

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 Thornstrom 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.

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.

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.

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 Thornstrom, 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 Thornstrom 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.

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.