



OPENING STATEMENT OF U.S. REPRESENTATIVE JERROLD NADLER (NY-08) Chairman of the House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties Hearing on "Substantive Due Process Violations Arising From the Environmental Protection Agency's Handling of Air Quality Issues Following the Terrorist Attacks of September 11, 2001" June 25, 2007

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.

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 environmental 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 air 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 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.

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 or 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 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.

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."

EPA's Inspector General found that these statements were falsely reassuring, lacked a scientific basis, and were politically motivated. The IG said, "When the 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." She called this EPA assurance, "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 WTC collapse. This reassurance appeared to apply to both indoor and outdoor air."

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

The IG's report described a 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, "competing considerations, such as . . . the desire to open Wall Street, also played a role in EPA's air quality statements."

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 decontamination 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.