challenges, Successes, and Areas for Improvement

Report No. 2003-P-00012

August 21, 2003



Executive Summary

The September 11, 2001, terrorist attack on the World Trade Center in New York City and the environmental aftermath were unprecedented. Airborne dust from the collapse of the towers blanketed Lower Manhattan and was blown or dispersed into many of the surrounding office buildings, schools, and residences. This complex mixture of building debris and combustion by-products contained such ingredients as asbestos, lead, glass fibers, and concrete dust. Responding to this crisis required organizations from all levels of government to coordinate their response efforts and to make critical public health and safety decisions quickly, and without all of the data that decision-makers would normally desire.

Unfortunately, this country may experience more terrorist attacks, and a response to such a tragedy could be needed again. Accordingly, we initiated this evaluation, in consultation with the Environmental Protection Agency (EPA) Deputy Administrator, to evaluate EPA's response to September 11. During our evaluation, we sought to answer six specific questions that address how EPA responded and how it could better respond in the future. These questions, along with summaries of what we found and recommendations for each, follow.

1. Did the available monitoring data and analyses of that data support EPA's major public communications regarding air quality and associated health risks resulting from the collapse of the World Trade Center (WTC) towers?

EPA's early public statements following the collapse of the WTC towers reassured the public regarding the safety of the air outside the Ground Zero area. However, when EPA made a September 18 announcement that the air was "safe" to breathe, it did not have sufficient data and analyses to make such a blanket statement. At that time, air monitoring data was lacking for several pollutants of concern, including particulate matter and polychlorinated biphenyls (PCBs). Furthermore, The White House Council on Environmental Quality influenced, through the collaboration process, the information that EPA communicated to the public through its early press releases when it convinced EPA to add reassuring statements and delete cautionary ones. An EPA draft risk evaluation completed over a year after the attacks concluded that, after the first few days, ambient air levels were unlikely to cause short-term or long-term health effects to the general population. However, because of numerous uncertainties – including the extent of the public's exposure and a lack of health-based benchmarks – a definitive answer to whether the air was safe to breathe may not be settled for years to come. Details regarding the handling of indoor contamination are discussed in relation to Objective 2 below.

EPA has initiated actions to strengthen its risk communication procedures for emergency situations, including the development of a draft Plan for Incident

Newsweek

Periscope

We Were Not Told to Lie' About 9/11 and Health

Eleanor Clift and Julie Scelfo
534 words
8 September 2003
Newsweek
8
English
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After stepping down this summer as the head of the EPA, the embattled Christine Todd Whitman is once again in the hot seat. This time it's over her role in the downplaying of health hazards for New York City residents after 9/11. A report by the EPA inspector general says that Whitman assured the public that the air was safe before testing was conclusive. She's also under fire for allowing EPA statements to be filtered through the White House and screened by the Council on Environmental Quality, which is chaired by James Connaughton, a lawyer who formerly represented the asbestos industry.

The long-term affects of inhaling contaminated air is unknown. But New York Rep. Jerrold Nadler accuses the administration of covering up a potential health danger in order to get the economy up and running. "Many people will die early because of this," says Nadler.

In her first interview since the release of the report, Whitman tells NEWSWEEK that she did not object when the White House edited out cautionary notes by EPA scientists. "We didn't want to scare people," she said, explaining that spikes in asbestos readings tended to return quickly to acceptable levels. She believes that much of the data were open to interpretation, and that the public wasn't harmed by the White House's decision to adopt the more reassuring analysis. But New York Sen. Hillary Clinton is calling for an investigation, saying she knows how the White House works and that somebody surely leaned on the EPA to lie. "We were not told to lie," says Whitman.

Firefighters and other rescue workers suffering health problems continue to blame the EPA for failing to make them aware of the risks. The EPA advised wearing protective clothing and masks, Whitman says, but many working on the site rejected the gear as too cumbersome. "We couldn't force them to do it," says Whitman. In addition, residents returning to the area say they weren't told to have their homes professionally cleaned.

"Maybe there was one press release where we didn't say that, but then we said it over and over," says Whitman.

EPA's former ombudsman said soon after 9/11 that Whitman had a conflict of interest because of her husband's connection to Citigroup, which owns Travelers Insurance. By pronouncing lower Manhattan safe, critics say, Whitman saved the insurance giant millions in cleanup costs. Whitman was cleared of the conflict by the EPA inspector general. "There's no way in hell--excuse my language--that I would ever, ever play games with this kind of information."

Eleanor Clift and Julie Scelfo

NEWS
Whitman: EPA did not lie on 9/11 air risk - After critical report, ex-chief denies Ground Zero dangers minimized
TED SHERMAN
STAR-LEDGER STAFF
788 words
2 September 2003
The Star-Ledger
EAST
1
English
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Former Environmental Protection Agency administrator Christie **Whitman** yesterday denied that her agency downplayed the health risks of the dust plume caused by the collapse of the World Trade Center on Sept. 11, 2001.

In the wake of a recent watchdog report criticizing the EPA for its reassurances immediately after the terror attacks that the air in Lower Manhattan was safe to breathe - despite the lack of data or proper analysis - **Whitman** said there was never an intention to mislead the public.

At the same time, while acknowledging that some of those reassurances came at the direction of the White House, she said her agency was never told to lie about the air quality.

"At no time did anyone from the White House say, 'Don't put out this data, or manipulate it,'" **Whitman** said. "Nothing was ever changed in a way to jeopardize the health of the people."

The growing storm over the EPA's actions, and the role of the White House, has led Sen. Hillary Rodham Clinton (D-N.Y.) and Rep. Jerrold Nadler (D-N.Y.) to call for a broad investigation. Nadler also wants the EPA to implement a more comprehensive cleanup of any contaminated sites.

The controversy was sparked by a report released more than a week ago by the EPA's inspector general. That report found that the agency's immediate public announcements after the collapse of the Trade Center that the air was safe to breathe were made without sufficient supporting evidence.

At the time, there were still no air monitoring data available for many of the particulates and polychlorinated biphenyls, or PCBs, that were present in the dust plume that darkened the skies over New York City. Studies have since concluded that the airborne dust from the collapsed towers contained a complex mixture of asbestos, lead, glass fibers and concrete. The dust blanketed Lower Manhattan and was blown into many surrounding office buildings, schools and apartments.

Investigators for the inspector general's office also found that the White House influenced the information the EPA was communicating to the public - convincing the agency to "add reassuring statements and delete cautionary ones." In fact, top EPA officials were instructed that all statements to the media needed to be cleared through the National Security Council.

The inspector general noted that even a year after the attacks, a draft evaluation by the EPA concluded that after the first few days, ambient air levels were unlikely to affect the health of the public.

"However, because of numerous uncertainties - including the extent of the public's exposure and a lack of health-based benchmarks - a definitive answer to whether the air was safe to breathe may not be settled for years to come," said the inspector general.

Whitman told Newsweek for this week's edition that she did not object when the White House edited out cautionary notes by EPA scientists.

"We didn't want to scare people," she said, explaining that spikes in asbestos readings tended to return quickly to acceptable levels.

Reached at her home yesterday, the former New Jersey governor charged that the controversy is being saddled with political overtones.

The report by EPA Inspector General Nikki L. Tinsley, she said, concluded only that the federal agency should have had better data to back up its conclusions. Yet she said the issue now seems to be focused on allegations - which **Whitman** said were never made by the inspector general - that the White House told them to lie.

"It didn't happen that way," said **Whitman**, who stepped down as EPA administrator in June. "They did not tell us to lie. The White House role was there had to be a consistent message. They wanted to ensure data went out in a comprehensible fashion."

Emergency workers at Ground Zero, meanwhile, have blamed the EPA for failing to warn them of the hazards. A screening program being conducted by the National Institute for Occupational Safety and Health and Mount Sinai Medical Center has found that medical problems continue to plague the cleanup and rescue workers.

Whitman, however, said the agency had strongly advised them to wear protective gear.

"There was a constant drumbeat on my part and others to make sure people working at the site used respiratory devices," she said. "But respirators are hot, and these were people trying desperately to get to their brothers and sisters. When we went down there to tell them to wear protective gear, they told us, 'Get out of my way.'"

1. Former EPA chief Christie **Whitman** says, "Nothing was ever changed."

Document NSJ0000020030902dz9200005

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TAB 7

OFFICE OF INSPECTOR GENERAL

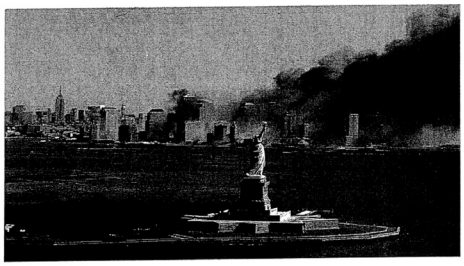
Catalyst for Improving the Environment

Evaluation Report

EPA's Response to the World Trade Center Collapse: Challenges, Successes, and Areas for Improvement

Report No. 2003-P-00012

August 21, 2003



We were unable to identify any EPA official who claimed ownership of EPA's WTC press releases issued in September and early October 2001. When we asked the EPA Chief of Staff whether she could claim ownership of EPA's early WTC press releases, she replied that she was not able to do so "because the ownership was joint ownership between EPA and the White House," and that "final approval came from the White House." She also told us that other considerations, such as the desire to reopen Wall Street and national security concerns, were considered when preparing EPA's early press releases. The OCEMR Associate Administrator said of the September 16 release: "I did not feel like it was my press release."

September 13 Press Release Also Revised to Eliminate Cautionary Statements

Cautionary statements in a draft version of the September 13, 2001, press release (see Appendix H) were removed and replaced with more reassuring statements. For example, the second clause of the caption to the draft press release, which noted that EPA was testing for environmental hazards, was replaced with a statement reassuring the public about environmental hazards. Further, the press release did not contain a statement in the draft version that EPA considered asbestos hazardous in this situation. We were unable to locate any record that explained why the changes were made, and the OCEMR Associate Administrator did not recall ever having seen the draft. The major differences between the draft and the issued press release are shown in Table 2-5.

Table 2-5: Significant Changes to the September 13 EPA Press Release

Draft Press Release	*Issued Press Release*
Caption to press release: EPA Initiating Emergency Response Activities, Testing Terrorized Sites For Environmental Hazards	**Revised caption to press release:** EPA Initiating Emergency Response Activities, Reassures Public About Environmental Hazards
Preliminary results of EPA's sampling activities indicate no or very low levels of asbestos. However, even at low levels, EPA considers asbestos hazardous in this situation and will continue to monitor and sample for elevated levels of asbestos and work with the appropriate officials to ensure awareness and proper handling, transportation and disposal of potentially contaminated debris or materials.	EPA is greatly relieved to have learned that there appears to be no significant levels of asbestos dust in the air in New York City," said Administrator Whitman. "We are working closely with rescue crews to ensure that all appropriate precautions are taken. We will continue to monitor closely." Public health concerns about asbestos contamination are primarily related to long-term exposure. Short-term, low-level exposure of the type that might have been produced by the collapse of the World Trade Center buildings is unlikely to cause significant health effects. EPA and OSHA will work closely with rescue and cleanup crews to minimize their potential exposure, but the general public should be very reassured by initial sampling.

The extent of the CEQ official's influence on EPA's WTC press releases was most clearly illustrated by the changes that were made to a draft press release dated September 14, 2001, that was issued on September 16, 2001. Every change that was suggested by the CEQ contact was made. The CEQ official's suggested changes added reassuring statements and deleted cautionary statements.

Details on these various revisions based on the CEQ contact's input, including comparisons of draft and issued versions, are in Table 2-4, while the actual press release is in Appendix G. It should be noted that our analysis of CEQ's input was limited because CEQ officials chose not to meet with us. Details on this limitation are in Appendix B.

Table 2-4: Impact of CEQ Instruction on September 16 EPA Press Release

Statement Deleted From the Draft and Not Replaced	
The concern raised by these samples would be for the workers at the cleanup site and for those workers who might be returning to their offices on or near Water Street on Monday, September 17, 2001.	
Statements Significantly Revised	
Draft Press Release	***Issued Press Release***
Recent samples of dust gathered by OSHA on Water Street show higher levels of asbestos in EPA tests.	The new samples confirm previous reports that ambient air quality meets OSHA standards and consequently is not a cause for public concern. New OSHA data also indicates that indoor air quality in downtown buildings will meet standards. EPA has found variable asbestos levels in bulk debris and dust on the ground, but EPA continue [sic] to believe that there is no significant health risk to the general public in the coming days. Appropriate steps are being taken to clean up this dust and debris.
Seven debris and dust samples taken Thursday, showed levels of asbestos ranging from 2.1 percent to 3.3 percent. EPA views a 1 percent level of asbestos as the definition for asbestos-containing material.	Debris samples collected outside buildings on cars and other surfaces contained small percentages of asbestors, [sic] ranging from 2.1 to 3.3 - slightly above the 1 percent trigger for defining asbestos material.
Statements Added to the Issued Press Release Based on CEQ Instructions	
CEQ Instructions	***Statements Added to Issued Press Release***
"Add sentence about OSHA monitors walking the streets yesterday and wearing personal monitors and coming up clean."	OSHA staff walked through New York's financial district on September 13th, wearing personal air monitors and collected data on potential asbestos exposure levels. All but two samples contained no asbestos. Two samples contained very low levels of an unknown fiber, which is still being analyzed.
"INSERT HENSHAW quote somewhere around here"	"Our tests show that it is safe for New Yorkers to go back to work in New York's financial district," said John L. Henshaw, Assistant Secretary of Labor for OSHA.
"Add OSHA indoor air sampling data sentence."	Air Samples taken on Sept. 13th inside buildings in New York's financial district were negative for asbestos.

press releases]. The Chief of Staff indicated the relationship between Mr. Thernstrom and Ms. Kreisher had been strained and that she [the Chief] had asked Mr. Connaughton to get Mr. Thernstrom to "lighten up." [since the Chief approved this paragraph, the Auditor corrected the first name in the above sentence from "Connaughton" to "Thernstrom" and added the two words in brackets.]

16. The Chief of Staff indicated that discussions about the press releases had sometimes become quite heated ("screaming telephone calls"). She further stated that there was "give and take" on all sides. The Auditor asked whether Mr. Thernstrom had ever yielded on an issue. The Chief of Staff stated that he had yielded during several telephone conference calls. The Auditor replied that he had not been able to locate any indication that Mr. Thernstrom had ever yielded on any issue. The Auditor advised the Chief of Staff that it appeared when Mr. Thernstrom asked that a word, phrase, or sentence be deleted from a draft press release, it was deleted. Also, when Mr. Thernstrom asked that a specific word, phrase, or sentence be added to a draft press release, it was added. The Auditor asked whether the Chief of Staff could identify an issue on which Mr. Thernstrom had yielded. She replied that it had been a long time since the terrorist attack and she could not recall a specific issue off hand. The Auditor asked if she could please let him know if she later recalled such an example. She indicated that she would do so.

17. The Chief of Staff was read the following statement: "EPA's press release on September 16, 2001 stated: New OSHA data also indicates that indoor air quality in downtown buildings will meet standards" [see workpaper A1.a1, page 7, item 19; also A1.a2, page 5]. The Chief of Staff was informed that OSHA officials have not been able to identify the information for us but they have indicated none of their sampling that was analyzed before September 17 was done indoors or in residential spaces (see workpaper B1e, page 4, item 16). Did the Chief of Staff know what OSHA data, or any other data,

TAB 8

Title - Conference With The Former Head Of EPA's Office Of Public Affairs

Purpose -

To obtain the perspective of the former head of the Agency's Office of Public Affairs to EPA's response to the World Trade Center (WTC) disaster and what steps might be taken to improve the Agency's response to future disasters.

Persons Present At Conference -

Tina Kreisher, Speechwriter, Office of the Secretary, United States Department of the Interior; former Associate Administrator, Office of Communications, Education, and Media Relations (the predecessor to EPA's current Office of Public Affairs); 202-208-5338

Rick Beusse, Director for Program Evaluation, Air Quality Issues, EPA, OIG, RTP

Chris Dunlap, Auditor, EPA, OIG, RTP

(The conference lasted approximately two hours. Mr. Beusse had to leave the conference shortly after the first hour to meet another commitment.)

Location And Date -

The conference was held on August 28, 2002, in Ms. Kreisher's office, Room 6219, in the Department of the Interior Building, located at 1849 C Street NW, Washington, DC.

On September 19, Mr. Dunlap telephoned Ms. Kreisher to discuss a follow-up meeting (see workpaper A2a2 for a write-up of this telephone conversation). Prior to this telephone call Ms. Kreisher had not mentioned the role played by the EPA Administrator's Chief of Staff, Ms. Eileen McGinnis. Mr. Dunlap amended the original write-up to describe this role.

On September 24, while in the District of Columbia for another purpose, Mr. Dunlap showed Ms. Kreisher printed excerpts of all statements that were attributed to her, as the write-up was then written. Ms. Kreisher added a few clarifying words to several thoughts, primarily concerning the actual practices that were followed when communicating with the public. She reaffirmed all statements attributed to her as they are now stated in this write-up.

28. When asked what documentation Mr. Thernstrom might have had for making suggested changes to press releases, Ms. Kreisher replied that Mr. Thernstrom had access to the same monitoring data and most of the same communications that she had.

29. In response to a specific question whether the desire to reopen Wall Street had any impact on the content of a press release, Ms. Kreisher indicated that this was not a consideration. "We were never given any pressure" [by Wall Street].

30. When asked was there anything in the press releases that made her uncomfortable, she discussed the difficulty of getting concurrence from OSHA officials and Sam Thernstrom on the wording of the joint press release with OSHA. She and OSHA officials shared the frustration of reaching agreement on the exact wording.

31. When asked specifically whether she was concerned with the use of the word "safe" in the press releases, Ms. Kreisher replied "not till later." Ms. Kreisher further stated that the available data indicated the ambient air away from ground zero was safe to breath and they always told the workers at ground zero that they were at risk and needed protection.

32. When asked whether there was a conscious effort to reassure the public, Ms. Kreisher said there was such an effort. This emphasis "came from the Administrator and the White House."

33. An OIG representative showed Ms. Kreisher a two-page "PM FACT SHEET" and a one page transmittal email, dated September 27, 2001, which had been retrieved from the area used by EPA's Office of Public Affairs for storage (see Attachment 3 to this interview write-up). The "PM FACT SHEET" discussed the health risk to "sensitive populations" from exposure to particulate matter. The OIG representative asked Ms. Kreisher whether she had considered putting any of this information in a press release. She indicated she had. However, according to Ms. Kreisher, Mr. Thernstrom told her that "health effects information should not be included in EPA's press releases." Mr. Thernstrom further said that "Anything dealing with health effects should come from New York - they were on the ground; they were already dealing with it."

34. When asked whether Mr. Thernstrom had provided additional guidance, Ms. Kreisher replied that she could not think of anything else.

TAB 9

Title - Conference With The Former Head Of EPA's Office Of Public Affairs

Purpose -

To obtain the perspective of the former head of the Agency's Office of Public Affairs to EPA's response to the World Trade Center (WTC) disaster and what steps might be taken to improve the Agency's response to future disasters.

Persons Present At Conference -

Tina Kreisher, Speechwriter, Office of the Secretary, United States Department of the Interior; former Associate Administrator, Office of Communications, Education, and Media Relations (the predecessor to EPA's current Office of Public Affairs); 202-208-5338

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c. Mr. Thernstrom appears to have written two sentences in the first paragraph of the issued press release:

> "The new samples confirm previous reports that ambient air quality meets OSHA standards and consequently is not a cause for public concern. New OSHA data also indicates that indoor air quality in downtown buildings will meet standards."

d. Mr. Thernstrom appears to have written the second paragraph of the issued press release:

> "EPA has found variable asbestos levels in bulk debris and dust on the ground, but EPA continues to believe that there is no significant health risk to the general public in the coming days. Appropriate steps are being taken to clean up this dust and debris."

e. Mr. Thernstrom suggests that Ms. Kreisher "Add sentence about OSHA monitors walking the streets yesterday and wearing personal monitors and coming up clean." This thought, with some wording from Mr. Thernstrom's suggestion, were added to the issued press release (see the fourth paragraph of the issued press release shown in Attachment 2).

f. Mr. Thernstrom suggests that Ms. Kreisher "INSERT HENSHAW quote somewhere around here"; a quote was added (see the third paragraph of the issued press release).

g. Mr. Thernstrom suggests that Ms. Kreisher "ADD OSHA indoor air sampling data sentence"; such a sentence was added (see the fifth paragraph of the issued press release).

26. When asked how she would characterize Mr. Thernstrom influence on EPA press releases, Ms. Kreisher indicated that he had considerable influence.

27. When asked if she felt pressure from Mr. Thernstrom, she replied that she "felt extreme pressure" from him. She further stated: "I did not feel like it was my press release" even though he would periodically say: "Of course, this is your press release."

TAB 10

Title – Telephone Call To Former EPA Associate Administrator

Purpose –

To document additional information which was obtained from the former Associate Administrator of EPA's Office of Communications, Education, and Media Relations

Person Contacted –

Tina Kreisher, Speechwriter, Office of the Secretary, United States Department of the Interior; former Associate Administrator, Office of Communications, Education, and Media Relations (the predecessor to EPA's current Office of Public Affairs); 202-208-5338.

Date Of Contact – September 19, 2002

Background –

On August 28, 2002, OIG representatives met with Ms. Kreisher and obtained information about EPA's press releases concerning the World Trade Center disaster (see work paper A2a). Mr. Dunlap, OIG Auditor, telephoned Ms. Kreisher to discuss a possible future meeting. During this discussion Mr. Dunlap obtained the information provided below.

Details (Additional Information Obtained) –

1. Ms. Kreisher does not recall the wording that was initially included in a an EPA press release concerning the need for residents of Lower Manhattan to obtain "professional cleaning" (this information was reportedly deleted at the request of Mr. Thernstrom, who provided a contact point between Ms. Kreisher and the Council on Environmental Quality).

2. In response to Mr. Dunlap's specific questions, Ms. Kreisher stated that she believes the wording included the phrase "professional cleaning." However, she does not recall any wording about a "certified

asbestos clean-up contractor." Ms. Kreisher further stated that when EPA's Administrator spoke to any group she frequently talked about the need for "professional cleaning of residance" and the need to use a "HEPA vacuum" (High Efficiency Particulate Arresting vacuum). Ms. Kreisher believes she basically included the Administrator's words in the draft of a press release.

3. If response to Mr. Dunlap's request for the rationale behind excluding health effects information from EPA's press releases, Ms. Kreisher stated:

   a. It was the role of HHS or OSHA to speak about health effects ("we were not the people that spoke on health").

   b. The thought was there should be a central place where everyone should go to look for health information.

   c. Initially that central place was a New York City web site (she believes this web site was the City 's health department).

   d. In EPA's press releases, EPA referred readers to this web site.

4. Ms. Kreisher volunteered additional information on a different subject which had not been brought up by Mr. Dunlap. Ms. Kreisher stated that all press releases pertaining to the World Trade Center disaster were "always approved by the Administrator's Chief of Staff, Eileen McGinnis." In addition, Ms. McGinnis "sometimes took part in negotiations with the White House."

(The above information was added to the write-up of the prior interview, work paper A2a.)

TAB 11

support the above statement from EPA's press release on September 16th?

The Chief of Staff did not recall any discussions about the quoted statement or the extent of any supporting evidence that may have been considered. (The Chief of Staff asked whether the statement was written by Mr. Thernstrom and was told that it was written by Mr. Thernstrom and was added to EPA's 9/16/01 press release.) [no problem-see work paper A3b, pg 9 - Dunlap 9-11-03]

18. The Chief of Staff was advised that Mr. Thernstrom had expressed his opinion in writing that putting monitoring data on the web without analysis was not constructive. The Chief of Staff was also advised that at least one EPA office had prepared a website which contained cautionary information, but this website was never activated (see workpaper A2b1). Did the Chief of Staff know why this website was not activated and whether Mr. Thernstrom's position had an impact on the decision not to activate the website? The Chief of Staff had no recollections on this subject.

19. The Chief of Staff was asked whether there was "an information black out" at any point in time (whether there was a decision to withhold information for any number of possible constructive reasons)? The Chief of Staff replied "no." She stated that "it was the opposite." They were trying to get information out as quickly as possible.

20. When told that the Auditor had not located anyone in EPA who "claimed Ownership of EPA's early WTC press releases", the Chief of Staff asked whether Ms. Kreisher had claimed ownership? The Auditor replied that Ms. Kreisher stated specifically that "she did not claim ownership of EPA's early WTC press releases" (Ms Kreisher had literally said " . . . [she] did not feel like it was . . . [her] press release" - see workpaper A2a, page 7, item 27). The Auditor asked the Chief of Staff: "Would you be able to claim ownership of EPA's early press releases concerning the World

Trade Center?" She replied, "no." She said that, in her opinion, "the ownership was joint ownership between EPA and the White House."

21. The Chief of Staff was asked to discuss the Administrator's statement that legislation is needed to clarify indoor air responsibilities. The Chief of Staff was asked to please detail what the Administrator thinks needs to be done in this area. Are authorities under CERCLA/SARA not sufficient? The Chief of Staff indicated that she was not an authority on the laws or regulations that address these questions. Her recollection is that the staff told the Administrator that she needed additional authority to address the indoor problems caused by the terrorist attack. Her recollection is that the statutes are not clear on EPA's indoor air responsibilities.

22. The Chief of Staff was asked to please discuss the deliberations and resulting decisions on whether the National Contingency Plan should be implemented. She stated that the possibility of declaring the lower Manhattan area around the WTC a Superfund site was discussed but she does not recall the details of that discussion.

23. The Chief of Staff was read the following question: "When drafting the press releases in September, what data was reviewed beside EPA's data? Specifically, did EPA officials consider monitoring data from OSHA, ConEd, New York City"?

    The Chief of Staff stated that she remembers a lot of data being discussed, but it has been over fifteen months and she does not recall the source of the data or what specific data may have been relied upon in writing a press release. Her strongest recollection about the data was the fact that there was an enormous amount of data and they were all trying to figure out how they could handle it.

24. The Chief of Staff was read the following question: "Were the limitations in the asbestos methods and the

TAB 12

Associated Press

Clinton, troubled by 9-11 report, to block Bush EPA nominee
By ERIN McCLAM
Associated Press Writer
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6 September 2003
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Associated Press Newswires
English
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NEW YORK (AP) - Sen. Hillary Rodham Clinton said Saturday she planned to block President Bush's nominee to head the Environmental Protection Agency because of a report suggesting the EPA misled New Yorkers about post-Sept. 11 health risks.

Clinton told The Associated Press she would place a hold on the nomination of Utah Gov. Mike Leavitt - a procedural move that would prevent a Senate vote on his confirmation.

While the maneuver does not stop committee hearings on the nomination, a hold, by Senate tradition, blocks a full vote. Clinton said she would lift the hold only if the White House answered her concerns about the EPA report.

"This is a very big issue," she said in a telephone interview. "It not only has to do with the health and safety of the people I represent. It has to do with the credibility and trust of this entire government."

A White House spokesman said the administration was disappointed by the senator's comments.

"It's unfortunate that Sen. Clinton would seek to politicize such a qualified nominee as Gov. Leavitt," spokesman Taylor Gross said Saturday. "He is a known consensus builder and has brought people together to work on solutions for environmental improvement."

The report, issued by the EPA's inspector general Aug. 22, said the agency had given New Yorkers misleading assurances that there was no air-quality health risk after the World Trade Center collapsed in the 2001 terrorist attack.

The White House "convinced EPA to add reassuring statements and delete cautionary ones" by having the National Security Council control EPA communications after the attack, the report said.

For example, seven days after the attack, the EPA made an announcement that the air was "safe" to breathe, but the agency did not have enough information to make such a guarantee, the report found.

"When they would say, 'Oh, no, the air is safe,' there was a great sigh of relief," Clinton said. "But we know that many of the ground zero workers and volunteers are suffering from the World Trade Center cough, from asthma, from pulmonary respiratory distress."

The administration has defended its decision, saying it was justified by national security concerns.

"We were making decisions about where the information should be released, what the best way to communicate the information was, so that people could respond responsibly and so that people had a good relative sense of potential risk," **James Connaughton**, chairman of the council that coordinates federal environmental efforts, said after the report's release.

And the EPA's acting administrator, Marianne L. Horinko, has said the agency put out "the best information we had, based on just the best data that we had available at the time."

Bush nominated Leavitt, a Republican known as a moderate on environmental issues, to take over the EPA after administrator Christie Whitman announced she would leave the post.

In the AP interview, Clinton said she held no personal grudge against Leavitt but was hoping to use the maneuver to force the administration to answer her questions about why it misled New Yorkers.

"This is an effort to get the administration that he wants to join to take responsibility," she said.

Clinton has also called for another round of EPA testing for homes and businesses near the site of the attack.

Rush

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TAB 13

"does not think an enormous amount of raw data would prove to be useful." EPA opted to follow the latter approach for the WTC press releases issued in September 2002.

10. The Chief of Staff was asked whether they had considered putting qualifications in the press releases and whether there was "resistance" to putting in such qualifications? She replied that "she would not call it resistance," but would call it "competing priorities." They were always "juggling priorities." She stated that "national security" and "opening Wall Street" were the two major competing priorities.

11. The Chief of Staff was asked whether she was familiar with a "philosophy" that all government entities should speak with one voice, and whether:

    a. accordingly, instructions for cleaning indoor spaces should be provided by New York City officials only, and not EPA officials; and

    b. information about the possible health effects of the collapse of the World Trade Center should be provided by New York City officials only, and not EPA officials.

The Chief of Staff was asked if the Administrator knew whether this philosophy had any impact on the content of any of EPA's press releases. The Chief of Staff stated that she would not call these ideas a philosophy, but "she would think it was more the responsibility of the City" of New York to provide guidance to New Yorkers. According to the Chief of Staff, there was "recognition" within EPA that the City had responsibilities to address New Yorkers.

When asked whether there was any agreement or understanding that EPA would not discuss possible health effects or provide indoor cleaning instructions in EPA press releases, the Chief of Staff replied that she did not remember anyone saying we could not do either.

TAB 14

9/11 COMMISSION REPORT

FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

WITH INTERIM REPORTS, PRESS RELEASES, AND INDEX OF THE FINAL REPORT

BARNES & NOBLE BOOKS
NEW YORK

9. The 9/11 crisis tested the U.S. government's place and capabilities to ensure the continuity of constitutional government and the continuity of government operations. We did not investigate this topic, except as needed in order to understand the activities and communications of key officials on 9/11. The Chair, Vice Chair, and senior staff were briefed on the general nature and implementation of these continuity plans.

10. White House transcript, Statement by the President in His Address to the Nation, Sept. 11, 2001 (online at www.whitehouse.gov/news/releases/2001/09/20010911-16.html).

11. White House transcript, Rice interview with Bob Woodward, Oct. 24, 2001, p. 371.

12. Joshua Bolten meeting (Mar. 18, 2004); see also Steven Brill, *After: How America Confronted the September 12 Era* (Simon & Schuster, 2003), pp. 50–51.

13. The collapse of the World Trade Center towers on the morning of September 11 coated Lower Manhattan with a thick layer of dust from the debris and fire. For days a plume of smoke rose from the site. Between September 11 and September 21, 2001, EPA issued five press releases regarding air quality in Lower Manhattan. A release on September 16 quoted the chair of the assistant secretary for labor in OSHA that says there "is a risk for New Yorkers to go back to work in New York's financial district." (OSHA's responsibility extends only to indoor air quality for workers, however.) The most controversial press release, on September 18, quoted EPA Administrator Christine Whitman as saying that the air was "safe" to breathe. This statement was issued the day after the financial markets reopened. The EPA Office of Inspector General investigated the issuance of these press releases and concluded that the agency did not have enough data about the range of possible pollutants other than asbestos to make a judgement, based public health benchmarks for appropriate levels of asbestos and other pollutants, and had inspection methods for sampling asbestos in the air. It also noted that more than 25 percent of the bulk dust samples collected before September 18 showed the presence of asbestos above the agency's 1 percent benchmark. EPA Inspector General report, "EPA's Response to the World Trade Center Collapse: Challenges, Successes, and Areas for Improvement," Aug. 21, 2003.

We do not have the expertise to examine the scientific accuracy of the pronouncements in the press releases. The issue is the subject of pending civil litigation.

We did examine whether the White House improperly influenced the content of the press releases so that they would inconsiderately mislead the public. The EPA press releases were coordinated with Samuel J. Berrettoni, assistant director for communications at the White House Council on Environmental Quality. Oral reports, interviews with EPA officials, and materials on the EPA's Web site were not coordinated through the White House. Although the White House review process resulted in some editorial changes to the press releases, these changes were consistent with what the EPA had already been saying without White House clearance. See, e.g., David Franco and Erika Check, "Asbestos Alert: How much of the chemical does the World Trade Center wreckage contain?" *Newsweek Web Exclusive*, Sept. 14, 2001 (quoting EPA Administrator Whitman as saying the air quality is not a health problem); Andrew C. Revkin, "After the Attacks: The Chemicals: Monitors Say Health Risk From Smoke Is Very Small," *New York Times*, Sept. 14, 2001, p. A6 (EPA says levels of airborne asbestos below threshold of concern); Hugo Kugiya, "Terrorist Attacks: Asbestos Targeted in Cleanup Effort; EPA's Whitman: 'No reason for concern,'" *Newsday*, Sept. 16, 2001, p. W31 (Whitman says there is no reason for concern given EPA data for asbestos). There were disputes between the EPA's communications person and the White House coordinator regarding the press releases. The EPA communication person said she felt extreme pressure from the White House coordinator, and felt that they were no longer her press releases. EPA Inspector General interview of Tina Kreisler, Aug. 28, 2002. The White House coordinator, however, told us that these disputes were solely concerned with process, not the actual substance of the releases. Samuel Berrettoni interview (Mar. 21, 2004). Former EPA administrator Christine Whitman agreed with the White House coordinator. Christine Whitman interview (June 28, 2004). The documentary evidence supports this claim. Although Whitman told us she spoke with White House senior economic adviser Lawrence Lindsey regarding the need to get the financial markets open quickly, she denied he pressured her to declare the air was safe due to economic expediency. We found no evidence of pressure on EPA to say the air was safe in order to permit the markets to reopen. Moreover, the most controversial release that specifically declared the air safe to breathe was released after the markets had already reopened.

The EPA did not have the health-based benchmarks needed to assess the extraordinary air quality conditions in Lower Manhattan after 9/11. The EPA and the White House therefore improvised and applied standards developed for other circumstances in order to make pronouncements regarding air safety, advising workers at Ground Zero to use protective gear and advising the general population that the air was safe. Whether these improvisations were appropriate is still a subject for medical and scientific debate. See EPA Inspector General report, "EPA's Response to the World Trade Center Collapse," Aug. 21, 2003, pp. 9–19.

14. Brill, *After*, pp. 47–50.

15. We studied this episode and interviewed many of the participants. The NYSE, Amex, and Nasdaq have developed plans for coordination and cooperation in the event of a disaster affecting one or all of them, but these plans do not include other exchanges or international components. The White House efforts during the crisis were coordinated by the President's Working Group on Financial Markets, a group created in the 1980s.

16. Brill, *After*, pp. 53–55, 89–91. Following interim reports in 1999 and 2000, a congressional commission

TAB 15

Title - Conference With The Former Head Of EPA's Office Of Public Affairs

Purpose -

To obtain the perspective of the former head of the Agency's Office of Public Affairs to EPA's response to the World Trade Center (WTC) disaster and what steps might be taken to improve the Agency's response to future disasters.

Persons Present At Conference -

Tina Kreisher, Speechwriter, Office of the Secretary, United States Department of the Interior; former Associate Administrator, Office of Communications, Education, and Media Relations (the predecessor to EPA's current Office of Public Affairs); 202-208-5338

Rick Beusse, Director for Program Evaluation, Air Quality Issues, EPA, OIG, RTP

Chris Dunlap, Auditor, EPA, OIG, RTP

(The conference lasted approximately two hours. Mr. Beusse had to leave the conference shortly after the first hour to meet another commitment.)

Location And Date -

The conference was held on August 28, 2002, in Ms. Kreisher's office, Room 6219, in the Department of the Interior Building, located at 1849 C Street NW, Washington, DC.

On September 19, Mr. Dunlap telephoned Ms. Kreisher to discuss a follow-up meeting (see workpaper A2a2 for a write-up of this telephone conversation). Prior to this telephone call Ms. Kreisher had not mentioned the role played by the EPA Administrator's Chief of Staff, Ms. Eileen McGinnis. Mr. Dunlap amended the original write-up to describe this role.

On September 24, while in the District of Columbia for another purpose, Mr. Dunlap showed Ms. Kreisher printed excerpts of all statements that were attributed to her, as the write-up was then written. Ms. Kreisher added a few clarifying words to several thoughts, primarily concerning the actual practices that were followed when communicating with the public. She reaffirmed all statements attributed to her as they are now stated in this write-up.

35. An OIG representative discussed the subject of "professional cleaning" for indoor residences and work spaces. The OIG representative read a statement which the Wall Street Journal attributed to EPA's Region 2 Administrator: "We have said from the very beginning that apartments need to be professionally cleaned." The OIG representative asked: "Did your office consider advising the public through a press release that they need to obtain 'professional cleaning' for their indoor spaces?" Ms. Kreisher replied that "it was in a press release; it was removed by Sam" [Mr. Thernstrom].

36. In regard to the documents which were in storage at the EPA's Office of Public Affairs (see the Background Section of this work paper), an OIG representative showed Ms. Kreisher copies of essentially all of the documents he had seen (a few documents were not shown to Ms. Kreisher, such as duplicate copies). Ms. Kreisher confirmed that these documents were from her files, but she indicated that these documents were not all of the WTC documents which she had left when she went to her new job. She further indicated, to the best of her recollection, all of the WTC information she left was contained in two accordion-type files (the writer estimates that the information he reviewed would not fill one accordion-type file). However, she further stated that "one of the file folders may have included duplicate situation reports that many have been discarded."

37. Ms. Kreisher was asked about the "High Efficiency Particulate Arresting, HEPA, vacuum trucks" that were discussed in EPA's press release on September 18. Three separate sentences in this press release touted the "cleaning" capability of these HEPA trucks. Later it was learned that the trucks did not initially have the proper filters and the streets of Lower Manhattan were not vacuumed with the proper filters until the second or third week in October. Ms. Kreisher was asked whether "consideration was given to advising the public of this fact through a press release"?

Ms. Kreisher indicated she does not have any recollection of ever having this information.

TAB 16

Table 1 (Annotated Version): Comparison of Known Information on WTC Pollution and Health Effects With Statements Made or Actions Taken by Federal Administration

Aug. 1, 1994	EPA advises schools against using polarized light microscopy (PLM) analysis for asbestos testing, urging that they use the "improved" method known as transmission electron microscopy (TEM). EPA explains that the new method identifies "thin asbestos fibers below the limits of resolution of the polarized light microscope."[1]	In Sept. 2001, EPA uses the old PLM method to test for asbestos in the air and dust generated by the WTC disaster.
Sept 12, 2001	When asked to help respond to a White House request to produce fact sheets on asbestos for the public, Dr. Ed Kilbourne of the federal Agency for Toxic Substances and Disease Registry tells the CDC, "We are concerned about even being asked to write a document for the public about recently at this point," and warns, "We are aware of other potential toxic hazards in the WTC area about which you haven't asked."[2] As this Report notes, federal experts have been well aware for decades of the typical products of building demolition and uncontrolled combustion of mixed materials.	EPA's Sept. 13, 2001 press release states, "Sampling of ambient air quality found either no asbestos or very low levels of asbestos. Sampling of bulk materials and dust found generally low levels of asbestos." It does not state that low levels of asbestos are a health hazard. (A draft version had stated, "However, even at low levels, EPA considers asbestos hazardous in this situation. . . .") The release states that tests "have been very reassuring about potential exposure of rescue crews and the public to environmental contaminants... the general public should be very reassured by initial sampling." The caption, "EPA Initiating Emergency Response Activities, Testing Terrorized Sites for Environmental Hazards," is revised to read, "EPA Initiates Emergency Response Activities, Reassures Public About Environmental Hazards."[3]
Sept 14, 2001	On September 13, 2001, Dr. Philip Landrigan of Mount Sinai warns that workers on the pile will be at risk. "They're going to need training and they're going to need to wear protective equipment." Dr. Stephen Levin of Mount Sinai also warns that surgical masks will not protect workers against asbestos fibers and urges people at the site to wear masks with a High Efficiency Particle Arrestance (HEPA) filter.[4] EPA data, according to its Sept. 14 draft release, shows asbestos levels in dust ranging from 2.1 percent to 3.3 percent, which is above the 1 percent level at which material must be managed under asbestos standards. A federal agency tests EPA's own Region 2 office building at 290 Broadway using the more sensitive TEM method and finds asbestos. (and then conducts an environmental clean-up.) Without even waiting for test results, EPA conducts an environmental cleanup of its lobby based only on the presence of visible dust.[5]	The White House Council on Environmental Quality changes EPA staff's Sept.14 draft release, which stated that some asbestos dust levels ranged from 2.1% to 3.3% and that 1% is the threshold for defining asbestos-containing material, to say in the Sept. 16 approved release that samples "contained small percentages of asbestos, ranging from 2.1 to 3.3 – *slightly above the 1 percent trigger for defining asbestos material.*" (*Emphasis added*) The Sept. 14 draft release had stated, "The concern raised by these samples would be for the workers at the cleanup site and for those workers who might be returning to their offices on or near Water Street on Monday, September 17, 2001." This sentence is deleted. Instead, the Sept. 16 release quotes OSHA saying, "Our tests show that it is safe for New Yorkers to go back to work in New York's financial district."[6] The 290 Broadway testing and clean-up information is not made public at the time.

Sept. 16 2001	EPA tells *New York Newsday* that its highest recorded asbestos reading for dust contamination was 4.5 percent.[10]	*New York Newsday* quotes the EPA Whitman as saying that "there is no reason for concern," based on levels of asbestos in air and debris in the financial district.[11] The stock market reopens on Sept. 17; tens of thousands of workers come back to work in the Ground Zero area
Sept. 18 2001	Over 25% of the bulk dust samples that EPA had analyzed by this date showed asbestos at levels above the 1 percent threshold used by both EPA and the City of New York to define asbestos-containing material.[12]	The EPA Administrator states that "the results for our monitoring . . . show that the public is not being exposed to excessive levels of asbestos or other harmful substances. I am glad to reassure the people of New York that their air is safe to breathe and their water is safe to drink."[13] Also, on Sept. 21, EPA issues a press release entitled, "NYC Monitoring Efforts Continue to Show Safe Drinking Water & Air." It does not discuss risk from particulates. It asserts, "Available results continue to show that rescue workers at the disaster site are not being exposed to hazardous materials."[14]
Sept. 27 2001	USGS presents to the WTC emergency response teams its chemical leach tests of WTC dust, which find that it is highly caustic.[15] (EPA scientists later disclose in a December 2002 report that the bulk of the WTC dust they sampled on September 12 and 13, 2001, was comprised primarily of gypsum and calcite, which they note, "are known to cause irritation of the mucous membranes of the eyes and respiratory tract."[16])	The Federal administration does not issue a press release on the USGS findings and does not change EPA's publicly released assurances about health risks from the WTC pollution.
Sept. 28 2001	*New York Daily News* columnist Juan Gonzalez reports that dust samples taken from within a block or two of Ground Zero by the New York Environmental Law & Justice Project showed asbestos at up to five times higher than the 1% definitional threshold, and significant amounts of fiberglass.[17] (By this time, also, Dr. Paul Lioy has submitted samples taken on Sept. 16 and 17 to EPA laboratories in Kansas City. His study is not published until July 2002, but the laboratories find asbestos ranging from .8% to 3%.[18])	On Oct. 3, EPA issues a press release again asserting that federal agencies' testing "found no evidence of any significant public health hazard to residents, visitors or workers beyond the immediate World Trade Center area." It states that "there is no need for concern among the general public, but residents and business owners should follow recommended procedures for cleaning up homes and businesses if dust has entered."[19] The so-called "recommended procedures" are for residents to clean the dust themselves.[20]
Oct. 5, 2001	*Newsweek* reports that tests of two private office buildings by an independent firm, HP Environmental, suggest that more asbestos was released than EPA tests indicated, "and in a potentially more dangerous form" and discloses that EPA is using the less-sophisticated PLM testing methods.[21]	EPA states that it has not seen the report and refuses to comment.[22]
Oct. 12, 2001	The Ground Zero Elected Officials Task Force releases sample results from two downtown apartments having asbestos levels in the dust nearly 460 times the EPA's allowable limit.[23]	The federal administration does not change its publicly released assurances about health risks from the WTC pollution, and it continues to support local City officials' instructions that residents can safely clean their apartments by themselves.

Oct. 25, 2001	*New York Daily News* columnist Juan Gonzalez reports that internal government documents reveal toxins in the air and soil around Ground Zero, sometimes at levels far exceeding standards.[24] EPA Administrator Whitman acknowledges in an interview that if a residence had "any kind of breach – a window open, a broken window, ... or ... a heavy amount of dust - you should get a professional cleaner to clean it out. ... but just wiping it down, using your regular vacuum cleaner, that's not good enough."[25]	The federal administration does not change EPA's publicly released assurances about health risks from the WTC pollution, and it continues to support local City officials' instructions that residents can safely clean their apartments by themselves. (In an unpublished letter, the EPA Administrator urges the *New York Daily News* that the high benzene readings on the pile are not in the 5 to 7 feet high "breathing zone" of the Ground Zero recovery workers , ignoring the fact that the workers were digging, reaching and pulling much of the time.[26])
Nov. 28 2001	Dr. Stephen Levin of Mt. Sinai reports at a public hearing his early observations of new-onset asthma, sinusitis, and reactive airway dysfunction syndrome (RADS) in Ground Zero workers and people who simply live or work within four blocks of the site – and his expectation that some people would have symptoms for the rest of their lives.[27]	The federal administration does not change its publicly released assurances about health risks from the WTC pollution, and it continues to support local City officials' instructions that residents can safely clean their apartments by themselves.
Dec. 19 2001	The fire finally stops burning at Ground Zero. The federal government has direct information that area employees were at risk from the WTC pollution at least by early 2002, if not in December. A NIOSH survey of federal Dept. of Health and Human Services in December 2001 finds that for 40-50 percent of the workers reporting shortness of breath or wheezing, such symptoms still were present at the time of the survey, nearly four months after the terrorist attack. In a report on its Ground Zero response, EPA notes that its own employees, in the same building, had respiratory effects months after the attack, while the fire still burned.[28]	The federal administration does not disclose the results of this survey. It also does not change its publicly released assurances about health risks from the WTC pollution. The survey results are quietly published in a scientific journal in July 2002, and, as noted, a vague reference to EPA worker respiratory symptoms is made in late 2002 in a report by EPA Region 2.[29]
Jan. 13, 2002	*St. Louis Post-Dispatch* reporter Andrew Schneider documents that private firms' tests are finding higher levels of asbestos than EPA. A senior EPA chemist in Washington, D.C., Cate Jenkins, is quoted as stating, "For every asbestos fiber EPA detected, the new methods used by the outside experts found nine. This is too important a difference to be ignored if you really care about the health of people."[30]	EPA does not change its publicly released assurances about health risks from the WTC pollution. On January 12, *Daily News* reporter Russ Buettner quotes a Region 2 EPA spokesperson as stating that the EPA Administrator never said the area was without risk, saying, "That's a mischaracterization of what was ever said."[31]
Jan. 31, 2002	OSHA notifies a law firm representing a union of asbestos and toxic waste laborers that indoor WTC dust below Canal and Pike Streets should be presumed to contain asbestos unless tests prove otherwise. OSHA declared that the federal asbestos standard for construction activity should apply during the site demolition or salvage activity, stating, "In that the materials containing asbestos were used in the construction of the Twin Towers, the settled dust from their collapse must be presumed to contain asbestos."[32]	The federal administration nevertheless does not change its publicly released assurances about health risks from the WTC pollution. . (OSHA's position is consistent with EPA's conduct in cleaning up its own lobby.)

Feb. 12, 2002	*St. Louis Post-Dispatch* reporter Andrew Schneider discloses that the United States Geological Survey reported to EPA that some dust from the World Trade Center was "as caustic as liquid drain cleaner" and capable of burning moist tissue in the throat, eyes or nasal passages.[33]	The Federal administration does not change its publicly released assurances about health risks from the WTC pollution.
Feb. 21, 2002	Dr. Thomas Cahill of the University of California at Davis testifies in New York City on his at sampling results, which showed that there were very high levels of ultra-fine toxic particulates in the air from Ground Zero.[34]	The Federal administration does not change its publicly released assurances about health risks from the WTC pollution.
Apr. 19, 2002	EPA and the City environmental agency, at the urging of the New York Environmental Law and Justice Project, test WTC dust at a residential loft building just north of Chambers Street (housing a day care center), using both PLM and TEM testing for asbestos. The PLM test finds no asbestos; the TEM method on the same dust sample reveals from 2% to 5% asbestos – up to five times the definition level for "asbestos-containing material."[35]	Ten days later, EPA announces that it will clean, on request, apartments south of Canal Street. It does not disclose the failure of the PLM method to detect the asbestos. The EPA Region 2 Administrator states, "While the scientific data bout any immediate health risks from indoor air is reassuring, people should not have to live with uncertainty about their futures."[36] A similar sentence appears in the outreach flier for the program.

Sept. 11 2002 to Sept. 11 2003	On Sept. 11, 2002 The Centers for Disease Control reports that up to 30 percent of employees surveyed in two workplaces near Ground Zero still had persistent symptoms four to six months after the attack, that "may have been due to exposure to complex environmental contaminants . . . from the collapses of the towers and ensuing fires."[1] On Sept. 12, 2002, The *New England Journal of Medicine* publishes Dr. David Prezant's study of firefighters suffering from "World Trade Center Cough."[2] In Dec. 2002, the *American Journal of Industrial Medicine* publishes study by Dr. Steven Markowitz and others of 418 WTC dust cleanup workers, "nearly all of whom" suffered long-lasting respiratory symptoms and chest pain that first appeared or significantly worsened after Sept. 11, 2001.[3] In Jan. 2003, the Mount Sinai School of Medicine reports that 70% of the more than 3,500 rescue and recovery workers that it examined had suffered lung ailments, and 88% of them experienced ear, nose and throat problems in the months following the attack.[4] In Aug. 2003, The *Journal of the American Medical Association* publishes the preliminary results of a study by Dr. Philip Landrigan of Mount Sinai, which found that pregnant women exposed to air pollution from the World Trade Center attacks were twice as likely to give birth to babies that were up to a half-pound smaller than babies born to women not exposed.[1] *Newsday* reporter Graham Rayman reports that, as of Sept. 11, 2003, reportedly 6,539 people, including Ground Zero workers, have filed worker compensation claims for injury or exposure, and that reportedly about 150 of 1,000 Ground Zero carpenters have received medical help for respiratory conditions.[2]	The Federal administration does not establish a program for cleanup of office and commercial buildings in lower Manhattan. The Federal administration does not expand the scope or increase the rigor of its residential clean-up program. The Federal administration continues to refuse the request to professionally clean firehouses and emergency equipment. The Federal administration does not change its publicly released assurances about health risks from the WTC pollution.
Oct. 27, 2003	Dr. Stephen Levin of Mount Sinai reported that ground-zero workers who are being examined now show roughly the same rates of illness as they did in 2002. He stated, "We're finding that these problems are not going away."[3]	The White House Council on Environmental Quality asserts in a letter to Senators Hillary Clinton and Joseph Lieberman, "We continue to stand by the information distributed in press releases regarding potential long-term health risks."[4]

1. 59 *Fed. Reg.* 38970 (Aug. 1, 1994).
2. "Ground's WTC Note: Don't Hurry Back," *Daily News* (Oct. 28, 2003).
3. U.S.E.P.A., Press Release, "EPA Achieves Emergency Response Activities, Reassures Public About Environmental Hazards" (Sept. 13, 2001).
4. *IG Report*, p. 17.

5. *IG Report*, p. 16.

6. Dan Fagin, "An Invisible Danger: Dust – Asbestos, Other Carcinogens Put Rescuers at Highest Risk," *New York Newsday* (Sept. 13, 2001).

7. Versar Corporation, "Asbestos Emergency Monitoring Report at 290 Broadway After the World Trade Center Disaster: Final Report" (Oct. 5, 2001), describing results of testing that took place on September 14, 2001.

8. *See* "Responses to Questions posed by the *St. Louis Post-Dispatch* (March 1, 2002)(undated, no author identified)(document provided in response to Sierra Club Freedom of Information request).

9. *IG Report*, p. 16.

10. Hugo Kugiya, "Terrorist Attacks/Asbestos Targeted in Cleanup Effort," *Newsday* (Sept. 16, 2001).

11. Hugo Kugiya, "Terrorist Attacks/Asbestos Targeted in Cleanup Effort," *Newsday* (Sept. 16, 2001).

12. *IG Report*, p. 34. On or about this date, the City of New York was informed that the towers housed a Secret Service shooting range with millions of rounds of lead ammunition and a U.S. Customs lab storing thousands of pounds of arsenic, lead, mercury, and strontium. Tetra Tech, Inc., "Tetra Tech Computerized Report – WTC Complex New York New York 10048, September 11, 2001" (Sept. 18, 2001). Produced for the NYC Department of Design & Construction, cited in Joel Kupferman, *supra*.

13. See Air Quality Research Subcomm., Committee on Environment & Natural Resources, National Science & Technology Council, Office of Science & Technology Policy (White House), *Preliminary Survey of Air Quality and Related Health Studies Conducted in the Vicinity of Ground Zero* (Dec. 2002), App. B, p. B-1-6 (<www.ostp.gov/NSTC/html/GroundZero%20final%20%20ALL%201.22.03.pdf>). *See also*, Andrew Schneider, "Public Was Never Told that Dust from Ruins is Dangerously Caustic," *St. Louis Post-Dispatch* (Feb. 16, 2002); "Scientists Know WTC Air Posed Health Risk" *New York Newsday* (Feb. 12, 2002). U.S.E.P.A., Press Release, "Whitman Details Ongoing Agency Efforts to Monitor Disaster Site, Contribute to Cleanup Effort"(Sept. 18, 2001).

14. U.S.E.P.A., Press Release, "NYC Monitoring Efforts Continue to Show Safe Drinking Water & Air" (Sept. 21, 2001).

15. United States Geological Survey (U.S.G.S.) "Environmental Studies of the World Trade Center Area After the September 11, 2001 Attack" (Open File Report OFR-01-0429), p. 4; <http://pubs.usgs.gov/of/2001/ofr-01-0429/>. According to EPA documents, EPA staff referred to having received the USGS data in an October 4, 2001 conference call. U.S.E.P.A., "8:30 AM Conference Call, Region II – Conference Call Summary: October 8, 2001" (EPA60)(released in response to Sierra Club Freedom of Information Act request).

16. *EPA Report on Toxicological Effects of WTC Fine Particulates* 2002, pp. vi, 18-19 and 44.

17. Juan Gonzalez, "Hostile Hazards in Air Worry Trade Center Workers," *Daily News* (Sept. 28, 2001). Mr. Kupferman sent a sample to two laboratories. One laboratory found 2.1 percent asbestos; the other found 5 percent asbestos. Testimony of Joel Kupferman, Esq., Executive Director, New York Environmental Law and Justice Project, to the Assembly Standing Committees on Environmental Protection, Health and Labor, Hearing Transcript (Nov. 26, 2001), p. 153-54.

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20. *See* Report, Part One.

21. David Franco, "Is Ground Zero Safe? – New Study Suggests More Asbestos at Disaster Site than Previously Revealed," *Newsweek Web Exclusive* (Oct. 5, 2001).

22. *Id.*

23. Greg Gittrich and Frank Lombardi, "Safety Guidelines Set for WTC Site Workers: Dems Seeking Cleanup Czar," *New York Daily News* (Nov. 30, 2001); *See also*, Abraham Lustgarten, "The Toxic Fallout of 9/11," *Salon.com* (Aug. 15, 2002).

24. Juan Gonzalez, "A Toxic Nightmare at Disaster Site," *Daily News* (Oct. 26, 2001)

25. Statement of the EPA Administrator Whitman on a televised interview on MSNBC, Oct. 26, 2001, quoted in *IG Report*, p. 26.

26. Memorandum from Christie Whitman, U.S.E.P.A. Administrator to Mortimer B. Zuckerman, Chairman & Co-Publisher, *Daily News* and Edward Kosner, Editor in Chief, *Daily News*, re October 26, 2001 Front Page News Story (undated)(provided in response to Sierra Club Freedom of Information request), p. 2.

27. Testimony of Dr. Stephen Levin to the N.Y.S. Assembly Standing Committees on Environmental Conservation, Health and Labor, Nov. 26, 2001.

28. Douglas Trout, *et al.* Health Effects and Occupational Exposures Among Office Workers Near the World Trade Center Disaster Site, *J Occup Environ Med* 44:601-605 (July 2002). See also, EPA Region 2, "A Response to 9-11: Oh My God, Look at That Plume!"(received Nov. 4, 2003; apparently written in fall 2002)(<*www.epa.gov/region02/overview.htm*>).

29. EPA Region 2, "A Response to 9-11: Oh My God, Look at That Plume!" *supra*, p. 7.

30. Andrew Schneider, "NY Officials Underestimate Danger," *St. Louis Post-Dispatch* (Jan. 13, 2002).

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32. Henshaw, John, Assistant Secretary for OSHA, U.S. Dept. of Labor, "Standard Interpretation Letter," Jan. 31, 2002; see also, *IG Report*, p. 34.

33. Andrew Schneider, "Public Was Never Told that Dust from Ruins Is Dangerously Caustic," *St. Louis Post Dispatch* (February 10, 2002); "Scientists Knew WTC Air Posed Health Risk," *New York Newsday* (Feb. 12, 2002).

34. Dr. Cahill's findings were first made known to the public in February 2002. University of California at Davis, Press Release, "Trade Center Air Held Unprecedented Amounts of Very Fine Particles, Silicon, Sulfates, Metals, Say UC Davis Scientists" (Feb. 11, 2002). See R. Lau and C. Bowman, "N.Y. Air Hazards Found: EPA Assurances Contradicted by UCD Scientists," *The Sacramento Bee* (Feb. 12, 2002); Gary Polakovic, "Danger Found in Trade Center Air," *Los Angeles Times* (Feb. 12, 2002). He described his findings at the February 2002 EPA National Ombudsman Hearing – a hearing at which federal agency officials refused to appear. See Testimony of Dr. Thomas Cahill, *EPA Ombudsman Hearing Transcript Feb. 21, 2002*, pp. 15-72. Diane Cardwell, "Hearing Brings More Debate over Ground Zero Air Quality," *New York Times* (Feb. 24, 2002).

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38. David Prezant, *et al.*, "Cough and Bronchial Responsiveness in Firefighters at the World Trade Center Site," *New Engl. J. of Med.*, 347(11)(Sept. 12, 2002).

39. Ekaterina Maievskaya, Nora Rosenberg and Steven Markowitz, "Assessing the Health of Immigrant Workers Near Ground Zero: Preliminary Results of the World Trade Center Day Laborer Medical Monitoring Project," *American J Industrial Med.* (Dec. 2002); *IG Report*, p. 41.

40. Robin Herbert, M.D. and Stephen Levin, M.D., Mount Sinai-Irving J. Selikoff Center for Occupational and Environmental Medicine, Department of Community and Preventive Medicine, Mount Sinai School of Medicine, "World Trade Center Worker and Volunteer Medical Screening Program: Report of Initial Findings to NIOSH/CDC" (Jan. 24, 2003).

41. G. Berkowitz, *et al.*, "The World Trade Center disaster and intrauterine growth restriction" (letter) *JAMA* 290(5): 595-96 (Aug. 6, 2003).

42. Graham Rayman, "An Air of Discontent: WTC Workers Worry About Post-Sept. 11 Health Risks," *Newsday* (Sept. 11, 2003).

43. Greg Sargent, "Zero for Honors," *New York Magazine* (Oct. 27, 2003).

44. Letter from James Connaughton, Chair, White House Council on Environmental Quality, Executive Office of the President, to United States Senators Hillary Clinton and Joseph Lieberman (Oct. 27, 2003).

TAB 17

OFFICE OF INSPECTOR GENERAL

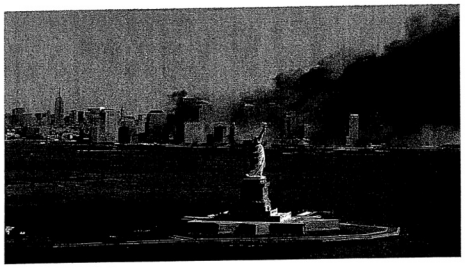
Catalyst for Improving the Environment

Evaluation Report

EPA's Response to the World Trade Center Collapse: Challenges, Successes, and Areas for Improvement

Report No. 2003-P-00012

August 21, 2003



assessing WTC ambient data.) Since this was done very quickly during an emergency situation, these benchmarks were not subjected to peer review.

In addition to not knowing the health impacts of certain individual pollutants, information was not available on the cumulative or synergistic impacts of being exposed to several pollutants at once. For example, one medical expert suggested there may be a synergistic effect between PAHs and asbestos, since PAHs resemble cigarette tar. Studies have shown the lung cancer risk from exposure to asbestos is increased exponentially for cigarette smokers. In addition, this expert noted that the combination of high pH and the small shards of glass found in WTC dust could have had a synergistic impact on the acute respiratory symptoms that many people experienced.

There were limitations with all three methods used to analyze asbestos concentrations in the ambient air and bulk dust in Lower Manhattan. These limitations, which were not noted in EPA's press releases, restricted EPA's ability to make definitive assessments about the health risks posed by asbestos. However, even with these limitations, sufficient data existed to identify the presence of asbestos in the dust and ambient air, and to warrant that persons working around the dust take necessary precautions to not inhale the dust. The three methods used and their limitations follow:

- Transmission Electron Microscopy (TEM) is a sensitive method generally used to analyze air samples collected from a relatively clean indoor environment. At the WTC site, many samples could not be analyzed because the filters being used to collect asbestos were overloaded with particulates. For example, 24 of the 69 samples collected as of September 17 could not be analyzed because the filters were overloaded.

- Phase Contrast Microscopy (PCM), which was used to analyze asbestos concentrations in ambient air beginning September 18, can only count fibers in the filter greater than 5 micrometers in length. A study at the WTC site found that the majority of the asbestos fibers at the site were less than 5 micrometers in length.

- Polarized Light Microscopy (PLM) was used to measure asbestos in bulk dust. This method is primarily an estimation method that is not very precise, and has a detection limit of 1 percent. Therefore, using this method against a strict benchmark is not reliable.

According to EPA, essentially all outdoor areas at the WTC site were vacuumed, and the detection methods did not impact the action actually taken to remove the dust from outdoor areas. See Appendix E for a summary of EPA's outdoor air asbestos sampling results.

TAB 18

Ambient and Indoor Sampling for Public Health Evaluations for areas near WTC
DRAFT ATSDR/DHAC Version 4, October 2, 2001

I. Introduction:

The collapse of the World Trade Center (WTC) buildings resulted in a large number of residents being evacuated from their homes. Until DATE, residents were not allowed to re-enter their homes in south Battery Park City (from West Thames Street and south, west of Broadway) or north of Chambers Street up through Canal Street, west of Broadway. Currently areas south of Chambers Street and north of West Thames Street, west of Broadway remain restricted; however, it is anticipated that residents will soon be allowed to move back into their homes. To date, non- rescue, recovery, and removal environmental sampling efforts have focused on commercial buildings to ensure the safety of worker occupants. It is now appropriate and necessary to ensure that residential areas are not adversely impacted by WTC collapse-related materials. In addition, additional environmental sampling is needed to ensure that ongoing WTC removal activities do not result in off-site migration of site-related material at levels of potential public health concern.

Surface dust and debris containing <1-4% asbestos has been found in lower Manhattan. Asbestos has been detected in personal air samples of "hot-zone" workers. In addition, low levels of asbestos have been detected in air samples collected on the "hot-zone" perimeter. Crystalline silica quartz has been detected in some of the 30 settled dust samples collected by NIOSH. Although most samples contained less than 5%, some samples contained from 15-20% crystalline silica quartz. Non-detectable levels of crystalline silica have been found in the few personal air samples analyzed to date. Dust, bulk, and air samples ("hot-zone"), as well as surface runoff water, river sediment, and river water have been analyzed for other contaminants, including metals, PAHs, dioxins and PCBs. The low levels of these contaminants found do not indicate an immediate need to conduct widespread environmental testing for them.

Materials surface dust that may be of more immediate health concern--especially to residents who are returning to lower Manhattan--are those that may cause eye, nose, and throat irritation. Materials that can be inhaled or respired from airborne dust may cause respiratory irritation and may cause exacerbation of pre-existing problems such as asthma, emphysema, and cardiopulmonary disease. Analysis of residential surface and airborne dust, both indoors and outdoors, is necessary to determine 1) if residents are being exposed to materials that may be of public health concern; and 2) the best methods of cleaning up the dust both inside and outside residences.

Information from a local south Battery Park resident supports the need to assess indoor and outdoor environmental health issues. Burning throats are a common problems in the recently re-occupied residential areas. Residents in south Battery Park, who left windows open prior to the WTC collapse, have settled dust in their homes. Some have disposed of furniture, stereo equipment, etc., because they were covered with "ash and dust." Homes in the Tribeca zone (Chambers Street to Murray Street, west of Broadway) are not yet occupied, but were reported to have roofs covered with hand-sized chunks of insulation-like material that contain small pieces

of mica-like material. In addition, the mica-like material has clogged roof drains and resulted in standing pools of water on residential roof tops. Finally, streets are periodically swept (HEPA vacuum trucks) and wetted (water trucks). However, the resident and others have reported constantly swirling dust throughout the area.

II. Sampling Objective:

The **overall objective** of this sampling is to provide results that will begin to characterize the ambient and indoor airborne and potentially airborne particles (surface dust) that remain in residential areas of lower Manhattan from the collapse of the World Trade Center that will allow a public health interpretation of the data.

Specific Objectives, in order of priority are:

1. Characterize the make-up and size distribution of both settled and airborne breathing zone dust in residential areas–both indoors and outside–closest to the WTC. This information will be used to determine if materials are present at levels of public health concern; the best methods for cleaning/removing the materials; and the best methods to prevent/minimize future material track-in into residential areas.

2. Characterize the make-up and size distribution of both settled and airborne breathing zone dust in other residential areas–both indoors and outside–located further from the WTC, but still impacted by debris and dust from the collapse. For example, modeling the debris/dust impact areas may indicate residential areas more than ten blocks away were affected, as debris and dust from the collapse were forced along street arteries [EPA's ERT is attempting to determine if this modeling is possible]. Impact areas further from the site of collapse may have dust/debris with a different composition than what settled closer to the WTC. This information will be used to determine if materials are present at levels of public health concern; the best methods for cleaning/removing the materials; and the best methods to prevent future material track-in into residential areas.

3. Re-characterize a selected number of areas throughout the WTC cleanup to ensure that removal operations are not impacting area residents, cleaning methods remain effective, and exterior material track-in is not occurring.

III. Data and Quality Assurance:

IV. Sampling Parameters:

Parameter	Environmental Media	Indoor/Outdoor	Rationale for Selection
Asbestos	air, dust	I/O	known use in building construction, evidence of presence in early air sampling and in settled dust, known inhalation carcinogen
Total Suspended particulates	air	O	Characterize amount of airborne dust that is inhalable ≤100 um aerodynamic diameter
PM10 and PM2.5	air	O	Characterize the amount of airborne dust that is respirable
Inhalable (<100μm) thoracic (<10μm) respirable (<4μm)	air	I/O	To determine relative amounts of each that are, present, and to have each fraction analyzed for silica, gypsum, asbestos to qualitatively determine potential hazards
Respirable crystalline silica	air	I/O	Known component of concrete, evidence of Presence in some settled dust samples, known inhalation carcinogen
pH	dust	I/O	Concrete has a high pH, if dust has a high pH, it may be contributing to reported symptoms of ENT irritation
gypsum, mica, dust calcite		I/O	Associated with building materials (concrete, drywall) and known to be irritating to ENT
magnesium	dust	I/O	May act as a tracer for WTC-related dust, levels found in metals analysis of settled dust from 16,000-29,000 ppm

V. Residence Selection/Sampling Rationale

The selection of priority residential areas should be decided upon by NYC DOH or the agency of their choosing, or by someone else on the scene with the concurrence of NYC DOH. Selection needs to be based on worst-case scenario(s) first, which will likely involve a visual determination (e.g., visible dust in lobby area, broken windows, dust along roadways and sidewalks). Worst-case residential areas would include:

A. Occupied and unoccupied residential areas closest to the WTC with visible exterior dust/fallout material
B. Residential areas further from the WTC, where debris fallout may be tracked indoors
C. Residential areas where Search/Rescue/Removal vehicles have spread dust that may be tracked indoors

Once residences are selected, then sampling can be pursued. If results of sampling in worst-case locations indicate no contaminants or respirable particle of present at levels of health concern, then residential sampling should be considered on a case-by-case basis (e.g., citizen complaint followed by a visual inspection).

If results in worst-case locations show indoor contamination/materials present at levels of concern, a thorough cleaning (these instructions need to be developed) should follow and the locations should be re-sampled. If the post-cleaning round of sampling indicates successful cleaning, then prior to sampling any additional residential locations (e.g., residential areas that also meet "worst case" or those on the tier below "worst case") a thorough cleaning should be conducted prior to any sampling. If post-sampling confirms that contaminants are below levels of health concern, then as other residential areas are cleaned, post-cleaning sampling should occur periodically as a quality assurance check of cleaning effectiveness.

It should be noted that contaminant/materials of concern may vary as the distance of the residence increases from the WTC. Therefore, an effective cleaning regime at one location may need to be modified for anther location.

If results in worst-case locations show outdoor contamination/materials present at levels of concern, efforts should be made to reduce these levels and take steps that eliminate transporting them indoors (e.g., reduce contaminant track in by removing or changing shoes prior to entering residence, use HEPA filters on HVAC systems, inspect/change HVAC filters frequently).

VI. Sampling Approach:

1. Interior

Air and dust sampling should focus on common/high traffic areas of the building (e.g., lobbies, front entryways) and in a selected number of apartment units where visible dust is and is not reported. These first 2 areas should also be representative of worst case conditions for contaminant/material track-in from outdoors and of fallout deposition. Selecting apartments in the same building should provide information the ranges found in indoor living spaces.

If the building is unoccupied, aggressive (leaf blower, high-power fan) indoor air sampling should be conducted. If the building is occupied, air sampling should be conducted with the building HVAC system in continuous operation. After sampling is completed, filters for the HVAC system, if applicable, should be inspected. If dust is present, recommend filter replacement.

Indoor air sampling will be conducted for: asbestos (NIOSH 7400 and, if an action level is exceeded, NIOSH 7402), PCMe), respirable crystalline silica (NIOSH 7500), and inhalable, thoracic, and respirable airborne particulate matter for fraction analyses of silica, gypsum, mica, etc. (IOM sampler).

Indoor floor dust sampling will be conducted for asbestos (via TEM as the detection limit for PLM is 1%); for silica, gypsum, mica (XRD); and for magnesium (EPA Methodif). Floor dust sampling will be conducted using EPA's Environmental Response Team (ERT) SOP for household dust collection. Any deviations from the SOP in actual field collection will be documented by the sampling team.

2. Exterior
Air and settled dust sampling should occur in a grid pattern in residential areas.

Ambient air sampling will be conducted at breathing height for: asbestos (NIOSH 7400 and, if an action level is exceeded, NIOSH 7402), PCMe). respirable silica (NIOSH 7500), and inhalable, thoracic, and respirable airborne particulate matter for fraction analyses of silica, gypsum, mica, etc. (IOM sampler). In addition, 24-hour real-time TSP, PM10 and PM 2.5 sampling will be conducted-again at breathing zone height.

Settled dust samples will be collected and analyzed for asbestos (via TEM as the detection limit for PLM is 1%); for silica, gypsum, and mica (XRD); and for magnesium (EPA Method #).

TAB 19

EPA-OSHA FACT SHEET: Environmental Information from lower Manhattan for Residents, Area Employees and Local Business Owners
Data through September 30, 2001

Air and dust samples collected in lower Manhattan, Brooklyn and New Jersey show that the public is not being exposed to concentrations of asbestos above EPA or OSHA levels of concern. Shortly after the World Trade Center collapse, EPA's emergency response team and OSHA staff were on the scene taking air and dust samples and analyzing them for asbestos, lead and volatile organic compounds.

Four air samples, collected on September 11 in Brooklyn where the prevailing winds were blowing, were analyzed for volatile organic compounds (VOCs). Also, five air samples were collected on September 11 in Brooklyn and were analyzed for lead and asbestos. None of the samples had detectable levels of lead. Asbestos was not detected in two samples, and the other two had levels of asbestos well below the EPA (AHERA) standard used to determine if children can re-enter a school after asbestos has been removed or abated. Two samples had no detectable levels of VOCs, and two had very low levels of a VOC compound.

EPA also obtained four air samples from Liberty State Park in New Jersey, across the Hudson River from the World Trade Center. Neither asbestos nor lead were detected in any of the samples. Two of the samples contained some toluene, which probably originated from automobile exhaust or gasoline generators being used near the sample collection locations.

As of September 30, EPA has collected and analyzed **442 air samples** for asbestos from its 16 fixed air monitoring stations. Only 27 were above 70 structures per millimeter squared, the AHERA standard.

In addition, EPA has taken 128 samples of dust and analyzed them for asbestos. Thirty-four have had levels of asbestos above the 1 percent used to define asbestos-containing material. Four samples of dust taken in the immediate vicinity of the debris pile on September 11 found lead concentrations well below EPA's lead action level. Only one of the four samples had an asbestos level over the 1 percent.

In addition, OSHA took nearly 200 bulk dust and air samples to test for asbestos in the Financial District and a 90-block area immediately surrounding the World Trade Center from September 13 to September 24. Results showed levels consistent with safe and acceptable standards, ranging from 0.0013 f/cc to 0.086 f/cc.

EPA has used its 10 HEPA filter SUPERVAC vacuum trucks to clean streets, sidewalks and parks in residential and commercial areas around the World Trade Center site, where heavy dust or the presence of asbestos was found. The high-powered vacuum trucks have been used to clean streets in the Financial District, as well as sidewalks, the Battery Park City promenade, area parks, playgrounds, and even children's sand boxes. Dust and other materials vacuumed are being kept in

air-tight containers and disposed of properly. Vacuum trucks will be available to address other areas, as needed.

In examining the data provided by EPA and OSHA, the public should be careful to distinguish between data that measures asbestos concentrations in the air and in data from dust samples taken from the ground or other surfaces. Ambient air samples are more accurate indicators of the potential exposure of the public to potential contaminants. Levels of asbestos in the dust and debris vary. The agencies have found some levels above the one percent standard that indicates that the material contains asbestos, but ambient air sampling has not generally revealed concentrations of asbestos at levels that pose significant threats to public health.

EPA has been evaluating samples of air against an extremely stringent standard, the AHERA standard (70 structures per millimeter squared, established by the Asbestos Hazard Emergency Response Act). Levels of asbestos above the AHERA standard do not imply that there is an immediate health threat to the public. Asbestos exposure becomes a health concern when high concentrations of asbestos fibers are inhaled over a long period.

Metals: EPA collected air samples at 24 locations in the residential and business districts near the World Trade Center on September 16, 23, and 27 and analyzed them for metals. No samples violated OSHA standards.

Workers in the Financial District:
EPA and OSHA made extensive efforts to ensure the safety of workers in the Financial District as they returned to work on September 17. EPA and the U.S. Coast Guard helped corporate personnel from 42 firms enter financial district buildings to retrieve important information and check computer systems that were needed in order to open the markets on September 17. Buildings were examined for contaminants and to ensure adequate oxygen prior to entry. EPA also deployed its SUPERVAC trucks to the Financial District to clean the streets and sidewalks before employees returned to work.

OSHA took approximately 126 air and bulk samples in the Financial District from September 13 to September 21. Results showed levels well below OSHA standards. Therefore, OSHA ceased sampling in the Financial District on Sept. 21.

Residents and Workers Returning to Homes and Offices in Lower Manhattan:
The vast majority of EPA and OSHA samples of air and dust analyzed for asbestos have been at levels that pose no significant risk to residents and workers returning to their homes or area businesses. However, people returning to buildings in the area may find some level of dust and debris. If dust or debris from the World Trade Center site has entered homes or offices, people should be sure to clean thoroughly and avoid inhaling dust while doing so. The New York City Department of Public Health has posted information and recommendations for people reentering buildings at www.ci.nyc.ny.us/html/doh/html/alerts/wtc3.html [Exit Disclaimer]

Additional EPA/OSHA Information Through September 30
Latest Available Daily Environmental Monitoring Summary

Last updated on Monday, March 13th, 2006
URL: http://www.epa.gov/wtc/summaries/epa-osha03.htm

New York City Department of Health
Response to the World Trade Center Disaster

Recommendations for People Re-Occupying Commercial Buildings and Residents Re-Entering Their Homes

What steps should I take upon returning to my workplace or home?
If you were evacuated from a residence or workplace south of Warren Street, west of Broadway, and north of Exchange Street, and have been approved to resume tenancy by your building manager, you are advised to wear a dust mask upon entering this area to decrease the possibility of dust inhalation and throat irritation. Outside these boundaries, masks are not necessary, but may be worn for your own comfort. If there is dust present indoors, it should not be necessary to wear this mask if you follow the cleaning procedures detailed below.

In a workplace, speak to your supervisor to see if there are special startup and cleaning procedure. In very dusty places, clean-up may be necessary before equipment can be restarted. Follow the cleaning procedures discussed below.

In your home, you should first make sure that conditions are safe. You should enter your home dressed in a long sleeve shirt and pants, and with closed shoes. Upon entry:

- Check for the smell of gas. If the apartment smells of gas, leave immediately and report it to your building manager and to Con Edison.
- Check for broken glass and fixtures. Wrap any broken glass in paper and mark it "broken glass." If large pieces of glass are broken, ask your building superintendent for instructions on disposal.
- Run hot and cold water from each of the taps for at least two minutes, or until water runs completely clean.
- Flush toilets until bowls are refilled. For air pressure systems, you may need to flush several times. If there are any problems with the toilet or plumbing system, call a plumber -- do not try to fix the problem yourself.
- Follow the cleaning procedures discussed below.

I have heard that asbestos was released from the collapse of the World Trade Center. What are the health effects of asbestos?
Because some asbestos was used in the building of the World Trade Center, City, State, and Federal agencies have been collecting dust, debris, and air samples since the World Trade Center collapse. As expected, some asbestos was found in a few of the dust and debris samples taken from the blast site and individuals working in this area have been advised to take precautions. However, most of the air samples taken have been below levels of concern. Based on the asbestos test results received thus far, there are no significant health risks to occupants in the affected area or to the general public.

In general, asbestos-related lung disease results only from intense asbestos exposure experienced over a period of many years, primarily as a consequence of occupational exposures. The risk of developing an asbestos-related illness following an exposure of short duration, even to high levels, is extremely low.

What should I do with food left in my apartment?
The power outage in much of lower Manhattan may have caused refrigerated and frozen food to spoil. Raw or cooked meat, poultry and seafood, milk and milk-containing products, eggs, mayonnaise and

creamy dressings, and cooked foods should be thrown out if power was out for two or more hours. Frozen foods that have thawed should be thrown away. Do not re-freeze thawed food.

Throw away any food that may have been contaminated with dust, except for food in cans, jars, or containers with tight-fitting lids. Wash cans and jars with water and wipe it clean. When it comes to food left in your building, if in doubt, throw it out.

How should I clean the dust in my apartment when I move back in?
The best way to remove dust is to use a wet rag or wet mop. Sweeping with a dry broom is not recommended because it can make dust airborne again. Where dust is thick, you can directly wet the dust with water, and remove it with wet rags and mops. Dirty rags can be rinsed under running water, being careful to not leave dust in the sink to dry. When done, used rags and mops should be put in plastic bags while they are still wet and bags should be sealed and discarded. Cloth rags should be washed separately from other laundry. Wash heavily soiled or dusty clothing or linens twice. Remove lint from washing machines and filters in the dryers with each laundry load. Rags should not be allowed to dry out before bagging and disposal or washing.

To reduce dust recirculation, the Health Department recommends using HEPA (high efficiency particulate air) filtration vacuums when cleaning up apartments, if possible. If a HEPA vacuum is not available, it is recommended that either HEPA bags or dust allergen bags be used with your regular vacuum. If these options are not available, wetting down the dust and removing it as described above is recommended.

Carpets and upholstery can be shampooed and then vacuumed.

- If your apartment is very dusty, you should wash or HEPA vacuum your curtains. If curtains need to be taken down, take them down slowly to keep dust from circulating in the air.
- To clean plants, rinse leaves with water. Pets can be washed with running water from a hose or faucet; their paws should be wiped to avoid tracking dust inside the home.

How can I remove dust from the air?
Air purifiers may help reduce indoor dust levels. HEPA air purifiers are superior to other models in filtering the smallest particles. Air purifiers are only useful for removing dust from the air. They will not remove dust already deposited on floors, shelves, upholstery or rugs. Keep windows closed when using an air purifier.

Additional recommendations include:

- Keep outdoor dust from entering the home;
- Keep windows closed;
- Set the air conditioner to re-circulate air (closed vents), and clean or change the filter frequently;
- Remove shoes before entering the home for several days (once you first make sure there is no broken glass)
- Avoid sweeping or other outdoor maintenance.

For more information, call the Health Department's General Information Line at (212) 213 - 1844.

Go to **WTC Information page** || **NYC DOH Home Page** || **Health Topics** || **Public Information** || **NYC.gov Home Page** || **Mayor's Office** || **City Agencies** || **Services** || **News and Features** || **City Life** || **Contact Us** || **Search**

World Trade Center Disaster Info.

Public Health Advisory Concerning Air Quality in the Affected Area of the World Trade Center Disaster

The NYC Department of Health (DOH), in collaboration with the City, State, and Federal agencies, is closely monitoring and analyzing air quality data in the wake of the World Trade Center disaster. Following the collapse of the Twin Towers, significant quantities of smoke and dust have been released into the air. The plume of smoke contained dust, ash, soot, and other burning materials present at the site.

In general, dusts can cause respiratory symptoms and eye and throat irritation. Because dust will continue to remain in the air during the ensuing clean-up efforts following the World Trade Center disaster, residents in the vicinity of the World Trade Center are encouraged to take precautions when they return to their homes.

What are the Recommendations for Residents Living in Lower Manhattan?

All residents in the immediate vicinity of the World Trade Center - particularly those who live the area bounded by Warren Street to the North, Broadway to the East, the Hudson River to the West, and Exchange and Thames Streets to the South - should take the following precautions when they return to their homes:

- Avoid unnecessary outdoor strenuous activity;
- Avoid sweeping or other outdoor maintenance;
- Keep dust from entering the home (e.g., remove shoes before entering the home);
- Keep windows closed;
- Set the air conditioner to recirculate air (closed vents), and clean or change the filter frequently;

What should I do if I experience respiratory symptoms?

Dust and other particulate matter have the greatest impact on persons with underlying respiratory conditions. Such individuals may experience chest tightness, wheezing, and shortness of breath. Anyone who has difficulty breathing should consult their physicians, especially those with underlying respiratory conditions. People with asthma may need to increase their usual medical treatment with more frequent use of bronchodilators, and should consult their physicians if necessary.

If I experience any eye irritation what should I do?

Ocular saline solutions or tap water may be used to rinse eyes irritated by dust. All persons should avoid wearing contact lenses while in the affected area.

What are the health effects of asbestos?

Destruction of the World Trade Center buildings released large

amounts of dust and ash, some of which contained trace amounts of asbestos. Based on the asbestos test results received thus far, the general public's risk for any short or long term adverse health effects are extremely low.

In general, asbestos-related lung disease general results only from intense asbestos exposure experienced over a period of many years, primarily as a consequence of occupational exposures. The risk of developing an asbestos-related illness following an exposure of short duration is very low.

What measures are being taken to protect the rescue workers?

Rescue workers have been equipped with half-face masks, goggles, and protective clothing to reduce their exposure to dust and other particulate matter while working in the blast zone.

How can I clean up dusts in or near my home or office?

The best way to remove dust is to use a wet rag or wet mop. Sweeping with a dry broom is not recommended because it can make dust airborne again. Dirty rags should be put in plastic bags while they are still wet and bags should be sealed and discarded (cloth rags can be washed, see instructions below). Rags should not be allowed to dry out before bagging and disposal or washing. Because the dust particles are so small, standard vacuuming is not an efficient way to remove the dust. High efficiency vacuums, which are now widely available in stores, should be used to remove dust. Carpets and upholstery can be shampooed, then vacuumed.

Persons should shower to rinse off any dust from hair and skin. Dusty clothes should be washed separately from other clothing. Pets can be washed with running water from a hose or faucet; their paws should be wiped to avoid tracking dust inside the home. To clean plants, rinse leaves with water. Throw away any food that may have been contaminated with dust. Food in cans, jars or containers with tight-fitting lids do not need to be discarded. However, if there is dust present on the exterior of vacuum-sealed food containers, just wash the can or jar with water and wipe it clean. **If in doubt, throw it out.**

Air purifiers may help reduce indoor dust levels. High efficiency air purifiers are superior to other models in filtering the smallest particles. Air purifiers are only useful for removing dust from the air. They will not remove dust already deposited on floors, shelves, upholstery or rugs. Keep windows closed when using an air purifier.

Do pregnant women and young children need to take additional precautions?

No. Pregnant women and young children do not need to take additional precautions.

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Table 3-1: Actions by New York City

Date	Key Statement
09-14-01	NYCDEP provided a notice to building owners entitled "Clean-up of Asbestos Containing Material." For "minimal dust accumulations (light coating)" the notice recommended using wet methods and/or vacuums equipped with HEPA (high efficiency particulate air) filters. For "accumulations of dust that included pieces of debris" the procedures provided for two options. Building owners could assume that the material was asbestos-containing material and have it cleaned in accordance with NYCDEP Asbestos Abatement Program removal procedures, or have the material sampled by a NYCDEP certified investigator or New York State Department of Labor inspector to determine whether the material was asbestos-containing material and subject to New York City's Asbestos Abatement Program removal procedures. Asbestos-containing material was identified as any material containing more than one percent asbestos.
09-16-01	The NYCDEP issued a "Public Notice" flyer to building owners that discussed building maintenance issues. The notice stated that building owners/managers should have possible contamination problems reviewed by competent professionals.
09-17-01	NYCDOH issued a press release that recommended that individuals reentering their residences and places of work remove dust by using a wet rag or wet mop, and vacuum with a HEPA filtration vacuum. If a HEPA vacuum was not available, the press release recommended using HEPA bags or dust allergen bags with a regular vacuum cleaner. EPA's web site also linked to these instructions.
09-26-01	NYCDEP issued a notice to building owners entitled "Clean-up of Debris Inside Buildings" which was identical to the notice issued on 9-14-01 except for three items. First, the notice did not say "accumulations of dust that include pieces of debris . . . may be assumed to be ACM (asbestos-containing material)." Second, the notice stated that such accumulations "can be sampled" (rather than "must be sampled") by a NYCDEP certified investigator or New York State Department of Labor inspector. Third, the notice stated that EPA had studied the situation and reported "that the potential presence of ACM in dust and debris is minimal."
10-25-01	NYCDEP described benchmarks and guidelines used to evaluate environmental conditions in a letter to Lower Manhattan residents dated October 25. In regard to cleaning indoor spaces the letter stated: "If more than 1 percent asbestos was found and testing and cleaning was necessary, it had to be performed by certified personnel." In addition, the statement indicated landlords should not reopen any building until a competent professional had properly inspected their building. The City's Asbestos Abatement Program requires that building owners file a written notification with the NYCDEP for asbestos abatement projects that do not require plan or permit approval from the City's Buildings Department. NYCDEP officials told us this notification applied to buildings owners who found more than 1 percent asbestos in bulk dust in their buildings (see Appendix J for a copy of the instructions).

NYCDEP officials told us that in September 2001 they began visually inspecting the exteriors of over 1,000 buildings and identified 323 with visible dust. NYCDEP documentation indicated that 102 of these 323 building exteriors were subsequently cleaned by the building owners. NYCDEP officials told us that the remaining owners stated they could not afford to clean their buildings, and these buildings were cleaned by NYCDEP with funding provided by FEMA.

To determine the extent of indoor contamination in Lower Manhattan residences,

OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Evaluation Report

EPA's Response to the World Trade Center Collapse: Challenges, Successes, and Areas for Improvement

Report No. 2003-P-00012

August 21, 2003

take safety precautions. This agreement is detailed on page 9 of the draft report and illustrated in Appendix P.

We do not agree that EPA "emphasized" the need for professional cleaning because this concept was not discussed in EPA's press releases. According to the OCEMR Associate Administrator, a recommendation to obtain professional cleaning was deleted from an EPA press release by a CEQ official. As detailed in the draft report, EPA's press releases referred the public to a New York City Department of Health web site which recommended that people clean their own residences and businesses using wet rags, wet mops, and HEPA vacuums.

Note 7 - We do not believe that "The Report erroneously focuses" on five early Agency press releases. We reviewed many different types of information from many different sources including videocassettes which were provided by Region 2. We made extensive efforts to locate all relevant records. For example, by contacting the Administrator's Press Secretary and Scheduling Director, we were able to determine the date of a videotaped newscast which showed the Administrator advising the public orally about obtaining professional cleaning on October 26, 2001. Similarly, we worked closely with Region 2 officials and agreed with their analysis that EPA's web site recommended professional cleaning at least as early as December 11, 2001. In summary, although EPA's subsequent communications sometimes added information or clarification to the message presented in the press releases, the Agency's overall message of reassurance about long-term health impacts did not change.

In regard to the comment in the response to the draft report about EPA's "massive outreach program," we note, as detailed in the draft report, that a NYCDOH study, other lessons learned reports, and testimony provided at various hearings indicated that the public did not receive adequate air quality information and that individuals cleaned their residences without using proper procedures or personal protection.

Note 8 - We agree there were no health-based standards for many of the pollutants encountered in the aftermath of the WTC attacks, and the report does not intend to find fault with EPA or any other government organization for not having developed those benchmarks beforehand. However, we do not agree with using certain criteria-based benchmarks – particularly the NESHAP asbestos-containing material definition of one percent asbestos – as health-related benchmarks when environmental professionals clearly acknowledge that this standard is not protective of health.

Note 9 - The Agency is to be commended for its proactive approach to analyzing its response to the WTC collapse and initiating improvements to its emergency response capabilities. We disagree with the Agency's comment that this report "trivializes both the horrendous event that occurred and the extraordinary efforts of EPA and other responders." The primary objective of the report is to ensure that, if such a tragedy were to happen again; the public and emergency responders impacted by the disaster would receive the best available advice, protection, and assistance that the Government can provide.

TAB 20

Clark Patricia K New York

From:	Zoldan Efraim
Sent:	Thursday, September 13, 2001 12:08 PM
To:	Layne Raymond (Davis)
Cc:	Clark Patricia K New York; Zoldan Efraim; Friedman Bonnie-OSHA; Gillen Gill; Mendelson Richard-OSHA
Subject:	Region 2 - Update 3 - WTC

The Manhattan Office Area Director has been in contact with the safety and health section of the New York Office of the FBI to offer assistance. They expect hundreds of agents to arrive shortly in New York. They have to be fit tested and trained on hazards to expect and how to protect themselves. We are gearing up to assist them.

There was extensive communication with the EPA (Region 2 and National Office), New York City DEC, State DEC and DOH concerning air quality. We have received early copies of the preliminary asbestos sampling results, both bulk and air samples. According to their limited results, there are small amounts of asbestos in the debris, but not the air. It must be noted that this is a small sample and sampling continues.

A conference call was held this morning with EPA, Regional and National, as well as representatives from the White House. Their overall concern was the quality of the ambient air and the reaction of the general population. They were concerned about the public understanding of the sample results that are forthcoming and our ability to reassure them with respect to air quality.

The secondary purpose of the call was to discuss the financial market and how we can work toward allowing them into their buildings. We are working closely with local EPA to conduct sampling. Thursday 9/13, Regional and Area Office personnel will be working with the EPA to sample in financial buildings and the immediate surrounding areas. Sampling for asbestos and silica will take place.

G-1 /

Clark Patricia K New York

From: Jerome, Edward [edward.jerome@osha.gov]
Sent: Friday, September 28, 2001 10:50 PM
To:

EXT

Cc:
Subject: 092801 600pm EOC Safety Meeting Update

Here are the notes from this evenings meeting:

Issues discussed at the 9/28/01 6:00pm EOC Safety Meeting

1. Freon 22 - A water sample taken in the P6 level showed small quantities of R-22. This is the first time any levels of Freon were found in any sampling and indicates some level of leakage. Workers have been down in this area.

2. Bechtal Safety and Health Plan - Is in development and a first draft will be available at the 6:00 pm meeting on Sunday. Comments on the draft will be due by 6:00pm on Tuesday with a final draft issued next Thursday. A final plan should be in effect next Friday.

3. Bechtal S&H Site Evaluation - A contractor was shut down on 9/28 for throwing bags of debris 5 to 6 stories off a building to the street level. Bechtal observed about 98% worker compliance with eye protection. But, only 30-35% compliance with respirator usage was noticed. Problem exists with excessive speed for trucks, gators and other equipment throughout the site.

(I will fax this ES&H evaluation to the Region this evening so that the concerns can be reviewed with the CSHOs who will be onsite tomorrow.)

4. Air Sampling - NIOSH conducted personal CO sampling of a worker near Church St. operating a gasoline cut off saw. A 33 min. sample had a result of 221 ppm, which is above NIOSH's ceiling level. In addition, the IDLH level for CO was exceeded during this sampling on more than one instance for up to 3 minutes. A NIOSH CO Alert is being made available to contractors. Bechtal will also educate contractors and include in toolbox meetings.

- Discussed that OSHA has continued to do sampling and has been using the Miran for organics at the pile. No levels of phosgene were found. CO of 500 ppm was found in the plume. A full written report will be available from OSHA tomorrow.

- EPA stated that by orders of the White House that the EPA web page is not being updated with current sample results. However, it was noted that worker exposure data is available from a restricted site at www.ert.org. (After the meeting I asked if OSHA's data was included and was told that it would be since it was obtained from DOH. It is supposedly up to date from the first sampling up until yesterday. I did not access the site but I do have instructions on how to do so.)

5. Respirators and PPE - A final NIOSH fact sheet titled "NIOSH Guidance on Respiratory Protection for WTC Workers" was distributed.

- The Operating Engineers IH noted that there is mixed message on respirator usage and workers see many not wearing the protection. Workers are confused as to who is running the site in regards to safety.

12-1

Clark Patricia K New York

From: Peist, Phillip [Phillip.Peist@osha.gov]
Sent: Sunday, October 07, 2001 8:55 PM
To: Clark, Patricia K (New York)
Cc: Zoldan, Efraim; Gillen, Gil; Mandelson, Richard; Ippolito, David; Kulick, Robert D.; Kaplan, Steve; Caldarelli, John; Brennan, Kevin; Rastelli, Arthur; Baxter, Gregory; 'diana.e.cortez@osha.gov'
Subject: 10/7 - 6PM - EOC meeting update

Note that Efraim was present and can discuss the OSHA enforcement issue tomorrow in detail.

10/7/01 - 6PM EOC Safety and Health Meeting Notes:

******* Kelly McKinney stated the city would like to OSHA to start taking enforcement action at the WTC and Staten Island Landfill sites. I explained that we are currently in a technical support mode at both locations. I asked if the WTC site was still a rescue/recovery operation under control of the NY Fire Department. Mr. McKinney stated that it was. He stated that New York City may formally ask the Secretary of Labor to direct OSHA to do enforcement as they believe that the contractors "fear" OSHA's ability to issue penalties and that would cause compliance.
****

I asked that status of identifying credentialed contractors that are doing work in area other than WTC site. The Army National Guard representative indicated that they need a written request from OEM to release that information. Kelly McKinney indicated OEM would do so tomorrow. Also Bob Adams of EDC stated he would give OSHA the name of the netting contractors and the locations they are working at tomorrows contractor safety meeting.

OEM reported that the "green line" is not where it should be located. It is on the wrong streets. They will try to get DOT to fix it.

The visitors viewing platform is in place and being used. Bechtel representatives reported they are still observing visitors in work areas without ppe. Other agencies report the same thing. OEM said the will bring it up again with NYPD.

FEMA safety and health representatives said they had a team of structural engineers go through the WTC site. They will be issuing a report on what they believed should be done with damaged buildings but they did not know when it would be issued.

Tim Dowd of Bechtel stated that the NYFD will be supplying a ladder tower for dust control and that tomorrow, they would meet after the morning safety meeting to continue to work on dust control plan with the WTC site contractors. Bob Adams asked if there was anyway to do real time dust monitoring and "set an action level" that requires wetting down. The idea was tabled.

The Phillips and Jordan representative said they are still working on the Staten Island Landfill safety and health plan. He said they have taken combustable gas reading in and around the various tents and structures and all have been below the LEL. They have 5 safety monitors working per shift. EPA is doing the perimeter air monitoring and FBI was doing personal air monitoring for the FBI. They did not report out on the results.

OEM is currently happy with OSHA's sampling web page, particularly the map.

EPA representative stated that they will be able to fit OSHA's trailer on the West and Vessey Lot. The Lot is being paved tonight and should be ready for the trailer tomorrow. (As of 8:45pm the trailer has not arrived)

98-1

Bonnie Piper
12/04/02 02:51 PM

To: Chris Durkin/RTP/USEPA/US@EPA
cc:
Subject: Re: EPA web site info on 9/11 -related info

Chris: here is some information about World Trade Center information (data) being posted on the epa website. As you can see the White House/Council on Environmental Quality was very involved and requesting to call the shots about content of materials that go out in any fashion - press release, web, etc.

Bonnie
--- Forwarded by Bonnie Piper/DC/USEPA/US on 12/04/02 02:52 PM ---

Tina Kreisher
09/25/01 05:47 PM

To: Bonnie Piper/DC/USEPA/US@EPA
cc:
Subject: Re: EPA web site info on 9/11 -related info

--- Forwarded by Tina Kreisher/DC/USEPA/US on 09/25/01 05:47 PM ---

Samuel A. Thevatso
09/25/01 04:26 PM

To: Tina Kreisher/DC/USEPA/US@EPA
cc: Brian B. Beardsley@ost.rtp.gov, Scott_McGeehan@who.eop.gov, James_Connaughton@ceq.eop.gov, Elizabeth_A._Stirpe@ost.rtp.gov
Subject: Re: EPA web site info on 9/11 -related info

CES

Given that the clearance process on this end has not been holding up EPA's ability to get data out, I don't quite see why it was necessary to post web site
information without giving us the courtesy of a heads up and a chance to review.
If you had done that, there would be no confusion about who was responsible for
posting information about bioterrorism without proper clearance. "Desperation" at EPA or not, the WH clearance process was not holding you up on posting that information, since you had never submitted it to us.

As far as the sample you submitted today goes, in my opinion it shows that in fact there is a value to running things past us, since EPA's perception of what
is problematic results slightly different from my own. These issues are touchy,
and it helps to have more than one set of eyes on them.

For instance, on the asbestos data, you propose disclosing that three samples were about EPA's 70 structures per mm sq. standard that you use to clear schools
after asbestos removal. How does this compare to OSHA's standards? How does this
speak to the short-term v. long-term exposure issues? How is the public to know
whether this is ambient air or bulk dust? On the whole, what does those three samples in violation of that standard mean from a public health standpoint? What
kind of cleanup is warranted, and why? Where were the samples that violated that
standard taken? You only say "in and around ground zero and New Jersey."

leaving
people in NJ to wonder about their safety: Giving people this raw data without
any context is, in my opinion, only adding fuel to their fears.

Altogether, although I understand your and the Administrator's annoyance at
being screwed by the WSJ today, I don't think that the best response is to
panic
and start posting lots of raw data without proper context and analysis of its
meaning. Raw data alone is easily misunderstood and mischaracterized by
political candidates in the city who have an axe to grind -- I think you only
leave yourself more open to their attacks by giving them more ammunition. If
the
public needs more info, I think more press releases might help, or at least
doing something more than just posting raw data -- a web site posting that
includes press release-type language providing context. And I would prefer it
if
we continue to have the chance to review that information before it is posted.
Unless there's a problem caused by slow WH review -- which there hasn't been
so
far -- I think we should stay in the loop.

Sam

(Embedded
image moved
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pic23663.pcx)

Kreisher.Tina@epamail.epa.gov
09/25/2001 03:44:37 PM

Record Type: Record

To: Samuel A. Thernstrom/CEQ/EXOPEOP

cc:
Subject: Re: EPA web site info on 9/11-related info

Sam, I was in Chicago all day yesterday with the Administrator. It has
taken me a while to get through the e-mails and voice mails from yesterday.
Plus I have been yelling at the Wall Street Journal all morning over their
ridiculous story on page A-10.

The web site information was put up out of desperation for the numbers of
calls and e-mails we were getting. The answers were written from the press
releases and the links were to other sites we assumed were pre-approved.

I am having someone check on the one you mentioned, which I agree, had not
been approved. So far, no one is admitting that they are responsible.

If you were on the conference call today, you heard the Administrator need
everyone the list of about having information on the web site to help
people and reporters. She was more than and about the Wall Street Journal
story that said we could not give out the raw data. Hence the e-mail you
have from me on whether or not we could use the format for our updates and
simply put them on the web each day. We certainly would let you know first
if there were a problem posting. So far we haven't encountered any data
for the phosgene reading, which is now moot because the city expects to
remove the containers of freon tomorrow.

thanks tina

TAB 21

Ground Zero Air Study Shows A 'Chemical Factory'

Rescue workers, volunteers and others close to Ground Zero in the months after Sept. 11, 2001, were exposed to a veritable "chemical factory" of dangerous pollutants, according to a study released yesterday during a national gathering of the American Chemical Society.

The lead author of the study, appearing with another leading scientist studying air quality in the aftermath of the terrorist attacks, said those same pollutants posed little health threat to New Yorkers and New Jersey's away from where the Twin Towers collapsed.

The study found levels of very fine particles -- cancer-causing pollutants, invisible shards of glass and sulfuric acid -- capable of penetrating the lungs at levels never seen by the researchers. They had conducted 7,000 similar tests worldwide, including when near the oil fires after the 1991 Gulf War, volcanic eruptions and global dust storms.

Conditions would have been "brutal" for people working at Ground Zero without respirators and slightly less so for those working or living in adjacent buildings, said the lead author, Thomas Cahill, a professor of physics and atmospheric science at the University of California, Davis.

The collapse of the World Trade Center towers sent a massive cloud of pulverized concrete into the air, but the study focused on the stubborn fires at Ground Zero that burned until mid-December 2001 while rescue and salvage operations continued.

The tests were conducted during October 2001, a mile from the site high on a rooftop. Both scientists said the plume of pollutants rose quickly, greatly reducing the risk to people living off the World Trade Center site or walking city streets. The anticipated high readings appeared only on days when the wind was blowing directly at the test site.

The concerns voiced by Cahill about the fearful level of pollutants did little to dispel a growing controversy about whether the federal Environmental Protection Agency did its job of protecting citizens in the aftermath of the terrorist attacks.

The EPA warned that rescue workers must wear respirators or risk serious consequences, but a report released last month by the agency's own inspector general said the EPA didn't have the data to support its contention a week after the attacks that the air around Ground Zero was safe to breathe.

The same report charged that White House officials instructed the agency to be less alarming and more reassuring to the public. Former EPA Administrator Christie Whitman has adamantly denied that Agency downplayed health risks and said the White House never ordered her to lie about air quality.

Whitman said yesterday that science has continued to support EPA contentions that workers needed to wear respirators and visitors with health problems should probably stay away, but that the rest of the city had little to fear. She said EPA testing also showed high spikes of pollutants, based on wind shifts, but they always dissipated rapidly.

"The agency is getting blamed for being right, which is kind of ironic," she said. "There has never been a subsequent study that disproved what agency scientists said all along."

Ed Rabinowitz, an employee of a demolition company, Mazzocchi Wrecking of East Hanover, N.J., that worked at Ground Zero on the afternoon of Sept. 11, said he didn't get the messages about dangerous air in the early days.

But he and co-worker, Ed King, said all workers on the site were under strict orders after about two days to wear respirators. They said they complied, but contend they had seen others who didn't. Countless photographs taken during the rescue operation document the uneven use of respirators.

Both demolition workers said they experienced no early health problems but have begun to wonder about their exposure in the early days.

"We were walking around with all that dust, and who knows what was in it?" Rabinowitz said. "Will we get asbestosis? Yeah, I worry about that."

Cahill and Paul Lioy, associate director of the Environmental and Occupational Health Sciences Institute in Piscataway, said it is too early to determine precisely what the long-term health effects will be for people working at Ground Zero who failed to wear respirators.

Lioy said it was good news that there weren't an enormous number of "acute" cases of lung damage in the immediate aftermath of the attacks. One study traced "Ground Zero cough," a condition suffered by hundreds of workers, firefighters and volunteers to alkaline dust particles from pulverized concrete that irritated the throat but did not enter the lungs.

Still, a study by Mount Sinai Medical Center, which has begun to track long-term health concerns related to Ground Zero exposure, found that half the initial 250 participants suffered persistent lung or sinus symptoms a year later.

The scientists at the news conference yesterday -- who are not health care professionals -- seemed to grow exasperated with persistent media questioning about whether there would be long-term effects from exposure to Ground Zero pollutants.

"We can come away with a simple answer," Lioy said. "I guarantee the that, but it just isn't going to happen."

By Steve Charkovich
Star-Ledger - 9/12/2003

TAB 22

Associated Press

Democrats ask for investigation of ex-pollution agency director on Sept. 11 health issues

By DONNA DE LA CRUZ
Associated Press Writer
441 words
13 September 2006
10:43 pm GMT
Associated Press Newswires
English
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WASHINGTON (AP) - Democrats from the two states hardest hit by the terror attack on New York City asked on Wednesday for an investigation that could lead to criminal charges against the former head of the Environmental Protection Agency because of breathing problems suffered by thousands after the Sept. 11 attacks.

Christie Whitman told The Associated Press that she and the EPA "agreed then, and I reiterate now, that the air on the WTC site was not clean -- the consequence of millions of tons of burned debris from the most horrific attack in our nation's history.

"We were emphatic that workers needed to wear respirators, a message I repeated frequently."

At hearings last week in New York, Whitman was the most frequent target of lawmakers who charged that workers in the pit where the twin towers of the World Trade Center had stood were not protected as they worked to clear the pile of toxic debris.

Whitman, a Republican former governor of New Jersey, declared in the days after Sept. 11, 2001, that the air in lower Manhattan was safe for workers and residents. But she has said she and the EPA always differentiated between the air quality in lower Manhattan and at ground zero.

Chairman Thomas Kean of the commission that studied government action before and after the attacks, who also is a Republican former governor of New Jersey, said it was troubling that the Democratic congressmen "would misuse the heroic service of thousands for their political gain in an election season."

The congressmen -- New York Reps. Jerrold Nadler and Anthony Weiner and New Jersey Rep. Bill Pascrell Jr. -- said the health of their constituents, and not politics, was their concern.

In a letter to Attorney General Alberto Gonzales, the trio accused Whitman of "endangering the lives of thousands of people."

Weiner said, "Only with the appointment of a special prosecutor with subpoena power can an independent investigation occur and, if necessary, criminal charges be brought against those responsible."

Pascrell said it was "morally incumbent" upon Gonzales to appoint a special counsel. The Democrats want the investigation to look at other government officials as well, but did not specify anyone other than Whitman.

Justice Department spokeswoman Kathleen Blomquist said the agency had not yet received the letter.

Separately, Whitman and the EPA are being sued by residents, workers and others over health problems. Last week, Mount Sinai Medical Center released the results of a study showing nearly seven of every 10 ground zero responders suffered lung problems.

TAB 23

CBS News Transcripts

September 11, 2006 Monday

SHOW: The Osgood File Various Times CBS

9/11 rescue workers face serious health problems

REPORTERS: CHARLES OSGOOD

LENGTH: 348 words

CHARLES OSGOOD reporting:

The huge cloud of dust that enveloped blocks of Lower Manhattan near the World Trade Center five years ago today when the Twin Towers collapsed after being rammed by two hijacked airliners was pulverized construction material the buildings had been made of. Everybody in the area was coughing and sputtering and, for the rescue workers who lingered there, it became treacherous.

Dr. ROBIN HERBERT: This really be came a cataclysmic environmental, as well as human, disaster.

OSGOOD: Dr. Robin Herbert of Mount Sinai School of Medicine.

Dr. HERBERT: We have 40,000-plus people who were exposed to massive, massive levels of dust and irritants that reacted in the body to cause chronic inflammation.

OSGOOD: More after this.

(Announcements)

OSGOOD: Daniel Arrigo is a construction worker, one of the thousands of ground zero workers who now have chronic lung problems.

Mr. DANIEL ARRIGO: The last test that I had at Mount Sinai, they told me that I had lost 44 percent of my lung capacity.

OSGOOD: He didn't realize what was happening at the time because, he says, nobody told him.

Mr. ARRIGO: We could have taken precautions to better off ourselves. And we weren't told the truth.

OSGOOD: Christine Whitman, the former governor of New Jersey who was head of EPA at the time, says everybody was told.

Ms. CHRISTINE WHITMAN: We were there saying that this stuff wasn't good to breathe. We were there saying they should take some protection.

OSGOOD: The city handed out masks to the workers.

Ms. WHITMAN: (From file footage) Even better, that's what these are all about, and it's important that they wear them.

OSGOOD: She says she didn't have the authority to make people wear them.

Former Mayor Rudy Giuliani:

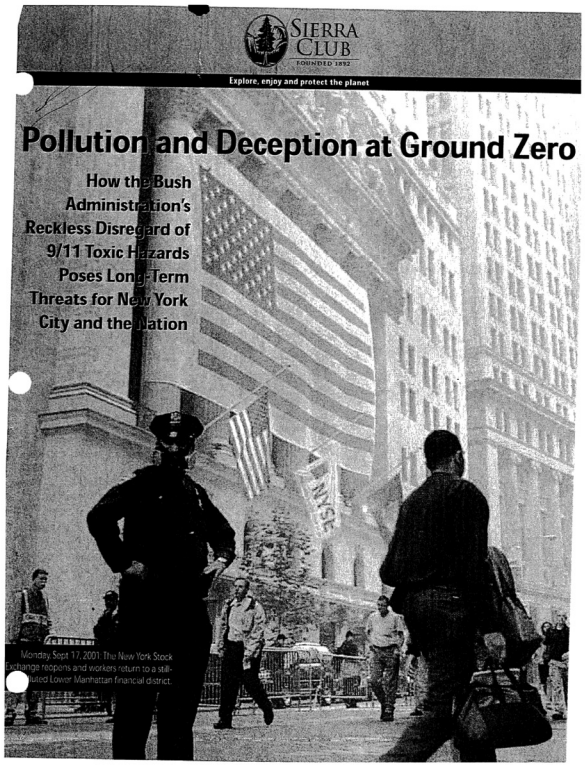
Mr. RUDY GIULIANI: Christie Whitman made it very clear. You have all the tape that you can show over and over again saying that air quality was, at least, not dangerous.

OSGOOD: And the tapes have Whitman saying:

Ms. WHITMAN: (From file footage) The levels are all well below any indication of a health risk.

OSGOOD: THE OSGOOD FILE. Charles Osgood on the CBS Radio network.

TAB 24


SIERRA CLUB
FOUNDED 1892
Explore, enjoy and protect the planet
Pollution and Deception at Ground Zero
How the Bush Administration's Reckless Disregard of 9/11 Toxic Hazards Poses Long-Term Threats for New York City and the Nation
NYSE
Monday, Sept 17, 2001: The New York Stock Exchange reopens and workers return to a still-devastated Lower Manhattan financial district.

EPA's early press releases," and that the EPA Chief of Staff said, "final approval came from the White House."[253] This information is consistent with the recollection of former counter-terrorism czar Richard Clarke, who reports that on the evening of September 11th, the President stated to some members of his staff, including Clarke, that he wanted the stock market, banks and other businesses to reopen by the next day, relenting on the "tomorrow" demand when he was informed of the physical damage but declaring that as soon as rescue operations were done, everything should shift to restore the economic activity. Clark recalls President Bush stating:

> "I want the economy back, open for business right away, banks, the stock market, everything tomorrow." Ken Dam, the Deputy Secretary of the Treasury, filling in for the traveling Paul O'Neill, pointed out that there was physical damage to the Wall Street infrastructure. "As soon as we get the rescue operations done up there, shift everything to fixing that damage so we can reopen," Bush urged.[254]

Reporter Ron Suskind similarly states that Paul O'Neill, the former U.S. Treasury Secretary, was told on Wednesday night, September 12, by the undersecretary for domestic finance:

> The President wants to open the New York Stock Exchange tomorrow -- that's the word I'm getting. . . . I think he made his wishes known to several people on the senior staff.[255]

The message was clear.

It was, of course, reasonable to be concerned about the economy. The longer that the country's major financial markets remained closed, the greater potential for economic damage. Still, this was not a situation in which one could complete rescues and recover bodies within a day or two. Also, the Ground Zero fires burned for weeks and weeks. Lower Manhattan was heavily polluted, and this fact should have entered into the decision-making on how to go about recovery.

The federal government's course of action, instead, was to sacrifice public health to the goal of achieving the visible impression of nearly immediate economic recovery at any cost. The Inspector General's report clearly shows that the White House Council on Environmental Quality placed inappropriate pressure on technical agencies to give health assurances that were unsupported by the

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[253] *IG Report*, p. 17. The EPA Inspector General Tinsley stated, "We were told that a desire to reopen Wall Street and national security concerns were the reasons for changing the press releases." Lisa Myers, "What Was Known About Post 9/11 Air," NBC News (Sept. 5, 2003).

[254] Richard Clarke, *Against All Enemies: Inside America's War on Terror* (2004), p. 24.

[255] Ron Suskind, *The Price of Loyalty: George W. Bush, the White House, and the Education of Paul O'Neill* (New York: Simon & Schuster, 2004), p. 183. O'Neill, according to Suskind's account, convinced the President to wait through the weekend, until Monday, September 17, arguing that Stock Exchange computers were under water and the phone and electrical systems were impaired, and that it would be devastating if the Stock Exchange were opened but then forced to close again because of such infrastructure problems. *Id., pp. 183-85.*

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The New York Times
nytimes.com

September 14, 2001

AFTER THE ATTACKS: THE CHEMICALS; Monitors Say Health Risk From Smoke Is Very Small

By ANDREW C. REVKIN

The persistent pall of smoke wafting from the remains of the World Trade Center poses a very small, and steadily diminishing, risk to the public, environmental officials and doctors said yesterday.

There could be a slight health threat, they said, to city residents with weakened immune systems, heart disease or asthma, and to rescue workers who did not wear protective gear or who smoke. Smoking greatly amplifies the effects of some kinds of pollution, scientists said.

But over all, the danger was no greater than that on a smoggy day, some officials said.

Some government scientists, speaking only on the condition of anonymity, said they were concerned that city health officials had not done more to encourage those people who were caked in the dust as the disaster unfolded to avoid spreading it around once they were safe at home.

But tests of air and the dust coating parts of Lower Manhattan appeared to support the official view expressed by city, state and federal health and environmental officials: that health problems from pollution would not be one of the legacies of the attacks. Tests of air samples taken downwind of the smoldering rubble on Tuesday and Wednesday -- mainly in Brooklyn -- disclosed no harmful levels of asbestos, lead or toxic organic compounds, officials of the federal Environmental Protection Agency said yesterday.

Some samples of the dust that cloaked the disaster scene, victims and rescuers on Tuesday showed slightly elevated levels of lead and asbestos, the agency said. But by Wednesday, levels of the substances had dropped below the threshold of any concern, said Bonnie Bellow, a spokeswoman for the Environmental Protection Agency. Tests on samples taken yesterday would not be completed until today, she said.

Continued monitoring of fine soot particles and other kinds of air contaminants by state environmental officials also showed "nothing out of the ordinary," a state official said.

"We're not seeing any violations," the official said, "not seeing anything out of the ordinary, with the exception of small episodic spikes based on wind shifts or activity at ground zero."

The best approach for people near the attack site, experts said, would be to limit their exposure to smoke and dust as much as possible, by using filtering masks and washing coated clothing in separate loads from other laundry.

"There's a lot of debris and various kinds of dust," Ms. Bellow said. "The best advice for workers is to wear the proper protection."

Federal and city health officials said they had a stockpile of 10,000 paper-filter masks, 5,000

more-sophisticated masks able to filter the tiniest particles, and 2,000 sets of goggles on hand for rescuers to wear.

At St. Mary's Hospital in Crown Heights, Brooklyn, which treated many victims of the attack who fled across the Brooklyn Bridge, there was no sign of a spike in respiratory illness, said Ernst J. Baptiste, the hospital's executive director.

The situation was similar at Bellevue Hospital Center, which treated dozens of injuries. Hospital officials said only a small number of people walked in complaining of breathing troubles.

The first volcano-like clouds of dust and smoke from the fires and building collapses undoubtedly contained potentially harmful particles and gases, which have since dissipated, said Dr. Mark D. Siegel, the director of the medical intensive care unit at Yale-New Haven Hospital.

The most visible ingredient, though -- the large particles of dust and ash -- was probably the least dangerous, he said.

The lungs, throat and nasal passages are designed to eject large particles, like the heavy ash that coated Lower Manhattan and fell on many fleeing people, he said. But gases and the finest particles can penetrate deep in the lungs and remain behind even after extensive fits of coughing.

Generally, the biggest risk posed by those substances would be to people who have a heightened sensitivity to chemicals, Dr. Siegel said. He said that one of the lowest risks would be from inhaling asbestos fibers, if any were released when the towers fell.

"Even in a worst-case scenario," he said, "most people with asbestos- related lung disease usually had long-term occupational exposure."

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The Dust at Ground Zero; ill health of World Trade Center first responders and clean-up workers CBS News Transcripts September 10, 2006 Sunday

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ANCHORS: KATIE **COURIC**

BODY:

THE DUST AT GROUND ZERO

KATIE **COURIC,** co-host:

On September 11th, 2001, thousands of workers rushed into lower Manhattan while everyone else was rushing out. They spent day and night on what became known as The Pile searching for survivors and, later, remains in the worst of conditions. The cruel irony is that thousands of them are now getting sick, and a growing number of studies confirm they're getting sick because of all the time they spent breathing the dust at ground zero.

(Footage of World Trade Center rubble; firefighters; photo of James Zadroga; photo of Zadroga and other police officers; Joseph Zadroga)

COURIC: (Voiceover) In all, there were about 40,000 people who worked on The Pile, a collection of firefighters, policemen, construction and utility workers. One of them was this 30-year-old New York City police detective, James Zadroga. When the planes hit the World Trade Center, he drove straight to ground zero and stayed for weeks. His father, Joseph Zadroga, says he remembers shortly after that his son started getting sick.

Mr. JOSEPH ZADROGA: Every morning he would wake up and he said he would be coughing, hacking and this black stuff would come

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up out of his lungs. And he just didn't know what was happening to him, he just couldn't figure out what was happening to him.

(Footage of James inhaling medication; **Couric** looking at photos of James' lungs; Joseph Zadroga)

COURIC: (Voiceover) His doctors didn't know either. Before long, as you can see in this home video, James needed to inhale medication to breathe. And when doctors took a scan of his lung, instead of healthy pink tissue his was black. The one morning this past winter James' father woke up to an unusual silence: his son wasn't coughing.

Mr. ZADROGA: I went upstairs and as soon as I opened the door I was him on the floor. I realized--I didn't even have to go in the room, I knew he was gone. And we spent the next two hours or so with him before we called anybody.

(Photo of James)

Mr. ZADROGA: Then we had them come to take him.

COURIC: An autopsy was performed.

Mr. ZADROGA: Right.

COURIC: What did that autopsy reveal?

Mr. ZADROGA: The doctor said, to the best of his knowledge, that Jimmy died from the results of working at the World Trade Center.

(Visual of autopsy report; footage of the World Trade Center collapsing; people running)

COURIC: (Voiceover) The coroner wrote it on the autopsy report: the failure of his lungs was directly related to 9/11. It was the first time a death had been officially linked to inhaling the dust created when the towers fell.

(Excerpt from scene)

Unidentified Man #1: Smoke all over the place.

Unidentified Man #2: Go! Come on!

(End of excerpt)

(Footage of people escaping scene; debris cloud)

COURIC: (Voiceover) It was an unprecedented toxic brew, approximately one million tons of pulverized concrete, glass, asbestos, PCBs, lead and more than 400 chemicals. No one had ever dealt with anything like it.

Dr. PREZANT: The air was so thick that everything was stuck in your mouth, in your nose, you were pulling large pieces out.

(Footage of people coughing at the scene)

Dr. PREZANT: (Voiceover) Coughing like crazy. You couldn't not but inhale and swallow tons of material.

(Footage of **Couric** and Prezant; Prezant at scene)

COURIC: (Voiceover) Dr. David Prezant, the chief medical officer for New York City's Fire Department, was caught in the dust cloud when the first tower fell.

How quickly did you notice that people were showing the effects of breathing in this air?

Dr. PREZANT: What we noticed when we were down there is that everyone was coughing.

(Footage of man coughing; firefighters; people in distress)

Dr. PREZANT: (Voiceover) Every firefighter, every EMT was coughing. And then we went back down there the second day and the third day and everybody was still coughing.

And by the end of the first week, everybody was still coughing.

COURIC: As a physician, have--well, there you go, you have that little cough. In fact...

Dr. PREZANT: Just a little bit now.

COURIC: ...you're suffering in a minor way from the after-effects yourself.

Dr. PREZANT: Well, that's the good thing about being down from my perspective, I was able to realize I had this cough and I realized that this is a problem.

Unidentified Woman #1: (From September 11th) What the hell is going on?

(Footage of emergency workers in debris)

COURIC: (Voiceover) What was it about the dust at ground zero that made it so unbelievably toxic?

(Footage of dust and debris in the streets)

Dr. PREZANT: (Voiceover) The biggest problem was that it was pulverized building materials that wind up having a very high alkalinity, almost like lye or Drano, that when you inhale it or swallow it, it's burning your entire nose and airway and stomach.

(Footage of ground zero site; Giuliani)

COURIC: (Voiceover) But most workers thought they'd be OK, in part, they say, because of what they heard early on from public officials, including then-New York City Mayor Rudy Giuliani.

Mayor RUDY GIULIANI: As you get beyond the epicenter of the--of the recovery site, the asbestos levels in the air are either safe or non-existent.

(Footage of Christine Todd Whitman at scene)

COURIC: (Voiceover) Christine Todd Whitman, the head of the Environmental Protection Agency, said this at the time:

Ms. CHRISTINE TODD WHITMAN: Everything we've tested for, which includes asbestos, lead and VOCs, have been below any level of concern for the general public health. Obviously for those who are down here, these are very important. (Face mask)

(Footage of firefighters are scene; workers at the scene weeks later; group of first responders with **Couric)**

COURIC: (Voiceover) But many workers say they couldn't get respirators at first, and when they did they were cumbersome and often clogged, making them useless. Within weeks, most of them were feeling minor effects of inhaling the dust. But as the months wore on, some, like this group of first responders, began to come down with more severe and unusual symptoms.

Unidentified Man #3: I have chronic lung disease. I have nodules in my right lung. The pleural lining which is thickening. Pleurisy, which is a pain in my back that's constant 24 hours a day, seven days a week.

Unidentified Man #4: I ended up getting a lung infection, nose infection.

Unidentified Man #5: My throat still burns every now and then. Basically right now the biggest part of my problem is breathing.

(Footage of workers at ground zero; **Couric** and Prezant)

COURIC: (Voiceover) Initially, many doctors were skeptical that a link could be made to the dust at ground zero, but now Dr. Prezant. He started to investigate.

Dr. PREZANT: So this is a breathing test. What it does is it tests both the amount of air these firefighters are able to move back and forth as well as the speed of air.

(Footage of lung test tool; firefighter; man doing lung test; **Couric,** Prezant and Garrett Barbosa)

COURIC: (Voiceover) Based on routine tests like this, he knew the lung capacity of every firefighter in the department before 9/11. He found that firefighters who worked at ground zero lost a significant amount of lung function, an average of 12 years. While we were visiting, firefighter Garrett Barbosa, who spent two months on The Pile, was being tested.

How's this affected your life?

Mr. GARRETT BARBOSA: From Superman to Jimmy Olsen. It's a big difference.

(Visual of medical journals; ground zero site; firefighters)

COURIC: (Voiceover) Dr. Prezant's findings were taken seriously, published in the country's top medical journals. Among his most

disturbing conclusion was that the particles from the buildings were still in firefighters' lungs. The dust they coughed up long after September 11th was virtually the same as the dust at ground zero.

Dr. PREZANT: And that's what we have to deal with. We're never going to be able to get this stuff out of people's bodies in terms of the dust and the concrete that is down there.

(Footage of Robert Ryan; photo of Ryan in firefighter gear)

COURIC: (Voiceover) No one knows that better than firefighter Robert Ryan, a long-time triathlete who spent four months on The Pile. Two years after that, he got the call for a routine fire; strapping on 100 pounds of equipment, he ran up five flights of stairs.

Mr. ROBERT RYAN: We opened the door and we were going in to do a search and I collapsed on the floor. At first I thought maybe my mask had malfunctioned, but it's not what happened. I was just laying there gasping, just gasping for air, and it just wouldn't go into my body.

(Footage of Ryan and boy playing catch)

COURIC: (Voiceover) Doctors told him he had lost about 40 percent of his lung function since September 11th. So much that he was forced to give up his life-long dream.

It was hard for you to tell your son that you were leaving your job.

Mr. RYAN: That was the hardest thing for me. He just looked at me and said, `Daddy, you're not going to be a fireman anymore?' And I said, `Daddy will always be a fireman, I just can't--I just can't be on the fire department anymore.' So yeah, that was something that stabbed me through the heart.

(Footage of firefighters at ground zero)

COURIC: (Voiceover) Ryan is only one of the 750 firefighters who are so ill they can no longer work. And according to department records, five years after September 11th, at least 3,000 firefighters, that's 25 percent of the department, still have respiratory problems.

As a physician, had you ever seen anything like this?

Dr. PREZANT: What you've never seen as a physician is such a large percentage of people all have the same problem, all right, and all have it affect their lifestyle so dramatically.

COURIC: So is there any doubt in your mind that there is a connection between people working at ground zero and then getting sick?

Dr. PREZANT: There's no doubt in my mind at all about that.

(Footage of aerial view of ground zero; Whitman)

COURIC: (Voiceover) As more and more people have become sick, many workers are questioning if more could have been done to

protect them on The Pile. At the time, many of them remember being told the air was OK and they remember being told that by the head of the EPA at the time, Christine Todd Whitman.

On September 18th you said, quote, "I'm glad to reassure the people of New York that their air is safe to breathe."

Ms. WHITMAN: Mm-hmm.

COURIC: What led you to make that determination?

Ms. WHITMAN: Everything that the scientists were telling us that the air--ambient air quality in lower Manhattan--this was not about The Pile, this was about lower Manhattan, the readings were showing us that there was nothing that gave us any concern about long-term health implications. That was different from on The Pile itself at ground zero. There we always said consistently `got to wear protective gear.'

COURIC: Many of the first responders told us all they heard was the air is safe, and it gave them a false sense of security. Do you think you emphasized it enough in hindsight?

Ms. WHITMAN: You know, it's hard to know when people--people hear what they want to hear and there was so much going on that maybe they didn't make the distinction.

COURIC: You've provoked a firestorm of criticism. One congressman said, quote, "You brazenly mishandled," end-quote, the situation. A fireman called you a disgrace. A lot of people are furious, and it seems that a lot of the anger has been targeted at you personally.

Ms. WHITMAN: The last thing in the world that I would ever do would be to put people at risk. Of all the criticisms I've had in my career and, you know, politics in New Jersey is not for the faint of heart, I'm used to a lot of that, this is by far the most personally troubling. I want to say you're wrong, I mean you're just so wrong, we never lied.

(Footage of EPA truck; EPA workers; EPA documents; emergency workers wearing respirators; workers not wearing masks; workers at the Pentagon site)

COURIC: (Voiceover) But a government investigation found that she spoke too soon when the EPA determined the air was safe, because all the test results were not yet in. And EPA press releases were changed by the White House Council on Environmental Quality to sound more reassuring. On another front, although the city required respirators and posted signs at the site, safety reports show only half of the workers wore them. In contrast, at the Pentagon, anyone who was not wearing a respirator was not allowed to work on the site.

Does the EPA any responsibility that some of those first responders refused to wear respirators?

Ms. WHITMAN: No. No, it doesn't. We didn't have the authority to enforce that.

COURIC: But with all due respect, your job as head of the EPA...

Ms. WHITMAN: Mm-hmm.

COURIC: ...the Environmental Protection Agency...

Ms. WHITMAN: Mm-hmm.

COURIC: ...is to protect people from the environment.

Ms. WHITMAN: Right.

COURIC: Did you really do it?

Ms. WHITMAN: We did everything we could to protect people from that environment, and we did it in the best way that we could, which was to communicate with those people who had the responsibility for enforcing what we were telling--saying should be done. We didn't have the authority to do that enforcement, but we communicated that to the people who did.

COURIC: But who had ultimate authority over the site?

Ms. WHITMAN: Really it was the city, it was the primary responder.

COURIC: Did your people do enough to call the people who were overseeing the site, i.e., Mayor Giuliani and city officials, and say, `Damn it, we've got to protect these people'?

Ms. WHITMAN: Oh, EPA was very firm in what it communicated, and it did communicate up and down the line.

COURIC: In no uncertain terms?

Ms. WHITMAN: Mm-hmm. No uncertain terms.

(Footage of workers at ground zero; Giuliani)

COURIC: (Voiceover) In fairness to the City of New York, OSHA, the federal agency in charge of safety in the workplace, supplied and encouraged the use of respirators but decided not to enforce their use because of the extraordinary nature of the attacks. We wanted to ask former mayor Rudy Giuliani about all of this. He declined to talk to us, but sent us this statement: "The people who worked at ground zero are heroes. The government must do everything it can to make certain that they have the support needed to deal with any problems that may have developed as a result of their valiant service to our country."

Mr. RUDY WASHINGTON: When I first got down here, I was standing right in the middle of the street.

(Footage of **Couric** and Washington)

COURIC: (Voiceover) We did talk to one of Giuliani's deputy mayors, Rudy Washington, who was caught in the dust cloud himself on September 11th. He says he and the mayor were scrambling to restore order during a time of complete chaos.

Mr. WASHINGTON: Rudy wasn't huddled in some corner somewhere waiting on the federal government to come rescue him.

(Footage of Giuliani at the site)

Mr. WASHINGTON: We were out there on the front lines forging ahead.

COURIC: Could a greater effort been made to get the people who were working day in and day out in those horrifying conditions better protection?

Mr. WASHINGTON: Nobody anticipated this level of toxic exposure. We never had this before.

(Footage of Washington and **Couric)**

COURIC: (Voiceover) And perhaps no one was caught off-guard more than Rudy Washington when, after months of working at ground zero, he too got sick.

Did a doctor at some point say to you, `Hey, you're sick because of what you were exposed to during the September 11th tragedy'?

Mr. WASHINGTON: Oh, yeah. Oh, yeah. There's no ifs, ands or buts about it. And to make it worse, they said, `We don't know if you're going to get better.'

COURIC: When Rudy Washington and hundreds of others tried to get medical help, they discovered something that added insult to injury. That part of the story in a moment.

(Announcements)

COURIC: In the aftermath of 9/11, New York City's deputy mayor, Rudy Washington, was one of the unsung heroes. When Mayor Rudy Giuliani was trapped in a building after the first tower fell, Washington was front and center. He spent months on the site overseeing the recovery and cleanup efforts. But then Rudy Washington started to get sick, and he soon learned from his doctors that his repeated bouts with pneumonia were linked to the dust at ground zero.

Mr. WASHINGTON: I go down for the screening and instantly they tell me, you know, `You're suffering from what a whole lot of other people were'--they told me. And I realized it wasn't just me, a lot of us were suffering.

COURIC: Have you felt sick more than you have felt well?

Mr. WASHINGTON: Oh, I would say in the course of a year, 40 percent of the time I'm probably not myself. And of that 40 percent, sometimes I'm really, really sick that it puts me in the emergency room.

(Footage of Washington and **Couric)**

COURIC: (Voiceover) His doctors told him he may never get better and he feared his family would be saddled with medical bills for years to come. He applied for Worker's Compensation as soon as he realized his illness was connected to 9/11. To his surprise, he was denied. He had missed a two-year window to file a claim.

Mr. WASHINGTON: Oh, there was a real sense of betrayal when they denied me the Workman's Compensation.

COURIC: Did you feel as if, `Hey, I did all this, I came through, I risked my life'?

Mr. WASHINGTON: Oh, I did my part, I did my part, yes. And when I asked the government to do its part, that was the answer I got.

(Footage of doctor and patient; Dr. Robin Herbert looking at chest X-ray; **Couric** and Dr. Herbert)

COURIC: (Voiceover) And Rudy Washington was only one of more than 10,000 first responders who filed Worker's Compensation claims. Almost everyone we spoke to said their claims were mired in bureaucratic red tape for months if not years. Dr. Robin Herbert of Mount Sinai Hospital heads a network of special clinics where more than 16,000 ground zero workers have been seen. According to her latest study, which made news last Tuesday, nearly two thirds had persistent respiratory problems. She says she worries most about those who lose their health insurance because they're too sick to work.

Dr. ROBIN HERBERT: We have so many patients who, in addition to being really sick, are worried about losing their homes, about paying college tuition for their kids.

COURIC: Is it frustrating for you to sit and watch these people not only suffer but also getting ignored by officials or services that could help them deal with this financially?

Dr. HERBERT: It's heartbreaking to me. I saw a patient recently who said, `You know, Dr. Herbert, every time I try and get medicine every month, what they put me through makes me feel like I've committed a crime.'

(Footage of Washington speaking to crowd; Washington at doctor's office)

COURIC: (Voiceover) But Rudy Washington was accustomed to bare-knuckle politics, he hired lawyers and the city found itself under attack from a former deputy mayor. After more than a year, he prevailed, and four months later the state passed a law extending the deadline for filing claims.

Mr. WASHINGTON: How many people walk away saying, `I can't beat City Hall, I can't beat the government, I can't beat the law department, I can't beat this big insurance company'?

COURIC: On the other hand, can you see how insurance companies and the city government might be in a defensive posture because they're thinking, `They're going to want to sue us, and this is going to cost millions upon millions upon millions of dollars'?

Mr. WASHINGTON: Well, the flip side of that coin is do we let people die, you know, and what price do you put on that?

(Footage of ground zero site; firefighter; World Trade Center remnants falling;

COURIC: (Voiceover) Early on, the federal government gave about $100 million to Mount Sinai Hospital and the fire department to monitor ground zero workers, but it didn't provide any money to treat their breathing problems.

Unidentified Woman #2: (To group) This is a long-term problem.

(Footage of Dr. John Howard making speech; work being done at ground zero; **Couric** and Dr. Howard)

COURIC: (Voiceover) After mounting pressure from New York politicians, unions and family members, the Department of Health and Human Services put Dr. John Howard in charge of coordinating 9/11 health programs. And more than four years after September 11th, about $50 million was set aside for treatment. The bulk of that money will not be delivered until next month.

It has been five years since September 11th; what took the government so long to allocate money and deliver money to actually treat these people? Not just monitor and screen them.

Dr. JOHN HOWARD: Well, I'm not a policymaker and I'm not a...

COURIC: But as a doctor, as a physician?

Dr. HOWARD: As a physician, what I--what I...

COURIC: Does it strike you as a long time?

Dr. HOWARD: ...what I can say is that it's extremely important for me as a physician that these people be treated.

COURIC: We've been told that they money will run out, this federal money, in the next two to three years, but at least 30 years of monitoring and treatment will be needed. Do you have a commitment from the administration that there will be more dollars in the future as needed?

Dr. HOWARD: I fully intend to tell the secretary that we're not in this for the short-term, we're in this for the long-term.

(Footage of doctor and patient)

COURIC: (Voiceover) Until now, Mount Sinai's World Trade Center program has had to rely on private donations to keep its treatment clinic afloat.

Dr. HERBERT: It's astonishing to us how sick our patients still are when they come in.

(Footage of Herbert and patients; workers at ground zero;

COURIC: (Voiceover) Dr. Herbert says that Mount Sinai still gets about 100 new patients every month. Thirty percent have been misdiagnosed by other doctors who didn't have guidelines on what to look for until just last week. Some patients had been told they had asthma when they really had pulverized glass in their lungs. And it will be years until it's really known how the dust will affect many people in the long run.

Dr. HERBERT: We know that our patients, that the responders were exposed to a mix of potent cancer-causing agents, and my biggest worry is are they going to develop cancers down the road?

(Footage of Governor Pataki signing law; firefighters; workers at ground zero; David Warby at desk)

COURIC: (Voiceover) A few weeks ago, New York State passed a law to give generous death benefits to ground zero firefighters and

policemen, even if someone dies from cancer 30 years from now. And while some medical experts and public officials say you cannot definitively link every single cancer case to ground zero, attorney David Warby is convinced you can. He's representing 8,000 workers, some with cancer, some with respiratory diseases, all of whom blame their illnesses on ground zero.

But how do you know some of these people didn't just get sick?

Mr. DAVID WARBY: I think some did. There's totally a statistical possibility, if not probability, that some of them would have the problems that they have today.

COURIC: If they hadn't been exposed on September 11th?

Mr. WARBY: If they had or hadn't been, but not in the staggering numbers that I'm getting.

COURIC: Some people might say the workers on The Pile were told by the EPA, maybe they weren't told enough but they were told that they should be wearing respirators. Now, can you really blame the city and other government officials if these workers were told it but they didn't listen to it?

Mr. WARBY: We have to give them a safe place to work, that's our, the city and the contractors' responsibility. Let's say that some of my people are personally responsible, they're sick and they were there helping the country as rescue and recovery workers post-9/11. If they're partially responsible does that mean they shouldn't get medical treatment? Does that mean the government should be in denial about their problems? Of course not.

(Footage of dust over lower Manhattan; photo of Debbie Reeve; photo of Stephen Johnson; group of first responders)

COURIC: (Voiceover) The New York City Fire Department says that two more deaths could very well be linked to the dust. Debbie Reeve, a 41-year-old EMT, and Stephen Johnson, a firefighter in his late 40s. And the first responders we talked to who have joined that massive lawsuit say they don't know how long they have left.

I remember September 11th, everybody was so grateful for everything you were doing, people applauded you, I mean you were heroes. Do you still feel like heroes today?

Mr. RYAN: I don't know if I have ever considered myself a hero. It's a big term for me to swallow. I do what I had to do. We have a saying now, `It's from heros to zeroes,' that's what--that's what--that's what we are, heroes to zeroes.

COURIC: That's what you feel like?

Mr. RYAN: Mm-hmm.

Man #3: Absolutely.

Mr. RYAN: It's been five years now and a lot of people have moved on. You know, we don't--we can't move on, we all have parts of those buildings inside of our body and we can't get rid of that.

(Announcements)

LOAD-DATE: September 11, 2006

Source: News & Business > Individual Publications > C > **CBS News Transcripts**
Terms: **couric and date(geq (09/09/2006) and leq (09/11/2006))** (Edit Search | Suggest Terms for My Search)
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TAB 27

Table 2-2: Outdoor Sampling Timeline for Pollutants of Concern

Pollutant	Sampling Source	Sampling Started	Results Available[1]
Lead	Dust	September 11	September 12
Asbestos	Bulk Dust Ambient Air	September 11 September 12	September 12 September 13
Benzene [2]	Air Grab Samples	September 16	September 17
Mercury	Ambient Air Dust	September 16 September 16	September 18 September 20
Lead	Ambient Air	September 16	September 20 [3]
PAHs Cadmium Chromium Manganese	Ambient Air	September 16	September 20
PAHs	Dust	September 16	September 22
Dioxin	Dust Ambient Air	September 16 September 16	September 24 [4] September 28
PCBs	Ambient Air	September 16	September 28
$PM_{2.5}$ PM_{10} [5]	Ambient Air	September 21	October 4
TSP [5]	Ambient Air	No Monitoring	No Monitoring

Notes:
[1] = Based on Daily Summaries of monitoring results prepared by Region 2 staff in Edison, New Jersey, which were used to brief management on data results.
[2] = EPA sampled for additional VOCs on this date as well.
[3] = EPA's Health Risk Evaluation reported lead results were known on September 18.
[4] = EPA's Health Risk Evaluation reported dioxin results were known on September 23.
[5] = "PM" stands for "Particulate Matter." $PM_{2.5}$ represents "fine" particulate matter less than or equal to 2.5 micrometers in diameter. PM_{10} refers to particulate matter less than or equal to 10 micrometers, with the fraction between 2.5 and 10 micrometers known as "coarse." "TSP" stands for "Total Suspended Particulates," and includes all sizes of particles.

Health-based benchmarks for short-term and acute exposures did not exist for pollutants of concern resulting from the collapse of the WTC. For asbestos, EPA used benchmarks originally designed for other purposes to assess potential health risks from breathing the air following the WTC collapse. Because health-based benchmarks for short-term exposures did not exist for most of the other pollutants, EPA revised benchmarks for lifetime (30-year) exposures to develop screening levels for short-term (1-year) exposures. Further, health-based benchmarks did not exist for assessing the risk to human health from exposure to the combination of air pollutants that were emitted.

TAB 28

15722 Federal Register / Vol. 51, No. 80 / Friday, April 25, 1986 / Rules and Regulations

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-62044A; FRL 2965-7]

Toxic Substances; Asbestos Abatement Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a rule under section 6(a) of the Toxic Substances Control Act (TSCA). The rule will apply to asbestos abatement projects using employees not protected by regulations of the Occupational Safety and Health Administration (OSHA), by regulations of State plans adopted under the Occupational Safety and Health Act (OSHAct), or by State regulations in Idaho, Kansas, Oklahoma, and Wisconsin that EPA has determined are comparable to or more stringent than this rule.

DATE: This rule will be promulgated for purposes of judicial review at 1 p.m. eastern time on May 9, 1986. This rule is effective June 9, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, Office of TSCA Assistance (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Authority

Section 6(a) of TSCA authorizes EPA to impose a number of regulatory requirements concerning a chemical substance or mixture if EPA finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance, or any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment. Among the requirements that EPA may impose are those listed in sections 6(a)(5) and 6(a)(6). Section 6(a)(5) of TSCA authorizes EPA to prohibit or otherwise regulate any manner or method of commercial use of a chemical substance or mixture. Section 6(a)(6) of TSCA authorizes EPA to prohibit or otherwise regulate any manner or method of disposal of a chemical substance or mixture or any article containing that substance or mixture, by any person who uses or disposes of it for commercial purposes.

These sections provide authority for EPA to issue this rule, which establishes requirements to protect State and local public employees conducting asbestos abatement activities. The asbestos in buildings where State and local public employees may be involved in abatement has been sold as a commercial product. Therefore, regulation of abatement activities affecting asbestos use in these buildings, such as encapsulation or enclosure, is considered regulation of commercial use. The removal of asbestos, a disposal activity, will affect a number of commercial activities that take place in the public buildings and, therefore, is considered disposal for commercial purposes.

II. Background

EPA proposed a rule under section 6(a) of TSCA to protect State and local public employees who take part in asbestos abatement projects, but who are not covered by the OSHA Asbestos Standard or by regulations of State plans adopted under the OSHAct, as published in the **Federal Register** of July 12, 1985 (50 FR 28530). The proposed rule was effective immediately under section 6(d) of TSCA and will remain in effect until this final rule becomes effective on June 9, 1986.

EPA received over 20 comments from the public on the proposed rule and the final rule that EPA is issuing today includes changes in response to the public comments. Those changes are discussed in Unit IV below.

This rule is part of an EPA program to address the risks associated with asbestos in schools. As part of that program, EPA has established regional information centers to provide information concerning the identification and abatement of asbestos hazards and to train people in proper abatement techniques. To ensure that asbestos abatement is performed safely and correctly, EPA is helping States establish certification programs for asbestos abatement contractors. EPA is giving grants to several States to help them set up contractor certification programs and is advising States on ways to implement such programs. Through its technical assistance program, EPA provides guidance on asbestos matters to school officials and local health and education departments. Finally, EPA has updated existing guidance material and prepared new material.

III. Provisions of the Rule

This rule applies to asbestos abatement projects using State and local government employees not covered by either (1) the OSHA Asbestos Standard, 29 CFR 1910.1001, (2) an Asbestos Standard adopted by a State as part of a State plan approved by OSHA under section 18 of the OSHAct, or (3) a State asbestos regulation in Idaho, Kansas, Oklahoma, or Wisconsin. EPA has determined that these four State regulations are comparable to or more stringent than this rule. The rule defines asbestos abatement project as "any activity involving the removal, enclosure, or encapsulation of friable asbestos material, except removal, enclosure, or encapsulation during sampling or routine repair of less than either 3 linear feet or 3 square feet of friable asbestos material." The rule defines friable asbestos material as "any material containing more than 1 percent asbestos by weight which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure." Thus, the sampling of friable asbestos material and the routing repair or less than either 3 linear feet or 3 square feet of friable asbestos material are not covered by this rule at all.

The rule with certain exceptions, requires employers to report to EPA at least 10 days before they begin an asbestos abatement project covered by this rule. The first exception is for asbestos abatement projects involving the removal, enclosure, or encapsulation of less than either 3 linear feet or 3 square feet of friable asbestos material. These projects do not have to be reported at all. The second exception is for emergency projects, which EPA defines as "a project involving the removal, enclosure, or encapsulation of friable asbestos material that was not planned but results from a sudden unexpected event." Examples of emergency projects are repairs necessitated by serious vandalism, flooding, fire, boiler failure, and ruptured water pipes. Emergency projects do not have to be reported to EPA 10 days in advance. Instead, they must be reported "as soon as possible, but in no case more than 48 hours after the project begins." The third exception is for employers who submit a notice to EPA under the National Emission Standard for Asbestos, 40 CFR 61.146, at least 10 days before they begin the asbestos abatement project and the notice clearly indicates that employees covered by this rule will perform some or all of the asbestos abatement work.

Reports under this rule must include the employer's name and address; the location, including street address, of the project; and the scheduled starting and completion dates for the project.

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ject asbestos waste to general RCRA requirements designed to reduce exposure. However, such action under RCRA would reduce exposure only when the wastes from asbestos removal are ultimately placed in disposal facilities. It would not reduce exposure during the actual removal, enclosure, or encapsulation of asbestos products. Therefore, EPA finds that the risk from asbestos abatement projects cannot be eliminated or reduced to a sufficient extent by actions taken under another statute administered by EPA.

F. Other Options Considered

Section 6 of TSCA requires that EPA apply the least burdensome requirements to reduce an unreasonable risk. EPA considered the following options for reducing the risks associated with the removal, enclosure, or encapsulation of asbestos without any regulatory controls beyond those required by the National Emission Standard for Asbestos.

1. *Take no regulatory action under TSCA; instead provide the public with information and technical assistance.* Under this option, EPA would take no regulatory action, beyond that already taken as part of the National Emission Standard for Asbestos; but would instead provide the public with information and technical assistance. EPA is already increasing the information and technical assistance it provides the public. Persons could use that information to reduce the risk to public employees who perform asbestos abatement work during the removal, enclosure, or encapsulation of asbestos.

This approach would minimize the burden caused by regulatory action. However, this option is an inadequate response given the high risk to abatement workers associated with the removal, enclosure, or encapsulation of asbestos following only the requirements of the National Emission Standard for Asbestos. The National Emission Standard for Asbestos was designed to limit the release of asbestos to the ambient air and only incidentally protects abatement workers inside a building.

2. *Take no regulatory action under TSCA; instead defer to the States.* Under this option, EPA would take no regulatory action beyond that already taken as part of the National Emission Standard for Asbestos but would instead provide the States with information and technical assistance so that States can adopt regulations to protect public employees who perform asbestos abatement work.

This approach would minimize the burden caused by Federal regulatory action. However, this option is an inadequate response since a number of States have not taken action in this area in the past and may not take action in the future. Still, EPA encourages States to take action to protect such public employees with requirements more stringent than those in this rule. As stated earlier, employees exposed to asbestos at the level permitted by this rule still face a risk to health.

3. *Propose a rule which provides greater protection than the current OSHA Asbestos Standard.* OSHA has recognized that its current Asbestos Standard is inadequate and has begun rulemaking to adopt a new standard. EPA could issue a rule closer to the proposed OSHA standard or closer to the recommendations for worker protection in EPA's technical guidance documents. As stated earlier, EPA decided to follow the current OSHA Asbestos Standard closely to maintain consistency among Federal agencies. However, EPA expects to adopt a rule very similar to the final OSHA Asbestos Standard after OSHA issues that rule. This will ensure that all public and private sector employees who take part in asbestos abatement work enjoy similar levels of protection.

G. Analysis Under Section 9(a) of TSCA

Section 9(a) of TSCA requires EPA to review other Federal authorities not administered by EPA to determine whether action under those authorities may prevent or reduce to a sufficient extent such risks. EPA has reviewed other Federal authorities. The only statute not administered by EPA that could reduce such risks is the OSH Act. However, this rule covers only persons not covered by the OSHA Asbestos Standard. OSHA currently has no statutory authority to cover public employees in a State without an OSHA-approved State plan and 27 States do not have an approved plan. Thus, EPA cannot determine that there is a statute administered by another Federal agency that can prevent or reduce the risk presented to persons not covered by the OSHA Asbestos Standard during the removal, enclosure, or encapsulation of friable asbestos.

VII. Finding of Unreasonable Risk

EPA has weighed the health risks from unregulated asbestos abatement against the costs attributable to the proposed regulation. EPA estimates that this rule would avoid about 200 cancer cases, among abatement workers, other employees in buildings where abatement occurs, and visitors to such buildings while costing about $730,000 over 15 years. This is about $3,650 per cancer case avoided. Even if EPA underestimated the number of asbestos abatement projects covered by this rule, the cost per cancer case avoided would be about the same. EPA has concluded that the avoidance of these premature deaths substantially outweighs the costs of the control measures required.

Therefore, EPA finds that unregulated removal, enclosure, or encapsulation of friable asbestos material presents an unreasonable risk to human health and proposes to require that certain measures be taken to reduce the risk faced by asbestos abatement workers and persons using and visiting buildings during and after asbestos abatement activities. The finding is based on the following points:

1. The health effects from asbestos exposure are very serious. Asbestos is a demonstrated human carcinogen. The cancers caused by asbestos are usually fatal and cause much pain and suffering.

2. Available evidence supports the conclusion that there is no safe level of exposure to asbestos. This conclusion is consistent with present theory of cancer etiology and is further supported by the many documented cases where low or short-term exposure has been shown to cause asbestos-related disease.

3. Models developed to estimate the relative risk of developing cancer from exposure to asbestos show a linear dose-response relationship. Based on data from epidemiology studies, these models predict that humans exposed to even very low levels of asbestos incur some risk.

4. Many persons are involved in asbestos abatement activities, but are not protected by the OSHA Asbestos Standard.

5. Persons can be exposed to high levels of airborne asbestos if they conduct asbestos abatement without any exposure controls.

6. If persons attempt to abate asbestos hazards, but do so incorrectly, there may be very high levels of exposure to asbestos on the part of abatement workers, other employees who work in the building, and visitors to the building. These levels may far exceed the levels of exposure permitted by the current OSHA Asbestos Standard. For example, in schools that incorrectly abate asbestos hazards, school teachers and other school employees and school children could be exposed as well as abatement workers. State and local public employees could potentially take part in asbestos abatement activities in all State and local public buildings in the States not covered by OSHA State plans.

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TAB 29

OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Evaluation Report

EPA's Response to the World Trade Center Collapse: Challenges, Successes, and Areas for Improvement

Report No. 2003-P-00012

August 21, 2003

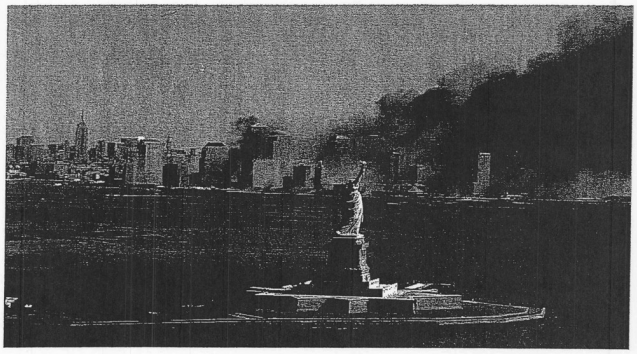

Table 2-1: Key Air Quality Statements from 2001 Press Releases

Date	Key Statement
09-13-01	"Monitoring and sampling conducted on Tuesday and Wednesday have been very reassuring about potential exposure of rescue crews and the public to environmental contaminants. . . . EPA and OSHA will work closely with rescue and cleanup crews to minimize their potential exposure, but the general public should be very reassured by initial sampling."
09-16-01	"Our tests show that it is safe for New Yorkers to go back to work in New York's financial district" (quoting Assistant Secretary of Labor for OSHA).
	"The Agency is recommending that businesses in the area planning to reopen next week take precautions including cleaning air conditioning filters and using vacuums with appropriate filters to collect dust."
09-18-01	"I am glad to reassure the people of New York and Washington, D.C. that their air is safe to breath [sic] . . . " (quoting EPA Administrator).
09-21-01	"NYC Monitoring Efforts Continue to Show Safe Drinking Water & Air" (press release heading).
10-03-01	"Data Confirms No Significant Public Health Risks; Rescue Crews and Nearby Residents Should Take Appropriate Precautions. . . " (press release sub-heading).
10-30-01	"While we have fortunately not found levels of contaminants that pose a significant health risk to the general public, our efforts to monitor the area and keep the public informed of our findings have not waned. "

Agency officials stressed that press releases were only one of many forms of communication used to provide air quality information to the public, and that public forums and media interviews were also important. Further, EPA provided public access to its monitoring data through its public web site, which included interactive maps that could be used to identify monitoring results. In regard to the monitoring data, we found no evidence that EPA attempted to conceal data results from the public.

Data Available at the Time Did Not Fully Support EPA Press Releases

Information and the analyses of available data did not fully support the statement made in the September 18, 2001, release, which quoted the EPA Administrator as saying the air was "safe" to breathe. Four factors in particular posed limitations on the conclusions that could be made at that time about air quality:

- A lack of data results for many pollutants,
- An absence of health benchmarks for asbestos and other pollutants,
- Imprecise optical asbestos sampling methodologies, and
- Over 25 percent of the bulk dust samples collected before September 18 showed the presence of asbestos above the 1 percent benchmark.

EPA did not have monitoring data to support reassurances made in press releases up to September 18 because it lacked monitoring data for several contaminants, particularly PCBs, particulate matter, dioxin, and PAHs.

According to a draft evaluation entitled *Exposure and Human Health Evaluation of Airborne Pollution from the World Trade Center Disaster*, by EPA's Office of Research and Development, that Office was not able to make health risk evaluations for exposures in the first couple of days because of the lack of monitoring data. For several pollutants of concern, sampling did not begin until September 16, and in many cases the results were not known until after the September 18 press release was issued. EPA was not able to obtain samples and monitor air due to difficulties in access and security, power supply sources, equipment availability, and analytical capacity. As a result, data available before September 18 for making conclusions about air quality for pollutants other than asbestos was limited.

Table 2-2 shows when air monitoring began and when the data results first became available for each pollutant of concern.

TAB 30

Title - Conference With The Former Head Of EPA's Office Of Public Affairs

Purpose -

To obtain the perspective of the former head of the Agency's Office of Public Affairs to EPA's response to the World Trade Center (WTC) disaster and what steps might be taken to improve the Agency's response to future disasters.

Persons Present At Conference -

Tina Kreisher, Speechwriter, Office of the Secretary, United States Department of the Interior; former Associate Administrator, Office of Communications, Education, and Media Relations (the predecessor to EPA's current Office of Public Affairs); 202-208-5338

Rick Beusse, Director for Program Evaluation, Air Quality Issues, EPA, OIG, RTP

Chris Dunlap, Auditor, EPA, OIG, RTP

(The conference lasted approximately two hours. Mr. Beusse had to leave the conference shortly after the first hour to meet another commitment.)

Location And Date -

The conference was held on August 28, 2002, in Ms. Kreisher's office, Room 6219, in the Department of the Interior Building, located at 1849 C Street NW, Washington, DC.

On September 19, Mr. Dunlap telephoned Ms. Kreisher to discuss a follow-up meeting (see workpaper A2a2 for a write-up of this telephone conversation). Prior to this telephone call Ms. Kreisher had not mentioned the role played by the EPA Administrator's Chief of Staff, Ms. Eileen McGinnis. Mr. Dunlap amended the original write-up to describe this role.

On September 24, while in the District of Columbia for another purpose, Mr. Dunlap showed Ms. Kreisher printed excerpts of all statements that were attributed to her, as the write-up was then written. Ms. Kreisher added a few clarifying words to several thoughts, primarily concerning the actual practices that were followed when communicating with the public. She reaffirmed all statements attributed to her as they are now stated in this write-up.

7. Ms. Kreisher indicated that she needed to keep Mr. Thernstrom informed about all news pertaining to September 11. She referred to Mr. Thernstrom as "White House concurrence."

8. She sent all press releases about the terrorist attack, and all related web site information to Mr. Thernstrom and Mr. McClellan.

9. Ms. Kreisher indicated that the intent of the White House Communications Office was "to coordinate info, not suppress it."

10. Ms. Kreisher did not know exactly whom Mr. Thernstrom consulted, or the extent of his consultation, but she understood that:

    a. he initially showed all press releases to a representative from the National Security Council;

    b. he worked with Dr. Condoleezza Rice's press secretary;

    c. he would "run the press releases through" whomever needed to see them;

    d. after three or four weeks, he no longer needed to show all press releases to a representative from the National Security Council.

11. A press release could not be issued without Mr. Thernstrom's approval for a three or four week period after September 11. However, information may have been posted to EPA's WTC web site without his approval during this time.

12. No other approval was necessary except an OSHA representative's approval was needed on one press release that was issued jointly by EPA and OSHA. Ms. Kreisher could not remember the name of the OSHA official who approved the final wording in the press release.

13. Mr. Thernstrom used to work for the New York Department of Environmental Protection.

14. Mr. Thernstrom helped make the decision that EPA would use the OSHA standard for asbestos.

TAB 31

****DRAFT****

ASBESTOS

Considerations for using the asbestos "1% rule" for cleaning up bulk contamination associated with the World Trade Center terrorists attacks.

Purpose: The purpose of this fact sheet is to discuss the basis of the 1% rule for asbestos containing material (ACM) and suggest how it may be applied to cleaning up asbestos contaminated debris from the World Trade Center collapse. The intent is to provide guidance for the use of bulk sampling results that will be protective of public health.

Background: The definition of asbestos containing material was first found in the Asbestos Hazard Emergency Response legislation of the United States Code. The term "asbestos-containing material" means any material which contains more than 1 percent asbestos by weight (see, United States Code, Title 15 - Commerce and Trade, Chapters 53 - Toxic Substances Control, Subchapter II - Asbestos Hazard Emergency Response, Sec. 2642. Definitions; which can be found at http://www4.law.cornell.edu/uscode/15/2642.html).

This definition was codified in the Code of Federal Regulations (40 CFR Ch1, Part 763 [7-1-00]) where a counting technique using polarized light microscopy (PLM) is used to determine percent asbestos.

% asbestos = (a/n) X 100% where
a = number of asbestos counts,
n = number of nonempty points counted (400),
If a = 0, report "No asbestos detected",
If 0< a ≤3 report "<1% asbestos".

Historical derivation of the definition of "asbestos containing material": Two different accounts of the discussions leading to the definition of asbestos-containing material containing greater than 1% asbestos exist were identified.

1) The first account suggest that in the late 1970's when EPA was looking at the different methods to examine bulk material for asbestos they considered several different methods including polarized light microscopy (PLM), electron microscopy, x-ray diffraction (XRD), and others. EPA eventually settled upon XRD. XRD had a detection limit of approximately 1% asbestos in bulk material. Eventually the limitations of XRD became an obstacle to reliable asbestos determinations and EPA looked toward PLM to replace XRD as the analytical tool of choice. However, even though PLM can detect well below 1% asbestos, the 1% number had become well accepted and had been written into legislation, and so therefore 1% remained the legally enforceable number.

2) The second account suggests that the 1% rule has a political basis and resulted as a compromise between regulators and the regulated industry. An account of the politics and

decision process leading to the selection of the 1% rule has been well described by Michael Moss and Adrianne Appel in an investigative report in the July 9, 2001 edition of the New York Times.

Regardless of which account is most accurate or even if the two accounts actually emerged about the same time resulting in the final definition of asbestos containing material, neither account indicates that the derivation of the 1% rule was in a manner that employed considerations of human health. The 1% rule is not based on health.

Two main short-comings of the 1% rule exist.

- The 1% rule is not derived from a risk assessment or any other type of health based analysis.
- The 1% rule does not insure that asbestos air levels will be at levels that are protective of human health.

The second point is not well documented in the literature. But two personal communications indicate this is a major problem with the 1% rule. OSHA (personal communication with Dan Krane, OSHA) has examined over 6000 work places in which asbestos existed in bulk material between 0% and 1 %. Four percent of these work places had asbestos air levels at or above the OSHA permissible exposure limit (PEL) of 0.1 f /cc. The measurements were point determinations and not 8 hour time weighted averages (TWA). But had the exposures continued for 8 hours, 4 % of the work places would have exceeded the PEL even though materials in these work places did not exceed 1% asbestos w/w.

The second indication of the limits of the 1% rule comes from Libby, Montana (personal communication with Chris Weis, EPA). Preliminary data from investigations into different types of activities show that tilling the soil in gardens with < 1% detectable levels of asbestos resulted in air levels close to the OSHA PEL.

Conclusion: The 1% rule has the advantage of being a legally enforceable level and precedence for its use is available. However the rule is not health based and may not provide adequate protection from airborne asbestos under a variety of conditions. Because of these limitations great care should be used in using any type of w/w percentage as guidance to protect human health. If percent determinations have to be made, they should be used only to confirm the presence or absence of asbestos or to recommend clean-up followed by further air testing.
A possible guideline is suggested below.

Interpretation of bulk and air samples: The following table provides a general guide for determining public health actions based upon sampling of both bulk material and indoor air. The table integrates the Environmental Assessment Workgroup multi-agency recommendations for reoccupation of residences in lower Manhattan (see attachment 1). It is important to note that the ultimate decision criteria for

reoccupation is the ambient air level of asbestos. Bulk asbestos determinations are useful for (1) determining the potential for recontaminating ambient air and (2) for determining the type of further sampling needed.

In general the sampling and resampling strategy encompasses testing of bulk material and clean up until such a time that further clean up will not lower bulk asbestos levels. Confirmation is made by air sampling; reoccupation of residents is acceptable below 0.01 f / cc.

ATSDR, with multi-agency concurrence, has provided guidance for re-entry into New York City buildings and has concluded that the 0.1 f/cc OSHA PEL is not acceptable for schools or residences (see attachment 1 ATSDR, CDC, EPA, OSHA Environmental Assessment Workgroup Asbestos Action Levels for World Trade Center Response October 11, 2001).

TAB 32

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

JAN 07 2002

Mr. Lowell Peterson
Meyer, Suozzi, English and Klein, P.C.
Counselors at Law
1350 Broadway, Suite 501
New York, New York, 10018

Dear Mr. Peterson:

Thank you for your October 16 letter to the Occupational Safety and Health Administration (OSHA). This letter constitutes OSHA's position only on the requirements discussed and may not be applicable to any issue not delineated within your original correspondence. You presented steps that Local 78 of the Asbestos, Lead, and Hazardous Waste Laborers union thinks are imperative to protect the workers and residents in the area of the World Trade Center from the settled dust produced by the collapse of the twin towers. The steps the union recommends and our replies are provided below.

Step 1: All of the dust must be tested for asbestos using the Transmission Electron Microscopy method.

Reply: In that the materials containing asbestos were used in the construction of the Twin Towers, the settled dust from their collapse must be presumed to contain asbestos. Therefore, the use of Transmission Electron Microscopy (TEM) is not necessary in order to establish that the applicable provisions of the Construction Asbestos standard, 29 CFR 1926.1101 apply during the demolition or salvage of the affected structures.

Step 2: All dust which tests positive must be removed by licensed contractors using certified asbestos handlers.

Reply: As you may know, contractor licensing and asbestos handler certification are city and state programs. Your concern, however, is directed toward ensuring the appropriate handling of asbestos hazards. OSHA's requirements, per 29 CFR 1926.1101(o)(i), address the need for a "competent person" and state that this individual must be on the worksite. The competent person must have the qualifications and authorities for ensuring worker safety and health as required by Subpart C, General Safety and Health Provisions for Construction (29 CFR 1926.20 through 1926.32).

The general definition of a "competent person" is presented at 29 CFR 1926.32(f). According to the standard, a "competent person" is, "*one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.*" Paragraph 1926.1101(b) further defines a "competent person" as, "*in addition to the definition in 29 CFR 1926.32(f), one who is capable of identifying existing asbestos hazards in the workplace and selecting the appropriate control strategy for asbestos exposure, who has the authority to take prompt corrective measures to eliminate them, as specified in 29 CFR 1926.32(f).*" The Construction Asbestos standard further incorporates the provisions of 29 CFR 1926.20(b)(2) which requires frequent and regular inspections of job sites, materials, and equipment to be made by the competent person. These requirements are geared toward ensuring maximum safety and health for employees on worksites where asbestos is present.

Step 3: <u>HEPA filters must be evaluated.</u>

Reply: The National Institute for Occupational Safety and Health (NIOSH) is the Federal agency assigned the responsibility for approving respirators and filters. All respirators and filters required by OSHA standards must be NIOSH certified. OSHA's Respiratory Protection Standard, 29 CFR 1910.134, governs the workplace use of respirators.

A NIOSH-certified HEPA filter is, "*a filter that is at least 99.97% efficient in removing mono-disperse particles of 0.3 micrometers in diameter.*" Equivalent particulate filters certified by NIOSH are the N100, R100, and P100 filters.

The 0.3 micrometers (microns – µm) diameter particle used in the certification testing of the HEPA (and 100-series) respirator filters is approximately the most penetrating for particulate filters. Although it seems contrary to expectation, smaller particles do not penetrate as readily as 0.3 µm particles. That is to say, these filters eliminate other particle sizes at least as well as the certified efficiency value of 99.97%.

Step 4: <u>The remaining debris must be taken out properly.</u>

Reply: Asbestos-containing waste must be presumed to be intermixed with the remaining debris at the World Trade Center site because materials containing asbestos were used in the construction of the Twin Towers. Therefore, in accordance with 1926.1101(g)(1)(ii), wet methods must and are being used to control employee asbestos exposures while removing the remaining Twin Towers debris except where employers

demonstrate that the use of wet methods is infeasible. The debris must be kept wet at all times until it has been loaded and transported away from the site.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statutes, standards, regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretations of the requirements discussed. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at http://www.osha.gov. If you have any further questions, please feel free to contact the Office of Health Compliance Assistance at 202-693-2190.

Sincerely,

John L. Henshaw

20-02 04:44pm From-MEYER SUOZZI ENGLISH & KLEIN +2122391311 T-330 P 02/03 F-031

FILE

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October 16, 2001

Mr. James Henshaw, Administrator
United States Department of Labor
Occupational Health and Safety Administration
200 Constitution Avenue, NW
Washington, D.C. 20210

Re: Safety precautions near the World Trade Center

Dear Mr. Henshaw:

We are the attorneys for Local 78, Asbestos, Lead & Hazardous Waste Laborers, AFL-CIO ("Local 78"), which represents approximately 2800 trained, certified asbestos handlers and lead abatement workers in the City of New York. Local 78 is proud that many of its members are hard at work in the clean up efforts near the site of the horrendous attack on the World Trade Center.

Because of what the members, the contractors, and independent professionals have told us, the union thinks it is imperative that the following steps be taken to protect the workers and residents of the area:

- All of the dust must be tested for asbestos using the Transmission Electron Microscopy method. Because of the force of the collapse, it is now clear that the dust is extremely fine and that the asbestos structures have been pulverized as small as .25 microns.

- All dust which tests positive must be removed by licensed contractors using certified asbestos handlers. We are speaking primarily about the many office and residential buildings in the area. By definition, the dust is friable. It will get into the air and into people's lungs if it is disturbed by sweeping, mopping, even tenants and others simply walking past. OSHA, the EPA, and the city and state agencies responsible for asbestos abatement would never countenance removal of asbestos-containing dust of this nature by

anyone other than licensed contractors and certified workers. The work must be done in containment with decontamination facilities, full worker protection, and proper bagging, labeling, and transportation. This is entirely feasible, even in the current emergency.

- HEPA filters must be evaluated. Local 78 wants to be certain that the standard HEPA filters approved by OSHA are capable of screening asbestos fibers as tiny as those which have been found near the site. We call upon OSHA to conduct appropriate tests and issue emergency regulations to protect the workers near the site from inhaling these tiny structures.

- The remaining debris must be taken out properly. Many tons of debris must still be removed, which will stir up more and more dust. Steps must be taken to minimize the amount of dust that is distributed - wetting down, covering all materials that are removed, removing dust from vehicles, and so forth.

Thank you for your attention to this matter.

Very truly yours,

Lowell Peterson

cc: Hon. Charles Schumer
Hon. Hillary Clinton
Mr. Sal Speziale
Mr. Pawel Kedzior

DRAFT 10/05/01

AIR QUALITY: PARTICULATE

NOTE: This document was designed to assist public health officials in communicating specific air quality issues to the general public. Additional materials (e.g., fact sheets) will be supplied for public distribution.

Air Quality:

The Agency for Toxic Substances and Disease Registry (ATSDR), Centers for Disease Control and Prevention (CDC), Environmental Protection Agency (EPA) and Occupational Safety and Health Administration (OSHA) Environmental Assessment Workgroup is recommending that people in the affected area make an effort to reduce their exposure to air contaminants due to the air quality issues in Lower Manhattan resulting from smoke, fire, and dust created by the collapse of WTC and on-going response. People who have respiratory problems, such as asthma, emphysema, chronic pulmonary disease (COPD), and bronchitis, should pay attention to their breathing and exposure to smoke and airborne substances including particulate matter. People should consult with their physician immediately if health problems should develop.

Health complaints from the area have been primarily irritant and respiratory in nature (such as coughing, burning throat, irritated eyes, wheezing, difficulty in breathing and shortness of breath). Airborne compounds known to cause acute health effects include particulate matter (such as TSP, PM_{10} and $PM_{2.5}$), fiberglass and inhalable dusts (cement and gypsum). Other compounds that may be present and may result in chronic health issues include respirable silica and asbestos. Efforts to measure air quality are focusing on all these compounds.

Particulate Matter:

The term "particulate matter" (PM) includes both solid particles and liquid droplets found in air. Many manmade and natural sources emit PM directly or emit other pollutants that react in the air to form PM. These solid and liquid particles come in a wide range of size. Particles less than 10 micrometers in aerodynamic diameter tend to pose the greatest health concern because they can bypass the nose and throat and be deposited in the lungs. Particles less than 2.5 micrometers in diameter are referred to as "fine" particles. Sources of fine particles include all types of combustion (motor vehicles, power plants, wood burning, building fires, etc.) and some industrial processes. Particles with diameters between 2.5 and 10 micrometers are referred to as "coarse." Sources of coarse particles include crushing and grinding operations, and dust from paved and unpaved roads.

Dust mask ≠ help either

In order to address public health issues associated with PM in air, a characterization of airborne particulate is necessary. Currently, that characterization is incomplete. Therefore, until adequate characterization data (e.g., bulk dust and airborne particulate) is collected, it is essential that air sampling results include total suspended particulate, PM_{10} and $PM_{2.5}$. For example, levels of PM_{10} and $PM_{2.5}$ may be below their respective comparison values while health complaints that may be attributed to TSP exposure (e.g., coughing, wheezing, etc.) are being reported.
The total particulate matter in the atmosphere is known as total suspended particulate (TSP).

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This includes all airborne solid and liquid particles, except pure water, ranging in size from approximately 0.005 μm to 100 μm in diameter. Many of the health complaints (irritation of eyes and throat, coughing, and wheezing) from Lower Manhattan could be attributed to high levels of TSP.

Air Quality Standards:

National Ambient Air Quality Standards (NAAQS) are promulgated by the Environmental Protection Agency (EPA) to meet requirements set forth in the Clean Air Act (CAA). The primary NAAQS are set to protect human health with an adequate margin of safety. The following table references EPA standards for PM_{10} and $PM_{2.5}$. For specific public health actions related to specific PM concentrations, please refer to the Health Comparison Guideline Table at the end of this document.

Particulate Matter	24 Hour	Annual Average
PM_{10}	150 mg/m^3	50 mg/m^3
$PM_{2.5}$	65 mg/m^3	15 mg/m^3
TSP (total suspended particulate)	260 mg/m^3	75 mg/m^3

It is possible that PM from the WTC fire and collapse could have entered your home. Additionally, settled dust can be re-suspended in to air during routine activities. Therefore, if you have dust in your home (e.g., on your couch, floors, counter tops, etc...) you should pay particular attention to the recommendations regarding tracking, cleaning, and checking the air conditioning system. Your indoor environment may have been affected by the WTC fire and collapse even if the windows and doors were closed (smaller particles can entered through very small openings and cracks). Additionally, settled dust can be tracked inside from outdoors by people, pets, and other activities.

Recommendations:

The Agency for Toxic Substances and Disease Registry (ATSDR), Centers for Disease Control and Prevention (CDC), Environmental Protection Agency (EPA) and Occupational Safety and Health Administration (OSHA) Environmental Assessment Workgroup is providing the following recommendations to protect against air pollution, reduce exposure and help people make more informed health decisions.

1. We encourage people with respiratory (e.g., asthma) or heart disease, the elderly and children to limit their exposure to air pollutants in the Lower Manhattan area or temporarily re-locate to an unaffected area until environmental sampling can verify an adequate level of air quality.
2. People having symptoms (shortness of breath, wheezing, difficulty taking a full breath, painful breathing or persistent cough), including those who have not been previously diagnosed with respiratory or heart disease, should contact a physician. Be aware that onset of symptoms can appear as much as 24 to 48 hours after exposure.

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3. Keep windows closed during hazy days or if dust is on the streets or entrances and/or smoke is in the air.
4. In dusty areas, minimize dust entering the home by leaving shoes outside or implementing a foot washing station for people and pets prior to entering .
5. Thoroughly wet dusty and sooty areas prior to clean-up. This will reduce the amount of PM becoming airborne. Wear the appropriate respiratory protection during clean-up activities.
6. Wash plants prior to moving them indoors that were on balconies, outdoor window sills, and roofs.
7. Replace or clean dirty air filters and set the air conditioner to re-circulate if indoor air is relatively dust-free.
8. A regular vacuum cleaner will clean dusty areas, furniture, and carpeting but some of the dust (esp. smaller particles) may re-suspend. Alternatively, using a High Efficiency Particulate Arresting (HEPA) vacuum without a beater bar is a very effective method to clean and minimize resuspension of dust.
9. Clean roof-top and building air conditioning systems before use and assess duct work for signs of contamination.

For additional information to protect against air pollution emanating from the World Trade Center area please visit the American Lung Association of New York website at: http://www.lungusa.org/newyork/

Health Comparison Guideline Table for Ambient PM*

24 Hour Levels (mg/m^3) $PM_{2.5}$	24 Hour Levels (mg/m^3) PM_{10}	Levels of Health Concern	Cautionary Statements
0-15	0-55	Good	None
>15-40	>55-155	Moderate	None
>40-65	>155-255	Unhealthy for Sensitive Groups	People with respiratory or heart disease, the elderly, and children, should limit prolonged exertion.

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>65-150	>255-355	Unhealthy Sensitive groups may experience more serious health effects.	People with respiratory or heart disease, the elderly and children, should avoid prolonged exertion; everyone else should limit prolonged exertion.
>150-250	>355-425	Very Unhealthy Everyone may experience more serious health effects.	People with respiratory or heart disease, the elderly and children, should avoid any outdoor activity; everyone else should avoid prolonged exertion.
>250	>425	Hazardous The entire population could be affected.	Everyone should avoid any outdoor exertion; people with respiratory or heart disease, the elderly and children, should remain indoors.

* Developed from EPA's Air Quality Index: A Guide to Air Quality and Your Health, EPA-454/R-00-005, June 2000 and EPA Guideline for Reporting of Daily Air Quality - Air Quality Index (AQI), EPA-454/R-99-010, July 1999 (at: http://www.epa.gov/airnow/publications.html).

** These comparison levels are guidelines to make public health decisions. Detected concentrations of PM above specific guideline levels does not mean that adverse health effects will occur.

TAB 33

1

2 ----------

EPA NATIONAL OMBUDSMAN FIRST

3 INVESTIGATIVE HEARING

4 on

5 WORLD TRADE CENTER HAZARDOUS WASTE

CONTAMINATION

6

7

Hosted by U.S. Representative Jerrold Nadler

8 at the Daniel Patrick Moynihan U.S. Courthouse

Ceremonial Courtroom, ninth floor

9 500 Pearl Street

New York, New York 10007-1312

10

February 21, 2002

11 12:26 p.m. to 11:23 p.m.

12

13 B E F O R E:

14 JERROLD NADLER, Congressman

ROBERT MARTIN, EPA Ombudsman

15 HUGH KAUFMAN, EPA Ombudsman Chief Investigator

16

17

18

19

20 MAYLEEN CINTRON, Hearing Reporter

21

22

23 ELLEN GRAUER COURT REPORTING CO.

133 East 58th Street, Suite 1201

24 New York, New York 11801

(212) 750-6434

25 REF: 43998

and what information you would like to start on, then we will have a colloquy, sir.

DR. CAHILL: My name is Tom Cahill, I'm a professor of physics and nuclear science in University of California at Davis, and we were asked by a friend of ours, Dr. Barbara Leifer, to in fact send information in terms of World Trade Center and requested us to send one of our air samplers that had just come back from Asia located at 201 Varick Street.

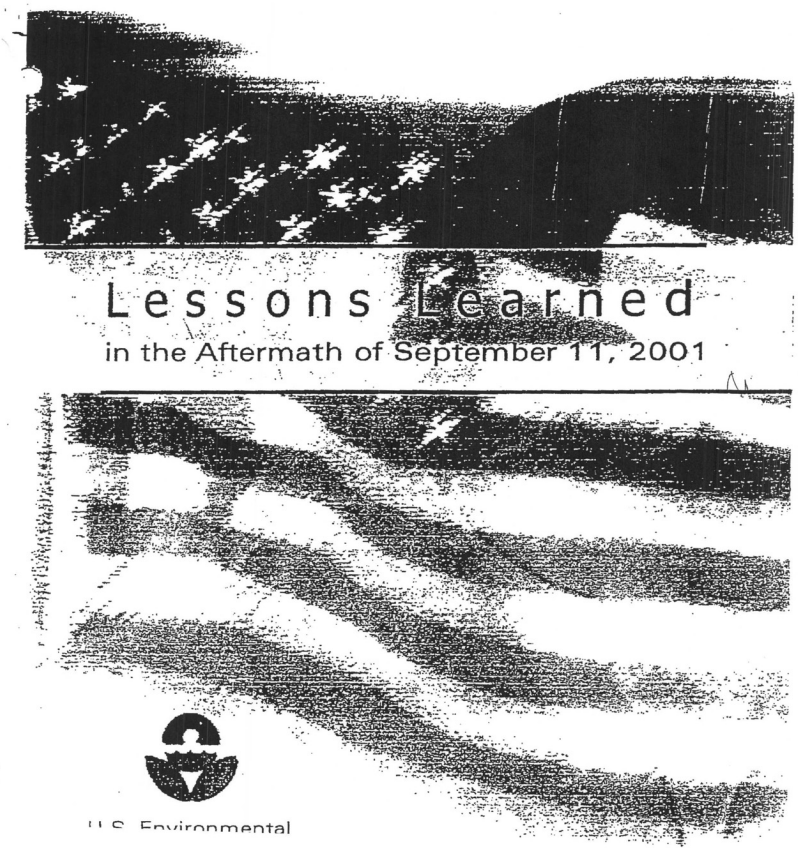
October 2nd, this fall, I started operating and we're operating continuously now until late December and it was sent back to Davis.

The samples are different than the normal air sampling in that they break the particles into eight size modes, from very coarse to very fine. And these people measured not only on a 24 hour average, but in fact every 45 minutes. So it's technology, in fact,

1 - WTC Hazardous Waste Contamination -
2 that has been developed by the EPA and
3 used by the EPA extensively in other
4 studies. It came out of an NSA study to
5 come here.
6 CHIEF INVESTIGATOR KAUFMAN: Hold
7 on. Let me just say: In other words,
8 the technique and technology that you
9 used starting in October through the end
10 of December to measure the particulates
11 was about a mile or not of Ground Zero --
12 DR. CAHILL: Correct.
13 CHIEF INVESTIGATOR KAUFMAN:
14 -- were techniques and technology
15 developed by the United States
16 Environmental Protection Agency and used
17 by that agency?
18 DR. CAHILL: In part, yes. Other
19 agencies have contributed also, but EPA
20 was a key factor in their development
21 and use. Most recently the large study
22 of Texas.
23 CHIEF INVESTIGATOR KAUFMAN: Okay.
24 Go ahead, sir. I just want to highlight
25 that point.

1 - WTC Hazardous Waste Contamination -
2 low. The EPA asked us to look for
3 shattered fine asbestos, we found very
4 little of it.
5 CHIEF INVESTIGATOR KAUFMAN: But
6 this is a mile or not?
7 DR. CAHILL: A mile north, right.
8 CHIEF INVESTIGATOR KAUFMAN: A mile
9 north.
10 DR. CAHILL: So that in other
11 words, in terms of the average values,
12 they are quite consistent. But in
13 addition, we saw spikes of material
14 coming off the site from the World Trade
15 Center that were simply unprecedented.
16 CHIEF INVESTIGATOR KAUFMAN: Now,
17 how high up were you? Were you at
18 ground level?
19 DR. CAHILL: No. We were several
20 floors up. So a low building.
21 CHIEF INVESTIGATOR KAUFMAN: You
22 were on the roof of what, the Federal
23 Building?
24 DR. CAHILL: No. It was the old,
25 it's the Federal Building at 201 Varick

TAB 34


Lessons Learned
in the Aftermath of September 11, 2001
U.S. Environmental

Subsequent Response Activities, Continued

Headquarters activities

The Chemical and Emergency Preparedness and Prevention Office (CEPPO) and OERR staff and managers provided round-the-clock (24/7) operation to facilitate the regional responses. They coordinated information through the EOC to keep the Administration informed regarding key developments. Operations were reduced to half-time (12/7) after the end of September. The CEPPO, OERR, and the Office of Radiation and Indoor Air (ORIA) continued to provide staff to the FEMA Emergency Support Team (EST). ORIA and CEPPO also provided personnel with top secret clearances to the FBI SIOC. CID special agents, teamed with FBI agents, helped find the Pentagon aircraft black box and documents that identified terrorists' team members.

OAR put monitoring experts on site within the first two days following the WTC attack and assisted in developing an air monitoring plan. OAR also developed a website that expedited later EPA efforts to use the Internet to respond to external questions about environmental conditions around the WTC site. In addition, OAR worked with the Office of Research and Development (ORD) and ATSDR on developing fact sheets concerning health effects associated with air pollutants (e.g., particulate matter, asbestos).

The Environmental Assessment Workgroup (EAWG), led by ATSDR, EPA, and OSHA, was established the weekend after September 11. Other agencies also played a significant role, such as NYCDH, NYCDEP, and NYSDEC. Weekly meetings were conducted and used to raise data management issues, to establish a multi-agency database, to ensure uniform methods, to review and establish sampling and monitoring plans, to address residential sampling, and to address other data issues (e.g., risk assessment). In addition, EPA Headquarters participated in NYC's daily calls in which data analysis results were discussed by all monitoring agencies.

In the weeks following September 11, OAR's Air Quality Trends and Analysis Group conducted a variety of analyses tracking NYC air quality and comparing post-September 11 levels with pre-September 11 levels for different pollutants.

Continued on next page

TAB 35

U.S. Environmental Protection Agency

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11/28/2001

Statement of Governor Christine Todd Whitman before the Subcommittee on VA, HUD and Independent Agencies of the Committee on Appropriations

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Statement of Governor Christine Todd Whitman
before the Subcommitte on VA, HUD and Independent Agencies
of the Committee on Appropriations

November 28, 2001

Madam Chair and Members of the Subcommittee, thank you for the opportunity to describe the Environmental Protection Agency's (EPA) role in combating bioterrorism: specifically, the role in the decontamination of anthrax in buildings as part of the Agency's overall mission to protect human health and the environment. I am pleased to say that EPA's efforts to meet its counterterrorism obligations are consistent with the President's statement that combating terrorism and protecting the nation's critical infrastructures are a high priority for his administration.

There are several Presidential Decision Directives (PDDs) that specify a role for EPA in counter terrorism activities. PDD 39 assigned EPA the task of assisting the FBI during crisis management in threat assessments and determining the type of hazards associated with releases or potential releases of materials in a terrorist incident. EPA, as the lead agency for Hazardous Materials Response under Emergency Support Function (ESF) 10 of the Federal Response Plan, is also assigned to assist the Federal Emergency Management Agency, during consequence management with environmental monitoring, decontamination, and long-term site cleanup. PDD 62 reinforces our mission to enhance the nation's capabilities to respond to terrorist events. PDD 63 which addresses the protection of America's critical infrastructure, named EPA the lead agency for the Water Supply Sector.

Under the provisions of PDD 62, signed by President Clinton in 1998, the EPA is assigned lead responsibility for cleaning up buildings and other sites contaminated by chemical or biological agents as a result of an act of terrorism. This responsibility draws on our decades of experience in cleaning up sites contaminated by toxins through prior practices or accidents.

Working with our federal partners, private sector experts, and drawing upon our considerable in-house expertise, EPA has been developing new methods and protocols, and standard operating procedures to deal with this new threat to the health and safety of the American people. And we have been doing so on a real-time basis. The speed of our response, however, has not been at the expense of sound science. Indeed, a team of science experts has been integral to our daily activities.

EPA'S ROLE IN BUILDINGS CONTAMINATED WITH ANTHRAX

Our cleanup experts have been drawing on their years of expertise and experience, on the talents of scientists in industry and academia, and on the

knowledge available from our federal partners. Similar analysis informed the cleanups undertaken at the several postal facilities and media offices, although since they were of a much smaller scope, they were more readily addressed.

Our role at a site generally begins after the Centers for Disease Control and Prevention (CDC) has tested to determine the presence of a threat and the risk that threat poses to human health. Once a decision is made to decontaminate a building, CDC also has the responsibility of defining: "How clean is clean?" They have the medical knowledge and expertise -- as well as the responsibility under PDD 62 -- to determine the levels to which a building must be cleaned before being judged safe for reoccupancy.

EPA staff has provided expert technical advice to facility managers throughout the country on issues such as sampling plans, worker safety and actual site cleanup methods.

This role is a natural fit for EPA's on-scene coordinators, managers who are experienced in assessing contamination in structures, soil, water and air-handling systems. On-scene coordinators have considerable experience at sorting out hazards, quantifying risks, planning and implementing emergency cleanups, and coordinating among other agencies, state and local government, and the private sector.

EPA employees are working at the direction of the incident commanders from other federal agencies, and report to the U.S. Postal Service and the Sergeant at Arms in the Capitol.

In addition to the activity generated by testing and cleaning, these sites are also being treated as crime scenes. That is why our Criminal Investigative Division has been working closely with the FBI and with local and state law enforcement agencies at the various contaminated sites. We are assisting the FBI in gathering evidence to identify the criminals responsible for terrorist attacks.

As we seek to apply the lessons we're learning from all our decontamination efforts one thing is becoming clear -- there's no one size fits all solution. Each event has to be thoroughly analyzed as a separate case before we can propose an effective solution.

For example, cleaning a facility that largely contains rugged, heavy equipment can be accomplished using such methods as foam or liquid chlorine dioxide -- methods that the contents of the building can stand up to. On the other hand, a facility that contains lots of paper, office furniture, and electronic equipment needs to be cleaned using another method -- such as fumigation -- that won't damage the contents in the way a liquid would.

Other factors, such as the amount of contamination found, the ways and extent to which it can be dispersed throughout a building, the nature of the surrounding area, and the ways in which the building is used all require additional consideration before proceeding with decontamination.

The first step in remediating a building is just like the first step in any cleanup operation and that is to determine the potential for risk to human health. Anthrax is a known threat to human health, but the literature is scant on the number of spores that a person must be exposed to before developing inhalational disease.

The health team that has come together to help us establish the parameters for defining the extent of contamination and providing direct health advice to affected individuals has involved a wide array of experts. The Congress's own Office of the Attending Physician has played a central role in providing direct medical advice to the people who work in the affected buildings. The CDC in the Department of Health and Human Services (in particular the National Institute for Occupational

Safety and Health (NIOSH) within CDC) have provided world-class expertise. The Department of Defense, including the U.S. Army's CHPPM group has special expertise because of the potential that anthrax would be used as a biological weapon in a war setting. OSHA has been helpful in determining appropriate safety measures both for the people who work in the buildings and also for the extensive remediation crews that are at work here. The District of Columbia's Department of Health as well as their state counterparts, Maryland's Department of Health and Mental Hygiene, have been consulted regularly. And EPA's own in-house expertise including toxicologists from as far away as our Denver office and safety officers from our own nearby Ft. Meade laboratory have also played a vital role.

Together this group of experts has reached consensus on when cleanup activities are warranted, and they have also formed a team to review final cleanup data to make a determination that the buildings will be safe to reoccupy.

REMEDIATION STRATEGIES

While we have developed extraordinarily strong working relationships with numerous partners in developing the appropriate health and safety standards and in conducting our sampling work, it is in the area of actual remediation efforts that our collaborations have been the most broad-based.

The full array of federal agencies with expertise in remediation strategies has been involved in helping develop the tools we need to deal with anthrax contamination. These include, of course, the various components of the Department of Defense and a number of health agencies out of the Department of Health and Human Services. We have consulted with the White House's Office of Science Technology Policy. Indeed, the President's science advisor has been at the Incident Command Center, providing a key link to this federal government-wide response.

At EPA, our Office of Solid Waste and Emergency Response, the Office of Pesticides, our Emergency Response Team out of Edison, NJ, the Emergency Operations Center here in Washington, and the legion of responders from across the country led by our folks from Region III, have all played important roles in the cleanup effort.

A number of liquid and foam applications are effective at actually killing spores. Sandia Foam is a patented product, developed by the Sandia Labs, that we have been able to use on a number of surfaces. Similarly, chlorine dioxide in a liquid form, has been an extremely effective sporocide. We know these techniques work because we have used them in a number of areas. To address airborne particles, HEPA (high efficiency particulate air) filter vacuums are able to capture particles down to less than one-half micron in size. After the remediation effort is complete, we have resampled these areas and they have come back clean.

The tools in our toolbox are growing rapidly. Each method, though, will have to prove its effectiveness before we add it to our Standard Operating Procedures. And that proof will come from confirmation samples that are taken after remediation is complete and come back demonstrating no threat to human health.

EPA'S COUNTERTERRORISM INCIDENT RESPONSE ACTIVITIES

As EPA continues to strengthen its counter-terrorism (CT) program by building on the existing national response system for hazardous materials (hazmat) prevention, preparedness, and response, the Agency is involved in a variety of activities with federal, state, and local officials that include: responding to terrorism threats; pre-deploying for special events; planning, coordination, and outreach; and training and exercises. Most recently, EPA was asked to chair the Security and Safety of U.S. Facilities Group of the National Security Council's Policy Coordinating Committee for Counterterrorism and National Preparedness.

EPA established and maintains a National Incident Coordination Team (NICT) to assure full agency coordination of all emergency preparedness and response activities including counter terrorism. In the regions, the Agency's first responders are the On-Scene Coordinators (or OSCs). The OSCs have been actively involved with local, state, and federal authorities in preparing for and responding to threats of terrorism. EPA's OSCs, located throughout the United

States, have broad response authority and a proven record of success in responding rapidly to emergency situations.

REGISTRATION OF PRODUCTS

Another principal responsibility of EPA's in anthrax decontamination is to ensure that the chemicals used to treat anthrax spores are efficacious and safe. EPA is responsible for registering pesticides, including these antimicrobial products used to treat anthrax spores, prior to their marketing in the U.S.

Before issuing a pesticide registration, the Agency reviews a significant body of data to determine whether use of that pesticide will result in unreasonable adverse effects to humans or the environment. These data can include information on short- and long-term toxic effects and examine the potential for exposure under expected application scenarios. For pesticides that have public health uses, such as those used on anthrax spores, EPA also critically evaluates their efficacy. Under emergency conditions, EPA may allow a new use of a previously registered pesticide or use of an unregistered pesticide where the Agency has sufficient data to make a safety finding. These decisions can often be made quickly, based on the data that EPA receives and reviews.

Responding to the anthrax contamination has presented some unique challenges to our pesticides program. For example, currently there are no registered pesticides approved for use against anthrax. Since the beginning of the anthrax-contamination events, EPA has been working hard to identify and evaluate existing pesticide products that are sporicidal, that is, those that kill spore-forming bacteria, even though such products may not have been tested on anthrax per se. Since October, the Agency has approved two pesticides for treating anthrax spores under emergency exemption provisions of existing pesticide laws – the aqueous solution of chlorine dioxide and a foam used to treat anthrax-contaminated surfaces. We have identified several potential chemicals and new technologies which may be effective against anthrax. The Agency continues to work closely with other federal agencies, emergency response teams, and independent experts to develop effective remediation tools. On the basis of site specific information, EPA recommends proper methods of decontamination including which antimicrobial or other substances will be used. EPA has also established a hotline for venders who believe they have products that could effectively treat anthrax and has begun daily briefings to establish routine communication between on-site personnel and key centers within the Agency who oversee and/or support them. EPA laboratories are assisting in testing samples from potentially contaminated sites and the evaluation of antimicrobial products for effectiveness against anthrax has been made a top priority. In addition, EPA is using its experience in this situation to develop approaches to handling future biological and chemical exposures should they occur.

CONCLUSION

September 11th has changed the world in which we live. EPA continues to rely on sound science and effective treatment techniques to address the threat of anthrax contamination in some of our nation's buildings. We are proud to be a part of a massive public-private effort to meet the challenges of this new world.

Thank you for the opportunity to appear before you today. I would be happy to answer any questions that you may have.

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TAB 36

NPA

WORKERS AT GROUND ZERO SHOULD HAVE BEEN PROTECTED: GIULIANI

521 words
12 September 2006
New Zealand Press Association
English
(c) 2006 New Zealand Press Association

New York, MCT - Former New York Mayor Rudy **Giuliani** said everyone

-- including his administration -- should have done more to protect workers from the toxic Ground Zero dust.

But **Giuliani** also lashed out today at the former Environmental Protection Agency administrator for trying to blame him. ``What I remember from Christie Whitman (is) her saying that the air was fine," he said. ``And her saying that quite prominently, over and over again, and insisting on it."

As the finger-pointing heated up over the spread of terrible lung illnesses among rescue workers, Whitman charged on CBS' 60 Minutes that **Giuliani**'s aides ignored her warnings to make all workers wear masks.

In his first comments since the Whitman interview on Sunday, **Giuliani** said the city did tell workers to wear respirators but blamed the federal Occupational Safety and Health Administration for not enforcing their use. ``We certainly gave people instructions that they should wear masks," **Giuliani** told reporters at Ground Zero. ``I was here five, six times a day for four months. I kinda thought I was living here. And there were times when I wore a mask when (I) got near the Pile. And there were times when I didn't. People were instructed to do that. I don't remember that from EPA, though."

Wary of slowing down work at the vast site, OSHA made the controversial decision not to enforce the use of respirators at Ground Zero. By contrast, workers digging through the Pentagon rubble were sent home if they weren't wearing one. ``In retrospect, I guess we all should have done it differently: the city, the state and the federal government," **Giuliani** said on CBS' The Early Show. ``Everybody bears responsibility for it."

The EPA is being sued by lower Manhattan residents and workers who say Whitman lied when she assured New Yorkers on September 18, 2001 -- when pressure was growing to reopen Wall Street -- that the air was clean.

Giuliani insisted that all the sick workers must be cared for and that anyone who worked at the site should get lifetime health benefits. ``Instead of trying to give people a hard time with this, people should be embraced and taken care of. They deserve it. They helped make America survive," **Giuliani** said. "We think they're entitled to the same support, same assistance and same help that the families got who lost loved ones here."

New York Senator Hillary Clinton agreed, but warned of a battle to get funding. ``I'm glad that people are finally waking up to the incredible problem that we've got. We have to take care of everybody who was affected. So far, we don't have the resources to do that," she said. ``I just know that if we don't have a system in place and enough resources available, we're going to leave people behind, and that's wrong."

Police Commissioner Raymond Kelly said, ``People came down here, they jumped in, they volunteered, they risked their lives to do this. So we have an obligation to them."

MCT hps

TAB 37

U.S. Environmental Protection Agency

Region 2: Newsroom

EPA Shifts Focus to Indoor Air

Release date: 05/31/2002

Contact Information:

(02052) New York, New York -- With the recovery efforts at Ground Zero and the Staten Island landfill drawing to an end this week, the U.S. Environmental Protection Agency (EPA) has stopped its sampling of pollutants associated with the World Trade Center fires. The Agency will continue to monitor for asbestos related to the debris handling in lower Manhattan and at the Fresh Kills landfill for a week after the recovery work officially ends. The outdoor sampling has generally shown no presence or very low levels of pollutants in recent months. The fires have been out for months, recovery activities are almost completed, the barge operation is shut down and our sampling generally shows that air quality in lower Manhattan is back to normal levels prior to September 11. EPA is now focused on providing local residents the assurance that their homes have been cleaned properly.

EPA is now focused on its comprehensive plan to ensure that apartments impacted by the collapse of the World Trade Center have been properly cleaned. EPA and the city will conduct specialized monitoring during the upcoming indoor and outdoor cleanup efforts. Outdoor sampling of fine particles and other pollutants that are needed to evaluate compliance with all federal health-related air quality standards will continue as part of New York's federally-required permanent air monitoring network.

Since September, the Agency has monitored daily for substances such as volatile organic compounds (VOCs), dioxin, polyaromatic hydrocarbons (PAHs) and metals that would have been associated with the fires that had burned for months after the World Trade Center collapse. These readings were first taken in the smoke plumes and later in the recovery pits and at a number of stations ringing the Ground Zero site. Early on, EPA found elevated levels of some substances in the smoke itself, but these levels tailed off dramatically even a few feet from the source of the smoke. Since January, the pollutants have been at either extremely low levels -- well below EPA's benchmarks -- or at levels not detectable. In addition, the Agency stopped monitoring for metals at three sites on Staten Island. This metals monitoring was designed to assess potential impacts from steel cutting operations at the landfill. Steel is no longer cut at the landfill, so the monitoring was no longer needed. The Agency also shut down its monitors on Pier 25 after the barge loading operation ended several weeks ago.

After workers stop work, the city plans to inspect the area sector-by-sector before officially declaring the site closed. The Agency estimates, based on recent announcements from the city, that this date will be June 21. Analysis of the majority of samples from monitoring sites at or around Ground Zero has not shown detectable levels of asbestos or has found levels well below the standard that EPA is applying -- one that is normally used to determine whether children may re-enter a school building after asbestos has been removed or abated. No lower Manhattan samples have been above this level since April 2, when a sample taken from the worker wash tent at which workers remove dust from their boots and clothing slightly exceeded the standard. Since September 11, only 21 out of nearly 9500

samples taken have exceeded the school-based standard.

In Staten Island, results from some monitors located right at the landfill where debris has been sifted through have sporadically exceeded EPA's school-based standard for asbestos and have never exceeded the Agency's level of concern for metals. All trucks coming and going from the landfill have been thoroughly washed to ensure that dust does not move into areas surrounding the landfill. This monitoring will also end one week after the last debris is processed.

EPA and the city will conduct monitoring as part of the cleanup efforts recently announced. The New York City Department of Environmental Protection (DEP) will specifically monitor to ensure that asbestos is not released into the air when it cleans rooftops and building facades. EPA will conduct monitoring in individual homes that are being cleaned and will monitor during its pilot study of cleaning methods in one still-unoccupied building. DEP will also conduct extensive monitoring when it cleans the remaining still-unoccupied buildings near Ground Zero. EPA and New York State Department of Environmental Conservation will work together on assuring air quality concerns are addressed during re-construction efforts.

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TAB 38

ST. LOUIS POST-DISPATCH

NEWS

NY OFFICIALS UNDERESTIMATE DANGER

1 IN 10 PEOPLE EXPOSED COULD BE AT RISK OF DEATH, RESEARCHERS SAY

HEALTH AUTHORITIES STILL INSIST THAT NEARBY HOMES, OFFICES ARE SAFE

CRITICS SAY CLEANUP SUFFERED IN RUSH TO REOPEN BUILDINGS; HIDDEN DANGERS LURK IN THE DUST

By **Andrew Schneider** Of The Post-Dispatch 2002, St. Louis Post-Dispatch
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Federal and state officials in New York have grossly underestimated or played down the number of people in lower Manhattan who are at risk of being sickened or killed from exposure to asbestos released in the collapse of the World Trade Center.

Evaluations of analyses done by teams of leading asbestos researchers show the increased risk of death to people who live, work or study in homes or offices that have not been properly decontaminated could be as high as one additional cancer death for every 10 people exposed.

These figures come as federal and state officials continue to insist that there is no significant health risk to those living and working near ground zero from the dust of hundreds of thousands of tons of asbestos-containing products used in the floors, walls, ceilings and on the steel of the twin towers.

"The agencies have made it a priority to get the lower Manhattan financial and stock markets up and running at any cost. In so doing, they have allowed thousands of people to be exposed to substances that haven't even all been identified, let alone quantified,"

said Joel Shufro, Executive Director of the New York Committee for Occupational Safety and Health, which represents more than 250 unions.

Federal and state officials are not disputing that the dust is making thousands of New Yorkers ill. For months people have been plagued with effects such as severe sinus infections, asthma attacks, nausea, headaches, rashes, beet-red eyes, and coughing that can bring a person to his knees. This is caused by the pulverized concrete, fiberglass, metal and other debris in the toxic dust storm and smoke that inundated the city after the towers crumbled Sept. 11.

These symptoms are not indications of asbestos exposure. It takes 18 to 30 years for asbestos to exert its deadly effects. This latency period -- the time from when a fiber is impaled in lung tissue to when a person knows they are ill or dying -- makes it easy to ignore or overlook the hazards of asbestos.

"Those (asbestos) exposures may have grave adverse public health consequences, but we will not know exactly what those consequences are for decades," Shufro said.

HELP RUSHES IN WITH NEW AND OLD TECHNOLOGY

When the World Trade Center went down, the U.S. Environmental Protection Agency and the Occupational Safety and Health Administration rushed teams to the site. Over the months, they gathered thousands of sam ples but used 20-year-old methods for collecting and counting asbestos fibers to assess the health risks from dust that blanketed lower Manhattan. The agencies and their state counterparts said only low levels of asbestos were found outside.

"The public faces little or no danger from asbestos," numerous agency heads echoed.

Civilian scientists and physicians hired by unions, tenant groups, contractors and New York political leaders found just the opposite. Taking hundreds of samples, many inside apartments, offices and condos, these experts used the newest electron microscope technology and fiber counting protocols. They found far more asbestos fibers than did government investigators. These private experts -- all regularly used by the government as consultants -- found levels in the dwellings that alarmed many assessing the health risk New Yorkers face.

"These eminent asbestos researchers brought state-of-the-art methods to lower Manhattan and the significance of what they found with the new technology is dramatically different than what EPA and New York State reported," said Cate Jenkins, a senior EPA chemist in the agency's hazardous waste division.

"For every asbestos fiber EPA detected, the new methods used by the outside experts found nine," Jenkins said. "This is too important a difference to be ignored if you really care about the health of the public."

Jenkins, a 22-year veteran of the EPA, talked about the asbestos levels that researchers Eric Chatfield and John Kominsky found in apartments and condos near the collapse that had not been cleaned or cleaned improperly.

"If people continue living and working in places that still have dust in the carpets, furniture, drapes and heating and cooling system, these fibers will continue to be resuspended," Jenkins explained. "The elevated risk could be from around one-in-a-thousand extra cancers to maybe as high as one in 10."

Four other federal health experts -- two toxicologists, an epidemiologist and physician -- from the EPA and the Centers for Disease Control, have studied the data gathered by Chatfield, Kominsky and a team headed by Hugh Granger of HP Environmental in Virginia. They agreed with Jenkins' interpretation of the data.

Officials at EPA headquarters declined repeated requests to comment on these statements.

No one really knows how many, if any, people might be killed by the asbestos. But a study released three weeks ago by EPA investigators on the health risks to vermiculite miners and their families in Libby, Mont., bode s ominously for what New Yorkers may face.

"The concentrations of asbestos in both settled dusts inside homes in Libby is comparable to the settled dusts inside the buildings in lower Manhattan," Jenkins said.

She and others in the agency are questioning why, if Libby is dangerous enough to be declared a Superfund site, is the EPA shrugging off even higher levels in New York.

"It is unfathomable to believe that EPA can stand behind antiquated science when the report on Libby, issued by the same agency, irrefutably documents the validity of the new methods," Jenkins said.

Many federal employees, contract scientists and physicians believe the confusion over how federal agencies are handling asbestos from the collapse is exacerbated by the government's long-fought internal disputes over what kind of asbestos is dangerous and how many fibers of what size it takes to sicken or kill.

LOWER MANHATTAN RESIDENTS FEEL ABANDONED

Nothing can be done about the enormous amount of asbestos and other toxic substances in the choking dust that terrified survivors and rescue workers gulped down as they fled from the collapsing towers.

The dust storm that crashed through Manhattan like a sonic boom on Sept. 11 blew in windows and doors many blocks from ground zero. Air conditioning units on rooftops and in windows sucked pounds of dust into apartments and building ventilation systems.

Some apartments had inches of gray dust covering everything. Most others within blocks of the attack had floors, walls, window coverings and furniture covered in a talclike film.

Those continuing the recovery effort at ground zero have hundreds of environmental and occupational health specialists hovering nearby, trying to keep the workers in the pit safe and diminish future exposure to asbestos and other dangerous material.

But many of the 340,000 or so people who live in the lower part of that island feel they were abandoned and, at the least, fed conflicting information by federal, state and city officials on how to avoid asbestos exposure.

"It's like all of us who live down here really don't matter to anyone in any government. We've pretty much been left to fend for ourselves," said Steve Swaney, who, with his wife, lived in a Battery Park apartment.

The World Trade Center, two blocks away, which once filled his view, has been reduced to a huge hole in the ground. It spews an acrid dusty stench, nothing like the time-honored bouquet of roasting chestnuts which used to permeate lower Manhattan through the fall and winter.

The Swaneys' patio doors were open when the buildings collapsed. Their one-bedroom apartment, like many of the 238 others in their 15-story building, was covered in dust.

Those with insurance paid as much as $10,000 to have professional asbestos crews clean their apartments, Swaney said.

The landlord cleaned the rest.

"But there was still dust all over the place, and we couldn't get anyone to tell us how much asbestos was still there," he said.

The tenants paid to have the dust analyzed, and the dust contained levels of asbestos above 1 percent, which the EPA considers unsafe.

The landlord sent in another cleaning crew.

On the streets nine floors below Swaney's balcony, men in air tanks and moon suits slowly waddle behind and beside huge gushing mobile water tanks and purring SuperVac vacuum trucks.

The bizarre ballet was precisely orchestrated to wash out, suck up and capture the most minute pocket of dust from Battery Park's promenade, playgrounds, sidewalks, and even children's sand boxes in the park.

Swaney, a 58-year-old computer consultant, has a sick wife. Her ribs are sore from hours of gagging, coughing and choking from the same dust that EPA crews are so carefully removing on the street out front.

He wonders why the crews working on the street are so meticulous, using special micro-filter vacuums, wearing special protective clothing and respirators. But in his apartment, the three-person pickup band of day laborers the landlord hired used brooms, dustpans, old mops and buckets and everyday vacuum cleaners.

"They didn't even have masks," he said. "My wife had to find masks for them."

He wondered what government officials knew about the dust that they weren't sharing.

"To those of us in the middle of this, it's obvious that there is a conscious effort not to put out the facts," said Swaney, who heads his building's tenant association. "I don't know whether it's the White House, or the governor's mansion or the mayor's office, but someone doesn't want this truth about asbestos getting out.

"They don't want to close down lower Manhattan. We're talking about a lot of money, a lot of jobs. That's OK, but is it safe to live here?"

Swaney and his wife moved out of lower Manhattan.

"Christie Whitman says it fine to return to our homes," he noted. "She's the EPA boss. Should we not believe her when she says our apartments are safe? But how does she know?"

That's a question that many are starting to ask.

EPA SAYS IT CAN'T TEST APARTMENTS AND OFFICES

None of the thousands of tests that the EPA cites as showing the asbestos risk is minimal were taken inside the buildings and rooms where people live, study and work.

"That's just not our job, and we have no policies or procedures for doing that type of testing," said Bonnie Bellow, spokeswoman for the EPA's region II office in New York. "We've never had to worry about asbestos in houses before."

Many people within the government said that when the buildings collapsed, the agencies grabbed the only "how to handle asbestos" book they had off the shelves. But those regulations haven't been updated for years, regardless of the need repeatedly demonstrated by field investigators for a half-dozen different agencies.

"To ignore testing the indoor environment for asbestos defies logic," said Granger, the Virginia toxicologist. "Outside, the normal air movement dilutes and dissipates asbestos concentration. Inside, the fibers are trapped by four walls. They constantly get

resuspended just by occupants walking on carpets, closing the drapes or having the air conditioner or heat go on or off."

BAD INFORMATION FROM THE START

Politicians, administrators of state and federal agencies and their spokespeople gave conflicting information and suggestions, sometimes in the same statement or news conference. Newspaper, radio, television and Web sites were filled with questionable guidance.

In October, the EPA and OSHA were still putting out information to residents saying that if dust from the collapsed towers was in homes or offices "people should be sure to clean thoroughly and avoid inhaling dust while doing so."

State and federal agencies warned about the toxic material and asbestos in the dust and quickly told people to wear masks, if they found dust when they returned to their homes.

Plain paper or cloth masks were worn by more then 1,800 volunteers from the Southern Baptist Church, the Salvation Army and other groups who cleaned hundreds of apartments.

No one told them that of the 29 most available brands of masks on the market, only one contained filters fine enough to stop the microscopic asbestos fiber.

The EPA and the state and city told residents who knew they had asbestos to "mop it up, wash it down and throw it away" and "avoid inhaling dust while doing so."

But throughout the nation, asbestos removal is intensely regulated by state and federal law. The laws, which carry steep penalties, demand that the cleanup be done by personnel wearing special respirators, full head-to-toe protective suits and gloves, and the waste disposed of only at authorized sites.

The EPA and New York health departments point fingers at each other as the source of the misleading information.

Bellow admits that the EPA's web site linked to incorrect guidance for office and apartment landlords and renters.

"It wasn't our information. It was from the (New York) state or city health department, and we removed it from our Web site last month," the spokeswoman said. "Obviously, our asbestos program was overwhelmed by a catastrophe of this magnitude. We are usually only concerned with asbestos from renovations and building demolition."

However, a check of EPA's web Saturday found the same links were being used.

OLD MEDICAL IDEAS CLOUD ASBESTOS DECISIONS

When it came to the bureaucrats issuing medical information on asbestos, the contradictions were even more glaring.

The New York City Department of Health told residents that "asbestos-related lung disease results only from intense asbestos exposure experienced over a period of many years, primarily as a consequence of occupational exposures."

But the EPA's own experts as well as physicians at the CDC and private research centers have shown that a "single burst, heavy dose" of asbestos could be enough to cause the lethal disease. Last month, the EPA issued a report documenting that casual exposure to asbestos has caused disease.

The EPA, OSHA and New York health and environmental experts repeatedly told the public that the health risks are minimal because the asbestos fibers are so small.

Asbestos fibers are measured in microns, which are about 1/100th the thickness of a human hair. They are so tiny that they will stay aloft for hours or days. The collapse of the towers exacerbated the problem by pulverizing the fibers into even smaller, thinner fragments.

Years ago, asbestos researchers believed fibers greater than 5 microns long presented the only health hazard which would produce asbestosis, lung cancer and mesothelioma. This was due, in part, to the fact that the microscopes of that period couldn't easily detect fibers that small. Also, government asbestos regulations, which have always been heavily influenced by the asbestos industry, discounted the toxicity of short fibers.

"I don't even know whether EPA knows the very small fibers are there, but to say that small fibers are not dangerous defies logic," Granger said. "In most of the autopsies on asbestos victims, the predominance of fibers we see are small, are under five microns."

All the agencies play down the importance of test results that found dust samples that contained less then 1 percent asbestos.

"They keep calling it a trace. This implies to the public that there is no hazard from it," said Dr. Jerrold Abraham, director of environmental and occupational pathology at Upstate Medical University in Syracuse.

"If you're talking about pure chrysotile asbestos, there are 10 billion or more fibers per gram, or about a fifth of a teaspoon.

"Their whole measuring and reporting system needs to be made more honest."

The EPA's Bellow tried to answer the criticism.

"We didn't see ourselves as the primary source for information on what the health implications were. We're not a health agency," she said, adding that these are national issues that EPA headquarters should be addressing.

But headquarters has repeatedly declined to discuss these policy issues, even though before Sept. 11, the EPA was in turmoil over how to handle several asbestos problems throughout the nation.

Granger, who has studied the importance of risk communication, said the ball was dropped.

"We are talking about the very lives of these people and those they love," he said. "Because of the misleading or completely inaccurate government information and guidance, people don't know where to turn or whom to trust."

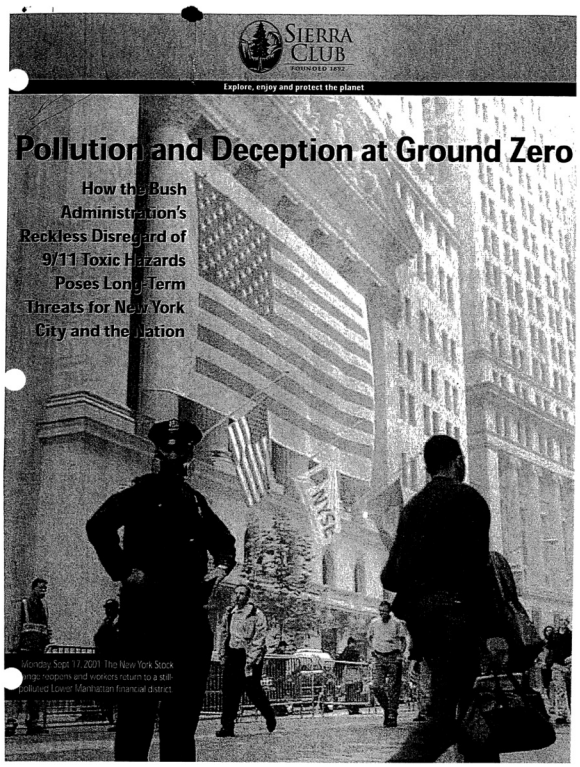
Meanwhile, starting Monday, NYCOSH, the unions' medical group, will make doctors and proper asbestos safety equipment available to the day lab orers who are cleaning many buildings and apartments.

Later in the week, the city health department is expected to release its findings on the safety of apartment residents. Those who have seen the draft predict that the report will do little to end the controversy on the risk New Yorkers face from asbestos.

ASBESTOS AT GROUND ZERO THE DUST SETTLES AT GROUND ZERO (This was the THREE STAR banner) Reporter Andrew Schneider: E-mail: aschneider@post-dispatch.com Phone: 314-340-8101

PHOTO | (1) Photo - An asbestos fiber, collected in dust from the World Trade Center collapse, is shown through a microscope. Asbestos fibers are measured in microns, which are about 1/100th the thickness of a human hair. They are so tiny that they will stay aloft for hours or days. (2) Photo - This ad from a 1981 issue of Asbestos Magazine shows how widespread the fire-resistant compound was in the building of America. It was found everywhere, from fireproof curtains in movie theaters, mixed with concrete, sprayed on steel beams and wrapped around pipes. But asbestos fibers can kill, and hundreds of thousands of construction workers died often horrible deaths. (Ad reads: WHEN THE FIRE ALARM WENT OFF, IT TOOK TWO HOURS TO EVACUATE NEW YORK'S WORLD TRADE CENTRE. The bigger the building, the more important fire-proofing becomes. That's why today's buildings have asbestos-cement walls and even floors containing asbestos. Asbestos contains fire, cannot burn and holds up after metal and glass have melted down, giving vital time for people to escape. You'll also find asbestos sealing plumbing joints, insulating heating pipes, electric motors and emergency generators. Asbestos. We couldn't live the way we do without it. When life depends on it, you use asbestos.)

TAB 39



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Pollution and Deception at Ground Zero

How the Bush Administration's Reckless Disregard of 9/11 Toxic Hazards Poses Long-Term Threats for New York City and the Nation

Monday, Sept. 17, 2001: The New York Stock Exchange reopens and workers return to a still-polluted Lower Manhattan financial district.

Andrew Schneider in a February 9, 2002 article.[25] John Graham, a rescue worker, carpenter and emergency medical technician, comments:

> I was at all the safety meetings, but they never told us what was really going on. Now I'm a walking pharmacy. I have a chest infection, ear, nose and throat problems. I have sinusitis, gastrointestinal reflux disease. We got skin burns, too, especially working at the bottom of the pit, where sometimes we were standing in pools of water that probably was full of chemicals. My tonsils look like strawberries – red and pitted. I guess drain cleaner would do that to you.[26]

Medical researchers concluded, "The high alkalinity of WTC dust produced bronchial hyperreactivity, persistent cough and increased risk of asthma."[27] Dr. Robin Herbert of the Mount Sinai School of Medicine reported:

> What we're finding is incredible irritation to the lungs, throat and nasal passages. Some of the tissue is cherry red, vivid, bright, and we've never seen anything like it before.... The high pH in the dust may be part of the answer. If the government had these pH readings of 11 and 12, the public and their physicians should have been told.[28]

EPA scientists subsequently confirmed – in a comment buried deep within a lengthy document – that their chemical analysis of the WTC dust "generally agrees with the extensive analysis of WTC PM [particulate matter] performed by the USGS."[29]

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[25] *Id.*; Andrew Schneider, "Public Was Never Told that Dust from Ruins Is Dangerously Caustic," *St. Louis Post-Dispatch* (Feb. 10, 2002); "Scientists Knew WTC Air Posed Health Risk," *New York Newsday* (Feb. 12, 2002). Oddly, EPA apparently responded to a question from a reporter about what it did with the USGS data by stating that it evaluated the data and found it consistent with its own findings, then asserted that USGS itself "distributed its findings directly to the press" (see "Response to Questions from Andrew Schneider, *St. Louis Post Dispatch*, February 1, 2002" - provided in response to Sierra Club Freedom of Information request), but a review of USGS's press releases from 2001 and 2002 reveals no such release.

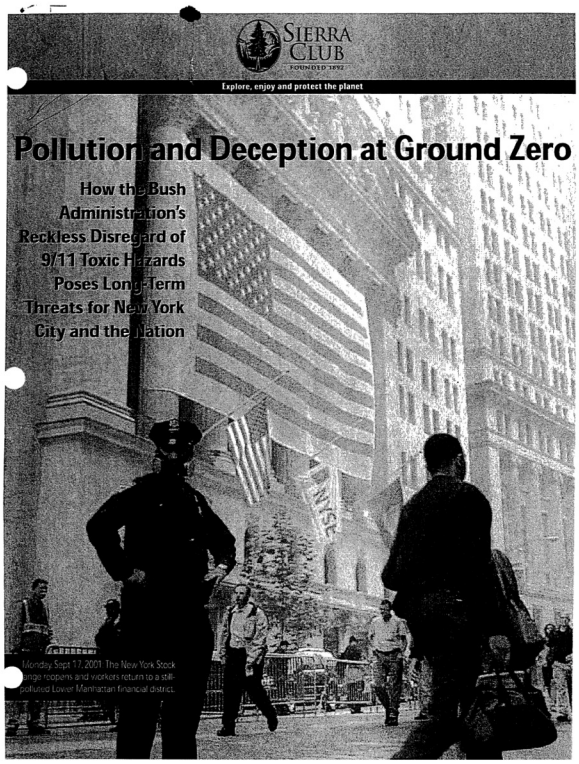
[26] Telephone interview of John Graham, rescue worker, carpenter and emergency medical technician, July 27, 2004.

[27] *Health and Environmental Consequences*, p. 12. See *also*, Lung Chi Chen and George Thurston, "World Trade Center Cough," *The Lancet Supplement* 360: s37-s38 (Dec. 2002).

[28] Andrew Schneider, "Caustic Dust Blankets World Trade Center Area," *supra*.

[29] U.S.E.P.A., *Toxicological Effects of Fine Particulate Matter Derived from the Destruction of the World Trade Center* (EPA600/R-02/028)(2002a)(available at < http://www.epa.gov/nheerl/wtc/WTC_report_Tkhi.pdf >)(hereafter, *EPA Report on Toxicological Effects of WTC Fine Particulates 2002*), p. 44. Dr. Paul Lioy also confirmed in 2002 that the street dust had an alkaline pH, ranging from 9.2 to 11.5. Lioy (2002), p. 707. The two outdoor dust samples taken by ATSDR and the City that were analyzed for pH value registered at 8.6 and 9.8 on the pH scale. ATSDR, NYC Dept. of Health and Mental Hygiene, U.S. Dept. of Health and Human Services, and Public Health Service, *Final Report of the Public Health Investigation to Assess Potential Exposures to Airborne and Settled Surface Dust in Residential Areas of Lower Manhattan* (Sept. 2002)(hereafter, *ATSDR and City Health Department Residential Dust Study 2002*), p. 5.

TAB 40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How the Bush Administration's Reckless Disregard of 9/11 Toxic Hazards Poses Long-Term Threats for New York City and the Nation
Monday, Sept 17, 2001 The New York Stock Exchange reopens and workers return to a still-polluted Lower Manhattan financial district.

> exposures can increase the risk of asbestos-related diseases but also that there is no safe level of exposure to asbestos.[85] The Bush administration never acknowledged this inconsistency, nor put forth any explanation for suddenly changing its policy.

The federal government's public assurances of safety were inconsistent with its own data. On October 26, 2001, *Daily News* columnist Juan Gonzalez published his in-depth assessment in an article entitled, "A Toxic Nightmare at Disaster Site." He reported that internal government documents revealed toxic substances in the air and soil around Ground Zero, sometimes at levels far exceeding federal standards.[86] Indeed, EPA's statements apparently were inconsistent with its own experts' advice. The Inspector General stated bluntly, "it appeared that EPA's best professional advice was overruled when relaying information to the public in the weeks immediately following the disaster."[87] Politics, it appears, trumped science in the communication of risks to the public.

Subsequent denials by Bush administration officials about interference with public health warnings simply do not comport with the facts. About two years after the events of September 2001, in her first broadcast interview on this topic, former EPA Administrator Whitman asserted, "The White House never directed the Environmental Protection Agency to withhold facts or lie to the people of the city of New York."[88] Similarly, Claire Buchan of the White House's Council of Environmental Quality insisted that the interest of the two agencies was "always in the health and safety of the people of New York."[89] Heads of 19 union locals representing EPA employees, however, issued a bitter rebuttal statement on September 15, 2003 denouncing White House interference with their work. They said:

> Little did the Civil Service expect that their professional work would be subverted by political pressure applied by the White House. ... These workers reported to senior EPA officials their best estimate of the risks, and they expected those estimates and the accompanying recommendations for protective measures to be released in a timely manner to those who needed the information.... [T]he Bush White House had information released, drafted by political appointees, that it knew to contradict the scientific facts. It misinformed. And many rescue workers and citizens suffered. Some citizens now face the long-term

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[85] 51 *Fed. Reg.* 15728. The rules are codified at 40 CFR § 763, subpart E. Congress, in adopting the Asbestos School Hazard Abatement Act in 1980, similarly stated, "Medical science has not established any minimum level of exposure to asbestos fibers which is considered to be safe to individuals exposed to the fibers." 20 U.S.C. 4011(a)(1)(findings and purposes section).

[86] Juan Gonzalez, "A Toxic Nightmare at Disaster Site," *New York Daily News* (Oct. 26, 2001)

[87] *IG Report*, App. K, p. 132.

[88] Lisa Myers, Senior Investigative Correspondent, "What Was Known About Post-9/11 Air," MSNBC (NBC News)(Sept. 5, 2003).

[89] Elaine S. Povich, "Democrats Seek EPA Probe: Focus on Misleading Info Revealed in 9/11 Air Quality Report," *New York Newsday* (Sept. 18, 2003).

> risk of asbestos-related lung cancer as well as other debilitating respiratory ailments as a result.[90]

The Bush administration's advocacy of approaches to cleanup of WTC dust was in direct conflict with a quiet OSHA warning about proper management of the material. In January 2002, OSHA responded to a query about WTC dust management from attorney Lowell Peterson, partner in a law firm representing Local 78 Asbestos, Lead and Hazardous Waste Laborers, by issuing an "interpretive letter." In that letter, OSHA stated that the WTC dust should be presumed to contain asbestos unless tests proved otherwise. OSHA declared that the federal asbestos protocols for construction activity should apply during demolition or salvage activity at the site, and stated, "In that the materials containing asbestos were used in the construction of the Twin Towers, the settled dust from their collapse must be presumed to contain asbestos."[91] This individual agency warning contradicted the casual public approach taken by the federal administration overall with regard to WTC dust. Certainly EPA, by encouraging unskilled family members to clean up contaminated indoor WTC dust using wet mops and wet rags, was taking a position diametrically opposed to OSHA's careful warning.

If this OSHA staff person's warning had been placed in a draft press release rather than an obscure interpretive letter responding to an individual query, one wonders how the CEQ might have changed OSHA's text.

The White House Council on Environmental Quality plainly gave EPA "double standard" instructions for when to communicate information on health hazards. EPA's Office of Communications, Education and Media Relations had a fact sheet on the health risk to "sensitive populations" from exposure to particulate matter. The *IG Report* states:

> We asked the Associate Administrator whether she had considered putting any of this information in press release. She said she had, but the CEQ official discouraged her from doing so. Her recollection was that he told her health effects information should not be included in EPA's press releases, and that anything dealing with health effects should come from New York because they were on the ground and they were already dealing with it.[92]

EPA did not disagree with this assertion in its response comments on the *IG Report*. The staff person's characterization of the Bush administration's oversight of EPA warnings, however, is not correct. The White House Council on Environmental Quality not only approved but required placing assurances about health into the EPA press releases. This indicates an active misinformation campaign intended

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[90] Letter signed by: Paul Sacker, President AFGE Local 3911, New York; Dwight Welch, President NTEU Chapter 280, Washington, DC; Gretchen Helm, President AFGE Local 3331 Washington DC; and EPA employee unions in 14 other cities (September 15, 2003).

[91] Henshaw, John, Assistant Secretary for OSHA, U.S. Dept. of Labor, "Standard Interpretation Letter," Jan. 31, 2002; *see also, IG Report*, p. 34.

[92] *IG Report*, p. 35.

**STATEMENT OF U.S. EPA LABOR UNIONS
ON IMPROPER WHITE HOUSE INFLUENCE ON EPA'S RESPONSE TO THE
TERROR ATTACK OF SEPTEMBER 11, 2001**

We, the undersigned representatives of the workers who perform health and environmental protection duties at the U.S. Environmental Protection Agency across America, express our anger and dismay over evidence of the White House's improper actions in connection with communicating health risk information to emergency workers and residents in New York immediately following the terror attacks on that city on September 11, 2001.

EPA's dedicated Civil Service employees performed their duties swiftly and competently following the terror attack, assessing as accurately as possible the environmental health risks faced by the brave rescue workers and nearby residents from toxic substances released in the attack. These workers reported to senior EPA officials their best estimate of the risks, and they expected those estimates and the accompanying recommendations for protective measures to be released in a timely manner to those who needed the information.

The public was not informed of all of these health risks, some of which were avoidable. This information was withheld from the public under orders from the White House. Instead, the Bush White House had information released, drafted by political appointees, that it knew to contradict the scientific facts. It misinformed. And many rescue workers and citizens suffered. Some citizens now face the long-term risk of asbestos-related lung cancer as well as other debilitating respiratory ailments as a result.

Little did the Civil Service expect that their professional work would be subverted by political pressure applied by the White House. This unwarranted and inexcusable interference with the professional work of the Civil Service by politicians reporting directly to President Bush caused rescue workers and residents to be exposed to health risks that could have been, indeed should have been, avoided.

We express our solidarity with the rescue workers and residents who were affected adversely by this outrageous action of President Bush's staff. There is no excuse for White House politicians imposing their values and overriding the Civil Service's best advice on protecting those still digging in the wreckage and those whose homes and offices were covered with toxic debris.

911_STATEMENT_FINAL.PDF

President Bush owes the rescue workers, residents, dedicated Civil Service workers and the American people more than an apology for his actions in this matter. President Bush should take steps to compensate the rescue workers and residents who were harmed by his administration's actions.

The President's political appointees' interference with the professional work of the EPA Civil Service has seriously harmed EPA's credibility. Before there is another national emergency, that credibility must be restored.

The President must pledge to never again order EPA to tell less than the whole truth about a public health emergency.

Signed:

/s/ Paul Sacker
President AFGE Local 3911, New York

/s/ Dwight Welch
President NTEU Chapter 280, Washington, DC

/s/ Alan Hollis
President AFGE Local 3631, Philadelphia

/s/ Henry Burrell
President AFGE Local 3428, Boston

/s/ Nancy Barron
President NAGE Local R5-55, Atlanta

/s/ Gretchen Helm
President AFGE Local 3331, Washington, DC

/s/ Charles Orzehoskie
President AFGE Local 704 Chicago

/s/ Merrit Nieswander
President AFGE Local 1003, Dallas

/s/ John C Anderson
President NTEU Chapter 294 Kansas City

/s/ Kevin Orendorf
President AFGE Local 3607, Denver

/s/ Wendell Smith
President ESC EPA-Unit San Francisco

/s/ Patrick Chan
President NTEU Chapter 295, San Francisco

/s/ Mary St. Peter
President AFGE Local 1110, Seattle

/s/ Mark Corvell
President AFGE Local 3907, Ann Arbor

/s/ Larry Penley
President NTEU Chapter 279, Cincinnati

/s/ Silvia Saracco
President AFGE Local 3347 Research Triangle Park

/s/ Nita Tallent-Halsell
President NAGE R12-135, Las Vegas

/s/ Lesley Mills
President NAGE R1-240, Narragansett

/s/ Geraldine Cripe
President NAGE Local R5-95

TAB 41

DAILY NEWS

Op-Ed

October 31, 2001

EPA'S ON TOP OF GROUND ZERO CASE

By CHRISTIE WHITMAN

Those of us in government and the media share an obligation to provide members of the public, in a responsible and calm manner, with the information they need to protect themselves and their families from any environmental hazards that may result from the attacks on the World Trade Center.

The Environmental Protection Agency has been working since Sept. 11 to make such information available in a complete and timely fashion. It also is important that this information be put into context so information that may be unfamiliar by itself can be better understood. For example, a Friday Daily News article, "Toxic Zone," focused on a small number of sampling results with the highest contaminant readings, but it did not also report that EPA has taken thousands of samples that did not exceed federal standards or guidelines.

Absent that context, the public could understandably conclude that the situation at Ground Zero presents a major environmental health hazard to area residents and employees. That would be inaccurate, as your Saturday article "City, feds say WTC air's OK" made clear.

The situation with benzene illustrates the nature of our monitoring and how we analyze the test results. Benzene is a pollutant that is being released from the disaster site as a result of ongoing fires, and EPA's primary goal is to determine whether the workers at Ground Zero are being exposed to unsafe levels. The data also give us an indication of the potential for benzene to migrate from the site at unsafe concentrations.

To identify the highest concentrations of benzene, EPA places extended probes in the debris pile where a smoke plume is sighted. These are the areas where we find the higher readings highlighted in The News' Friday article.

EPA has consistently said elevated levels of benzene and other contaminants at Ground Zero are a concern. This is why from the beginning we've strongly recommended that workers wear respirators and other protective gear and have provided this equipment in the thousands. Respirators, when used properly, protect workers from exposure to contaminants.

Fortunately, EPA has more consistently found low levels of contaminants in the "breathing zone" - 5 to 7 feet above the debris pile -- and undetectable levels away from the work site.

EPA also has collected and analyzed more than 1,300 air samples for asbestos since Sept. 11. Only 28 were above the Asbestos Hazard Emergency Response Act standard, and 27 of those were samples collected before Sept. 30.

Of course, individual samples represent only a snapshot at a moment in time, not the environmental conditions that would determine whether federal standards have been exceeded. Most health standards set by EPA and the Occupational Safety and Health Administration are based on exposure periods that cover anywhere from an eight-hour work day for occupational exposure to 30 years.

EPA is, however, taking the most conservative approach in assessing samples by evaluating results against strict standards. We're working with the appropriate health agencies to make recommendations that protect workers and the public.

Finally, EPA has made and continues to make information available to the public. We continue to update our Web site daily, presenting summaries of all environmental findings, including results that exceed federal standards. We also are making data available in a public information repository in our lower Manhattan offices.

The people of New York deserve all the information available in as useful and complete a form as possible.

Whitman is the administrator of the U.S. Environmental Protection Agency.

TAB 42

C-Span - Washington Journal
Tuesday, June 12, 2007

Caller: Ms. Whitman I got to take you to task you are talking about being safe and this and that. I was in Manhattan in 2001 with my wife four blocks away from the World Trade Center. You and your administration came in talking about how safe and clean the air was and it was workable. Now we are seeing all these people, who are getting no government help by the way, people are dying now. My wife she has a cough that she never had before 9/11, so for you to come on TV and start talking about all these safety issues with nuclear power and stuff when you were the one standing on the Ground talking about how safe all the air was around the World Trade Center seems like a big debacle on your part and driving a tractor doesn't make you an authority on anything. I can drive a fucking tractor.

Whitman: Well I agree with you on driving the tractor and the bailing machine doesn't make me an expert on anything, but I will tell you something. My son was in Building 7 at the time, so I really have a very, besides losing a number of very good friends, I have a deep and personal commitment to what happened in New York on 9/11 and I will tell you, for anyone who was in that area when the buildings came down, there was a problem. And as I said repeatedly, those who worked on the pile needed to wear respirators. But the ambient air quality in Lower Manhattan in general after those first few days did not, nothing that I said was based on anything of my personal opinion, it was based on what the scientists were telling us from numerous readings that we were taking from air, water and dust samples. And nothing that they saw said that there was gonna be long-term health impacts from living in, from the ambient air quality in Lower Manhattan. Not when we were there when the buildings came down. There no question that if you were running away from those buildings you inhaled that dust deep into your lungs, I think there are gonna be problems and, while I'm not a medical expert, I still believe that what we're seeing today with the responders is directly related to the fact that they did not wear respirators. And that was a huge frustration, frankly, to me, that we couldn't get them to, we weren't, that the Environmental Protection Agency was not the primary responder there and were not able to enforce it, even though we provided respirators, and we repeated again and again, my public statements as well as meetings that were held every morning with those people who were going over what was going to be done that day, as far as the rescue and then recovery was concerned, reiterating the need to wear respirators. And I agree with you, we should be doing a great deal for those people. They were heroes. The men and women who responded on 9/11 and the days and months afterward, including the men and women at the Environmental Protection Agency, who were on that pile on a regular basis, wearing, wearing monitors on themselves to take real time data that we then put up on the air, put up so that people could do, would see and could make real comparisons as to what was problematic and what wasn't. I think we have a huge responsibility to those people.

TAB 43

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

February 1, 2001

THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Recusals

TO: Immediate Staff
Office of the Administrator

The purpose of this memorandum is to outline my recusal obligations under the "ethics agreement" that I executed in connection with my nomination to be EPA Administrator. Any matter from which I am recused is to be decided by the Deputy Administrator without my participation (or, if there is no Deputy Administrator, by the Assistant Administrator with subject matter responsibility for the matter).

My recusal obligations are as follows:

1. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the following entities:

Renaissance Cruise Lines
Vectura Group (a barge operator)
ACL, LLC (a barge operator).

2. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of the following entities to honor their bond obligations:

Bergen County New Jersey Utilities Authority
New Jersey Wastewater Treatment Trust
Port Authority of New York and New Jersey
Delaware River Port Authority
Puerto Rico Industrial, Medical, and Environmental Poll.

3. I will not participate personally and substantially in any particular matter involving the State of New Jersey as a specific party if the matter has a direct and predictable effect on the ability or willingness of the State of New Jersey to honor its pension obligations.

4. I have agreed to divest my working interest in oil wells in Texas and Colorado within three months of my confirmation; that is, by April 30, 2001. In the meantime, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on Texas or Colorado oil wells.

5. For one year after I cease to serve as Governor of New Jersey, I will not participate in any particular matter involving the State of New Jersey as a specific party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question my impartiality in the matter, unless my participation is specifically authorized pursuant to section 2635.502(d). Further, even after the one-year time period has elapsed, I will not participate in any particular matter involving the State of New Jersey as a specific party if the matter is one in which I participated as Governor of New Jersey and if the circumstances would cause a reasonable person with knowledge of the relevant facts to question my impartiality in the matter, unless my participation is specifically authorized pursuant to section 2635.502(d).

* * *

I ask that you help me to carry out these obligations referring matters from which I am recused to the Deputy Administrator without my participation (or, if there is no Deputy Administrator, to the Assistant Administrator with subject matter responsibility for the matter) and by seeking advice from the Designated Agency Ethics Official whenever there is a question about whether this recusal applies.

Christine Todd Whitman

cc: Anna L. Wolgast
Principal Deputy General Counsel
Designated Agency Ethics Official (2311A)

TAB 44

In The Matter Of:

Hugh B. Kaufman v.
U.S. Environmental Protection Agency

Deposition of: Marianne Lamont Horinko
January 6, 2003

Miller Reporting Company
735 8th Street, SE
Washington, DC 20003
(202) 546-6666

Original File 010GIIORI.ASC, 197 Pages
Min-U-Script® File ID: 300433370

Word Index included with this Min-U-Script®

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A: I get periodic updates from Region II on the progress of the number of homes that have requested testing and the number of homes that have requested cleanup or buildings that have requested cleanup, and also occasionally they will keep me posted on their negotiations with FEMA to do further work.

Q: Are you aware of the fact that the Occupational Safety and Health Administration considers all the dust created by the World Trade Center attack to be asbestos-containing material?

A: No, I'm not aware of that.

Q: Has Region II ever told that you?

MR. STARRS: Objection. Asked and answered. The witness testified she doesn't know about that.

THE WITNESS: Not that I can recall.

BY MR. KAUFMAN:

Q: Are you involved as a decision-maker in the cleanup of interiors of homes as EPA or are you a decision-maker?

A: The decision-maker — I am involved as

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a participant in the decisions. We work very closely with the other Federal agencies involved and the City and State of New York because there is still, I believe, an incident command up there. I don't know for a fact if that still exists, but I believe that it does and in any presidential disaster there is also an incident command that is the decision-maker.

Q: Who is the ultimate decision-maker for the cleanup of interiors affected by the World Trade Center disaster?

A: Ultimately it is the incident commander, which I believe is the City of New York, which makes the decisions. Now, I believe in theory that if we at EPA disagree with those decisions that we could move separately using our own legal authority and do that. But that would be very unusual procedure in a disaster.

Q: Doesn't PDD 62 mandate that EPA be the lead?

A: Yes. EPA does have the lead under ESF 10.

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Q: And what does ESF stand for?

A: Emergency support function. Under the Federal response plan FEMA has the lead overall in coordinating Federal deployment in emergencies, and then there are a number of specific emergency support functions of which we have the lead in the environmental response.

Q: And since we have the lead in the environmental response, are we the lead decision-maker on cleaning up the interiors of the buildings?

MR. STARRS: Objection. Asked and answered. She has testified she believed it was the local command.

THE WITNESS: All decisions are made at the site by the incident commander. EPA is the lead expert on environmental cleanup.

BY MR. KAUFMAN:

Q: Is that consistent with Presidential Decision Directive 62?

A: Yes.

Q: So Presidential Decision Directive 62

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does not mandate EPA to take the lead and be a lead decision-maker?

A: You always coordinate. EPA has the lead, but you always coordinate with the local incident commander.

Q: Who in EPA, who is the individual who has the ultimate lead for the cleanup of the interiors? Is it you?

A: Ultimately I suppose it would be Governor Whitman as the administrator. Since I do report to her, I am certainly the lead on emergency response.

Q: You are the lead on emergency response?

A: Yes.

Q: Is cleaning up the interiors an emergency response?

A: Yes, it is. I believe so. To the best of my knowledge, yes, it is.

Q: So then you have the lead, is that correct?

A: Yes.

Q: What was the basis — are you aware of