U.S. Congressman Jerrold Nadler
White Paper
Lower Manhattan Air Quality

Last Updated

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U.S. CONGRESSMAN JERROLD NADLER
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Executive Summary

- EPA Administrator Christine Todd Whitman misled the public when she announced to New Yorkers, shortly after the September 11th terrorist attacks, that their ". . .air is safe to breathe" and that they ". . .need not be concerned about environmental issues as they return to their homes and workplaces" as the EPA did not have the proper information to make such assurances.
- The EPA also misled the public about air quality by mischaracterizing its own data and ignoring or withholding other critical data that contradicted Ms. Whitman's assurances.
- The EPA allowed the City of New York to handle indoor air quality. The City, in turn, delegated indoor air matters (testing and remediation) to individual building owners for indoor public spaces, and to tenants for indoor private spaces. The City provided little enforcement with respect to indoor public spaces and no enforcement with respect to indoor private spaces, and gave improper advice regarding hazardous materials testing and remediation.
- As a result of the EPA's misleading statements about air quality and because it allowed the City of New York to handle matters related to indoor environments, there has been inadequate hazardous materials testing and remediation inside residential and commercial buildings downtown – putting the public health at risk.
- By allowing indoor air quality in residential and commercial buildings to be handled by the City of New York, and by not properly exercising its oversight authority pursuant to the National Contingency Plan (NCP), the EPA violated federal law.
- The EPA's inaction in New York City downtown residences and commercial buildings stands in stark contrast to its response in its own building at 290 Broadway, as well as at other non-Superfund hazardous materials contamination sites around the country.
- The Citizens of Lower Manhattan -- residents, workers and building owners -- have been victims of a terrorist attack on this nation, and should not bear the burden of making their homes, offices, and businesses safe again. The EPA must act in accordance with the NCP, and take action immediately to systematically and properly test and remediate all downtown buildings affected by the World Trade Center tragedy, using properly trained personnel and the best-available equipment and methods tied to genuine, established health-based standards. Seven months after the attacks, it is now clear that the EPA is the only governmental entity with the authority, resources, expertise and mandate to do this job. This is the only course of action if the EPA is to restore the public trust and protect the public health.

Christine Todd Whitman's "Safe" Assurance

EPA Administrator Christine Todd Whitman misled the public when she announced to New Yorkers, shortly after the September 11th terrorist attacks, that their ". . .air is safe to breathe," and that they ". . .need not be concerned about environmental issues as they return to their homes and workplaces," as the EPA did not have the proper information to make such assurances. Ms. Whitman's "safe" statement was first made in written form on September 18, 2001[1] (though she had been quoted as early as September 14, 2001[2]), before there was a single test of indoor air quality conducted by any governmental entity.

In response to criticism on this point, the EPA countered that Ms. Whitman's statement was made on the basis of outdoor air tests only. [It should be noted that the EPA had not even intended to do testing of outdoor air in residential areas until the Ground Zero Elected Officials Task Force (GZTF) requested that it do so in a memo dated September 21, 2001, in which it also requested indoor air testing.[3]] On January 13, 2002, an EPA Region II spokesperson stated, "That's [indoor air testing] not our job and we have no policies or procedures for doing that type of testing."[4] On January 17, EPA Region II issued a statement saying, ". . .EPA has lead [sic] the effort to monitor the outdoor environment while the city of New York has taken the lead regarding the reoccupancy of buildings"[5] thereby denying any responsibility for indoor air. EPA Region II Administrator Jane Kenny, took this "outdoor only" defense even further when she stated to a U.S. Senate panel, ". . .the statement that was made, was basically about walking around in Lower Manhattan."[6] In any case, indoor air quality data did not even exist at the time of Ms. Whitman's September 18 statement.

To date there have only been two small rounds of governmentally conducted or commissioned tests of indoor air quality in Lower Manhattan post 9/11. Neither can be used as evidence to support the statement that indoor air is "safe." The first study, commissioned by the Ground Zero Elected Officials Task Force (GZTF) on September 18, 2001 found elevated levels of hazardous materials in a number of apartments that had

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[1] EPA Press Release, "Whitman Details Ongoing Agency Efforts to Monitor Disaster Sites, Contribute to Cleanup Effort," September 18th, 2001. Ms Whitman's full statement is as follows: "We are very encouraged that the results for our monitoring 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. Given the scope of the tragedy from last week, I am glad to reassure the people of New York and Washington, DC, that their air is safe to breath[sic] and their water is safe to drink." This sentiment has been echoed repeatedly by EPA spokespeople and other governmental agencies, and, to this day, has been used as the definitive government comment on Lower Manhattan air quality post-9/11. Two days later, Ms. Whitman added in a press release, "New Yorkers. . .need not be concerned about environmental issues as they return to their homes and workplaces." (September 21, 2001).

[2] Ferraro, Susan, "EPA Chief Says Water, Air are Safe," *New York Daily News*, September 14, 2001.

[3] Ground Zero Elected Officials Task Force (Congressman Jerrold Nadler, Chair) "Memorandum #4," September 21, 2001.

[4] Schneider, Andrew, "NY Officials Underestimate Danger," *St. Louis Post Dispatch*, January 13, 2002.

[5] EPA Region II Press Release, "EPA Statement," January 17, 2002.

[6] Jane Kenny (EPA Region II Administrator), "Testimony before the United States Senate Subcommittee on Clean Air, Wetlands, and Climate Change," February 11, 2002.

not been cleaned or professionally remediated, and some that had been cleaned or professionally remediated.[7] The second study, conducted by the Agency for Toxic Substances and Disease Registry (ATSDR), at the request of New York City Department of Health (NYC DOH) in November and December 2001, is still not completed. According to a NYC DOH press release and a web site to which the release refers, the agency did find elevated levels of hazardous materials in early results, but the full results of the tests will not be available until Spring 2002.[8]

However, even with respect to outdoor air, Ms. Whitman's statement has been called into question by a number of respected environmental authorities. In a recent report, Natural Resources Defense Council (NRDC) described the situation post 9/11, "an unprecedented environmental assault," (in terms of size and type) in which the "synergistic impacts of multiple pollutants on human health in the aftermath of an air quality emergency such as the one that began on the day of the attacks are unknown."[9] Ms. Whitman's pronouncements of safety are obviously incompatible with the reality that the health effects are "unknown."

Ms. Whitman's safety assurance on outdoor air was also countered directly by a published report by University of California at Davis scientist, Thomas Cahill.[10] Dr. Cahill's team, known as the DELTA group, working in conjunction with the U.S. Department of Energy, took measurements one mile north of Ground Zero on a 15-story tall building. They found that the amount of pulverized "ultra-fine particulate matter" emitted from the World Trade Center (WTC) destruction, was "unprecedented." And according to the Los Angeles Times, ". . .outdid even the worst pollution from the Kuwait oil fields fires."[11] These measurements were taken in early October 2001, at the very same time that the EPA was reiterating that the air was safe.

According to Cahill, the EPA did not test for this level of very fine particulate matter (.25 to .09 microns), only for larger particles with less sensitive equipment. "The EPA could have identified these particles within a couple of days if they looked for them, but they didn't."[12] Dr. Cahill noted in the article that EPA scientists have acknowledged that the ultra-fine particles are the "most hazardous" because they can evade the body's

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[7] Chatfield, Eric J. (Ph.D) and Kominshy, John R. (M.Sc., CIH, CSP, CHMM), "Summary Report: Characterization of Particulate Found in Apartments After Destruction of the World Trade Center," requested by the 'Ground Zero' Elected Officials Task Force, October 12, 2001.

[8] NYC DOH Press Release, "NYC Department of Health Presents Findings from Indoor Air Sampling in Lower Manhattan," February 8, 2002.

[9] Nordgren, Megan D.; Goldstein, Eric A; and Izeman, Mark A (for the Natural Resources Defense Council), "The Environmental Impacts of the World Trade Center Attacks: A Preliminary Assesment," February 2002.

[10] UC Davis News and Information Press Release, "Trade Center Air Held Unprecedented Amounts of Very Fine Particles, Silicon, Sulfates, Metals, Say UC David Scientists." February 11, 2002. See also Lau, Edie and Bowman, Chris, "N.Y. Air Hazards Found: EPA Assurances Contradicted by UCD Scientists," *The Sacramento Bee*, February 12, 2002.

[11] Polakovic, Gary, "Danger Found in Trade Center Air" *Los Angeles Times*, February 12, 2002. See also Lau, Edie and Bowman, Chris, "N.Y. Air Harzards Found: EPA Assurances Contradicted by UCD Scientists," *The Sacramento Bee*, February 12, 2002.

[12] Ibid.

protection and lodge deep inside the lungs.[13] An extended commentary by Dr. Cahill on these topics was made at the February 23, 2002 EPA National Ombudsman Hearing in New York City.[14]

It stands to reason that if there were problems related to outdoor air, problems related to indoor air would necessarily arise. An EPA Region II Spokesperson acknowledged that very point when she said recently, "We [the EPA] have from the start been clear that what we found on the outside was likely to have gotten inside people's apartments."[15]

The EPA Misleads Further

The EPA also misled the public about air quality by mischaracterizing its own data and ignoring or withholding other critical data that contradicted Ms. Whitman's assurances of air safety. Ms. Whitman's statement, which continues to be echoed repeatedly by agency officials at every level of government, was made even as EPA officials possessed evidence that contradicted her statement.

Ms. Whitman's statement mischaracterizes EPA's own data. For example, in a January 25, 2002 speech given by Walter Mugdan, EPA Region II Counsel, he states, ". . .a significant number of the WTC bulk dust samples that we analyzed did have more than 1% asbestos."[16] If a significant number of those dust samples did have more asbestos than the EPA's own so-called "clearance level," it stands to reason that the environment is not safe.

Further, in a document detailing information provided by EPA Region II in response to a Freedom of Information Act (FOIA) request, the New York Environmental Law and Justice Project cites numerous examples of data points that exceeded EPA "levels of concern."[17] Joel Kupferman, Executive Director of the New York Environmental Law and Justice Project (in addition to other experts) has stated repeatedly that these details contradict Ms. Whitman's safety assurances.[18] A 22-year veteran of the EPA's Hazardous Waste Identification Division, Dr. Cate Jenkins, has issued a memo

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[13] Ibid.

[14] "Official Transcript," EPA National Ombudsman First Investigative Hearing on World Trade Center Hazardous Waste Contamination," February 23, 2002, testimony of Dr. Thomas Cahill, Professor, University of California at Davis, p. 15-72.

[15] Jones, Charisse, "Anxieties Over Toxins Rise at Ground Zero," *U.S.A Today*, February 7, 2002.

[16] Mugdan, Walter, Regional Counsel U.S. Environmental Protection Agency Region 2, "Environmental Law Issues Raised by Terrorist Events in 2001," January 2002, p. 13.

[17] New York Environmental Law and Justice Project, "World Trade Center Incident Environmental Health Concerns: Information Provided by U.S. Environmental Protection Agency Region II in Response to FOIA Request Submitted by New York Environmental Law and Justice Project. Work in Progress." See website www.nyenvirolaw.org.

[18] Gonzales, Juan, "A Toxic Nightmare at Disaster Site: Air, Water, Soil Contaminated," *New York Daily News*, October 26, 2001.

challenging EPA's testing methods and "clearance levels" for hazardous materials, which she argues belie an honest assessment of safety. [19]

Other government officials also provided the EPA with data challenging Ms. Whitman's safety assurances. For example, the above mentioned GZTF report by Chatfield and Kominsky was given to EPA officials by the researchers (who are long-time EPA contractors) on October 12, 2001. To this day, the EPA has neither commented on nor taken any action with respect to the findings of elevated levels of hazardous materials in this report. According to an analysis by Dr. Cate Jenkins, Chatfield and Kominsky found 9 asbestos strands to every one found by the EPA. She went on to argue that those levels of asbestos in Lower Manhattan are comparable or in excess of those found in Libby, Montana, a recently-designated federal Superfund site.[20] Some of the asbestos utilized in the World Trade Center was made in Libby, Montana. A plethora of news reports have detailed the widespread public health problems experienced by Libby residents such as lung cancer, asbestosis and mesothelioma.

Beyond downplaying its own findings, and ignoring other contradictory findings presented to it, the EPA has withheld important data from the public. Specifically, it took a FOIA request by the New York Environmental Law and Justice Project to get test results showing dangerous levels of hazardous materials in outdoor ambient air. The EPA claimed that its failure to make this information available was an "oversight"[21]

Additionally, the St. Louis Post Dispatch reported in February that the United States Geological Survey (USGS), using the country's best detection equipment and methods, found pH levels in World Trade Center dust that are ". . .as corrosive as drain cleaner" and passed this information along to health experts at the EPA on a "government-only" website. In the article, Andrew Schneider (the paper's Pulitzer Prize-winning environmental journalist) charges "the USGS data was not released by the EPA nor apparently were the environmental agency's own test results on the dust." The EPA claims to have released this data to the public, but when Schneider reviewed all of the EPA's statements made since 9/11, he found nothing that warned of these high pH levels. According to the New York Committee for Occupational Safety and Health (NYCOSH), such dust "once it's in contact with moist tissue – the throat, the mouth, nasal passages, the eyes and even sweaty skin – it becomes corrosive and can cause severe burns."[22] To be clear, the EPA admits that it had this data, but continued to state that the air was safe.

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[19] Jenkins, Cate, (Ph.D., Environmental Scientist WIB, HWID, Office of Solid Waste, U.S. EPA) "Memorandum, December 19, 2001." See also Jenkins, Cate, (Ph.D., Environmental Scientist WIB, HWID, Office of Solid Waste, U.S. EPA) "Memorandum, Subject: Status of Air and Dust Asbestos Testing After WTC Collapse, March 11, 2002."

20 Jenkins, Cate, (Ph.D., Environmental Scientist WIB, HWID, Office of Solid Waste, U.S. EPA) "Memorandum, Subject: Preliminary Assessment, January 11, 2002." See also Jenkins, Cate, (Ph.D., Environmental Scientist WIB, HWID, Office of Solid Waste, U.S. EPA) "Memorandum, Subject: Status of Air and Dust Asbestos Testing After WTC Collapse, March 11, 2002."

[21] Haughney, Christine, "In N.Y., Taking a Breath of Fear: Illnesses Bring New Doubts About Toxic Exposure Near Ground Zero," *Washington Post*, January 8, 2002.

[22] Schneider, Andrew, "Public Was Never Told That Dust from Ruins is Dangerously Caustic," *St. Louis Post Dispatch*, February 10, 2002. Also see asbestos effects noted in U.S.EPA Federal Register, Vol 51,

In addition to directly withholding information, the EPA has also effectively withheld critical data by providing disparate documents in response to direct requests made by Congress and via the FOIA process. For instance, in response to a request for information made by Congressman Nadler on January 23rd, Ms. Whitman replied that "the City assumed responsibility for indoor testing and reoccupancy of building."[23] However, in response to the previously mentioned FOIA request, documents indicated that the EPA did environmental assessments of at least some residential and commercial buildings (at the request of the Ground Zero Elected Officials Task Force), and that On-Scene Coordinators were working in lower Manhattan. Other discrepancies included information regarding the type of testing methods used to analyze dust samples in a downtown federal building (EPA's own building), and Department of Health recommendations for residents looking to reoccupy their homes.

Finally, the EPA has refused to participate in its own public accountability process. In order to further investigate the environmental conditions in New York City post 9/11, Congressman Nadler hosted two EPA Ombudsman hearings in the Spring of 2002. The Office of the EPA Ombudsman acts as an EPA watchdog, fielding complaints regarding the work of the EPA and making appropriate recommendations to the EPA Administrator. In the last four years, over one dozen National Ombudsman Investigative Hearings have been held, dealing with complaints regarding the EPA's handling of hazardous waste and material. As a result of these previous hearings, the EPA has altered and reversed decisions, and agreed to perform more detailed environmental testing and remediation.

The situation at the Ombudsman hearings regarding Ground Zero proved to be wildly different than those of the past. EPA officials failed to attend the Ground Zero meetings—a first in the history of such hearings. "We've had Ombudsman hearings all over the country," said Robert Martin, the EPA Ombudsman, "and never before have the government officials who've been involved in the testing and work refused to show up. I think they haven't shown up because they've got something to hide."[24] In addition, the EPA has not yet responded to requests made by Robert Martin for information in the form of interrogatories and requests for the production of documents, thereby further hindering the information-gathering process.

No. 19; 1/29/86; Asbestos Proposed Mining Restrictions and Proposed Manufacturing, Importation and Processing Prohibitions.

[23] Letter from Christine Todd Whitman (EPA Administrator) to Congressman Jerrold Nadler (NY-08), February 22, 2002.

[24] Cardwell, Diane, "Hearing Brings More Debate over Ground Zero Air Quality," *New York Times*, February 24, 2002.

The EPA Passes the Buck to the City

The EPA allowed the City of New York to handle indoor air quality. The City, in turn, placed the burden for indoor air matters (testing and remediation) on individual building owners for indoor public spaces, and on tenants for indoor private spaces. The City provided little enforcement with respect to indoor public spaces, no enforcement with respect to indoor private spaces, and gave improper advice regarding hazardous materials testing and remediation.

As was previously mentioned, it first became clear to the public in mid-January, 2002 that the EPA had allowed the City of New York to handle indoor air quality.[25] An EPA spokesperson stated, on January 11, that ". . .indoor air is beyond EPA's jurisdiction."[26] An EPA Region II spokesperson went a step further later in January and stated the EPA had taken no responsibility for indoor air quality and was, in fact, satisfied by the City's work. That spokesperson stated, "The EPA's job was to monitor outdoor air. Monitoring indoors--that wasn't our job. That's what the city took care of." According to the article, she added "that she felt the city did a good job of testing and monitoring indoor air."[27]

However, the City of New York has demonstrated that it has not done the job properly. At a U.S. Senate Subcommittee field hearing on February 11, 2002, New York City Department of Environmental Protection (NYC DEP) Commissioner Joel Miele admitted that the DEP was capable of handling the job when he noted that available hazardous materials staff was ". . .adequate except [emphasis added] in the case of a catastrophic event such as occurred here" and the agency is primarily a "water and sewer agency."[28]

Commissioner Miele went on to say that although the City had taken the lead on indoor air, it actually placed the burden for testing and remediating indoor common spaces on the landlords and property owners.[29] The City has made very little effort to ensure that such testing or remediation actually took place, other than issuing one "public notice" on the subject.[30] The issue of DEP enforcement of building owner's responsibility for common areas caused a great deal of stir at the Senate Subcommittee hearing when Comissioner Miele first stated on the record that his agency had enforced the law, and then, after being heckled, admitted that it had not:

[25] See above Schneider, Andrew, "NY Officials Underestimate Danger" and EPA Region II Press Release "EPA Statement."
[26] Lyman, Francesca, "Yearning to Breathe in a Toxic Zone: Four Months on, WTC Attacks Still Haunting New Yorkers – And Their Health," *MSNBC*, January 11, 2002.
[27] Rogers, Josh, "Nadler says EPA is Passing the Buck Downtown," Downtown Express, January 22, 2001.
[28] Miele, Joel (Commissioner, NYC DEP) "Testimony before the United States Senate Subcommittee on Clean Air, Wetlands, and Climate Change," February 11, 2002.
[29] Ibid.
[30] NYC DEP, "Notice to Building Owners Located South of 14th Street, Manhattan," September 16, 2001.

> Senator [Joseph] Lieberman: You're saying that every building was tested, every buiiing had its indoor air tested before people were allowed to go back in?
>
> Dr. Miele: That's the city regulation. That's correct. sir. [Interruption from audience.]
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> [Senator Lieberman questioned another witness for a moment.]
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> Senator [Hillary Rodham] Clinton: . . .we had some vocal audience member who responded when you said that's city regulation. Can you sit there today and tell us that every landlord and every building complied with the city regulations?
>
> Dr. Miele: No, I can't tell you that. But the reason for the that, in large measure, has been the fact that we've let people back into buildings, that is to clean up the buildings, and then when we're comfortable that they've got the tests, let people back in. One of the things we did to try and facilitate it was to let people get back in when we were comfortable that they had cleaned up the buildings but before they had submitted the formal permit application to us and gotten the permits from us.[31]

A September 22, 2002 DOH press release confirms that while the City required that buildings be certified for issues such as "structural stability," no such certification was required for environmental safety.[32] The only record of any enforcement of common space testing and remediation seen to date is a letter sent by DEP to building owners the day after the Senate hearing, requesting documentation of cleanup measures taken.[33] Moreover, that letter informed the landlords and property owners that they are only responsible for common or public areas of buildings.[34] And, according to some experts, the type of testing that DEP instructed building owners and managers to use would not properly detect the hazardous materials.[35]

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[31] Miele, Joel (Commissioner, NYC DEP) "Testimony before the United States Senate Subcommittee on Clean Air, Wetlands, and Climate Change," February 11, 2002.

[32] New York City Department of Health Press Release, "NYC Health Department Distrubutes Health Recommendations for Residntial and Commercial Reoccupation," September 22, 2001.

[33] Letter from R. Radhakrishman (P.E., Director of NYC DEP's Asbestos Control Program) to Building Owners, February 12, 2002.

[34] Ibid. Also, see AHERA 40 CFR 763 Appendix C to subpart E Asbestos Model Accreditation Plan. Under the regulations, public and commercial building is defined as:
the interior space of any building which is not a school building. . ..The term includes, but is not limited to: industrial and office buildings, residential apartment buildings and condominiums of 10 or more dwelling units, government owned buildings, colleges, museums, airports, hospitals, churches, preschools, stores, warehouses and factories. Interior space includes exterior hallways connecting buildings, porticos and mechanical systems used to condition interior space.

[35] Jenkins, Cate, (Ph.D., Environmental Scientist WIB, HWID, Office of Solid Waste, U.S. EPA) "Memorandum, December 19, 2001" See also Jenkins, Cate, (Ph.D., Environmental Scientist WIB,

Testing and remediating of actual apartments and private workspaces has been left up to individual tenants.[36] There has been no enforcement whatsoever of any rules or regulation with respect to testing or cleaning indoor private spaces.[37]

As the City placed the burden for testing and remediating indoor private spaces on individual tenants, it referred individuals for advice (though no other assistance) to the New York City Department of Health (NYC DOH) for recommendations on re-occupying homes and businesses.[38] The EPA, on its website and in public press releases, also referred residents to these recommendations[39], which state that "based on the asbestos test results received thus far, there are no significant health risks" and advises people to remove dust using a "wet rag or wet mop."[40] EPA Region II Acting Deputy Regional Administrator Kathleen Callahan reiterated that downtown tenants should look to the DOH guidelines for cleaning their indoor spaces in testimony before the New York City Council on December 11, 2001.[41]

This advice, which details unsafe and illegal cleaning methods,[42] directly contradicts a letter from John Henshaw, Assistant Secretary for OSHA, which states, "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" and therefore, OSHA federal regulations apply to the remediation of this material (emphasis added).[43] The DOH advice ironically also contradicts a statement of dubious veracity from an EPA Region II Spokesperson who said in a February 2002 U.S.A Today article, "We have from the start been clear. . .they [those in Lower Manhattan] could assume that the material is asbestos-containing and that they needed to get that material cleaned up using

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HWID, Office of Solid Waste, U.S. EPA) "Memorandum, Subject: Status of Air and Dust Asbestos Testing After WTC Collapse, March 11, 2002."

[36] Berger, Elizabeth (resident), "Testimony before the United States Senate Subcommittee on Clean Air, Wetlands, and Climate Change," February 11, 2002.

[37] Miele, Joel (Commissioner, NYC DEP) "Testimony before the United States Senate Subcommittee on Clean Air, Wetlands, and Climate Change," February 11, 2002. Remark made during the question and answer period.

[38] Letter from Joel Miele to Residents of Lower Manhattan, October 25, 2001.

[39] EPA Region II Press Release, "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," October 3, 2001.

[40] "Recommendations for People Re-Occupying Commercial Buildings and Residents Re-Entering Their Homes," (www.ci.nyc.ny.us/html/doh/html/alerts/wtc3.html), printed on January 24th, 2002 3:42pm.

[41] Callahan, Kathleen (Acting Deputy Regional Administrator, EPA Region II), "Testimony before the New York City Council Environmental Protection Committee," December 11, 2001.

[42] Jenkins, Cate (Ph.D., Environmental Scientist, Waste Identification Branch, HWID, Office of Solid Waste, U.S. EPA), "Memorandum: World Trade Center Asbestos" to Lillian Bagus and Robert Dellinger, Hazardous Waste Identification Branch, December 3, 2001 and Jenkins, Cate (Ph.D., Environmental Scientist, Waste Identification Branch, HWID, Office of Solid Waste, U.S. EPA), "Memorandum to Arts, Crafts and Theater Safety in NYC: EPA National Standards vs. New York City Guidelines," November 15, 2001.

[43] Henshaw, John, Assistant Secretary for OSHA, Letter to Mr. Lowell Peterson, January 31, 2002.

professional contractors."[44] If, in fact, the dust is presumed to be "asbestos containing material," its handling and removal is regulated under strict federal guidelines.[45]

Despite these facts, EPA Administrator Christine Todd Whitman defended her agency's actions of directing people to the City DOH's unsafe guidelines. In a February 22, 2002 letter to Congressman Jerrold Nadler (NY-08), Whitman wrote "In regard to your concern that the EPA guided residents to the New York City Health Department for direction on cleanup of homes, this was appropriate since traditionally, the health agencies make recommendations to the public on health-related matters."[46]

As was previously mentioned, the City did request an extremely limited indoor testing program be done by ATSDR. However, details about this program are still not known. In October, November, and December, 30 New York City apartment were tested for hazardous materials, though the nature of those tests are unclear, and the full results will not be available until Spring 2002.[47]

Result of EPA Misdeeds: Inadequate Indoor Hazardous Materials Remediation and a Threat to Public Health

As a result of the EPA's misleading statements about air quality and because it allowed the City of New York to handle matters related to indoor environments with no oversight, there has been inadequate hazardous materials testing and remediation inside residential and commercial buildings in Lower Manhattan – putting the public health at risk.

A significant number of downtown buildings simply have not been tested or remediated for hazardous materials properly, or at all, in public and/or private areas.[48] Congressman Jerrold Nadler's District Office receives calls nearly every day from constituents reporting this fact, and it has been well documented in the press.[49]

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[44] Jones, Charisse, "Anxieties Over Toxins Rise at Ground Zero," *U.S.A Today*, February 7, 2002.

[45] Odesey Capital Group III, L.P. d/b/a Cascade Apartments v. OSHA Review Commission and Secretary of Labor Bo 01-1030, 12/2001 U.S. App, Lexis 27797; where the OSHA Commission ruled that "an owner who fails to use specified testing methods to identify the presence of ACM fails to rebut the presumption that ACM is present in the building." And United State v. Weintraub Nos. 99-1691 (L) 00-1368, 00-1385, 2001 U.S. App, Lexis 24921 (2d Cir Nov 19, 2001) A jury found defendants guilty of criminal violations of the asbestos NESHAPS and EPA regulations for improper handling and removal of ACM and failure to notify the EPA and state agencies.

[46] Letter from Christine Todd Whitman (EPA Administrator) to Congressman Jerrold Nadler (NY-08), February 22, 2002.

[47] New York City Department of Health Press Release, "NYC Department of Health Presents Findings From Indoor Air Samplings in Lower Manhattan," February 8, 2002.

[48] "Official Transcript," EPA National Ombudsman First Investigative Hearing on World Trade Center Hazardous Waste Contamination," February 23, 2002. See specifically testimony from downtown residents and business owners.

[49] Statement taken from Constituent Services Staff Members, Office of Congressman Jerrold Nadler (NY-08)

Repeated assurances of air quality "safety" have resulted in vast numbers of downtown residential and commerial indoor spaces being cleaned as if the dust did not contain hazardous materials, despite the fact that official documents note that the law requires a contrary presumption. Hearing such assurances stopped many residents and employers, or building owners or managers, from looking for special cleaning or remediation procedures. This problem was compounded by the fact that about 40% of downtown residents reported receiving absolutely no instructions or protocols for cleanup or hazardous materials remediation.[50] They simply went about doing a "normal" house or office or building cleaning for their indoor spaces.[51]

As Andrew Mark, a resident of Pine St. in downtown Manhattan, testified at an EPA Ombudsman hearing, "Never did I receive anything from the EPA that said, 'Gee, just to play it safe, why don't you take the following precautions.' Nothing, nothing. We were never told, A) to leave the area, B) take any precautions whatsoever in terms of minimizing the potential impact." Mr. Mark went on to testify that as he wasn't aware that the dust could contain hazardous materials, he had his regular cleaning lady—clearly not a trained professional in hazardous material removal—clean the dust from his apartment. [52] Clearly, such spaces cannot be considered properly remediated or safe.

However, even where building owners, managers and tenants understood that this situation wasn't "business as usual," there were still many problems.

With respect to indoor common spaces, where building owners and managers were made responsible for testing and remediation, there have been mixed results. While some building owners and managers have dutifully attempted to clean the common areas, many have failed to do the job (or do the job appropriately). Presumably, this is because such a job was beyond their financial or other capacity to do so, and the City's lax enforcement made it easy to avoid getting caught when they did shirk the responsibility .

Irresponsible or unscrupulous building owners and managers have no doubt found it quite easy to skirt the NYC DEP's scant enforcement measures – either by remediating improperly or not taking any action with respect to testing or remediation.[53] Even as tenants in these buildings have found extremely high levels of hazardous materials in common spaces through their private hiring of professional contractors, their numerous calls to the NYC DEP "helpline" to report building owners' inaction has produced little,

[50] "A Community Needs Assessment of Lower Manhattan Following the World Trade Center Attack," Centers for Disease Control and Prevention, New York City Department of Health, December 2001.
[51] Ibid.
[52] EPA National Ombudsman Second Investigative Hearing on World Trade Center Hazardous Waste Contamination," February 23, 2002. Testimony of Andrew Mark, resident, p. 436-438.
[53] Lyman, Francesca, "Yearning to Breathe in a Toxic Zone: Four Months on, WTC Attacks Still Haunting New Yorkers – And Their Health," *MSNBC*, January 11, 2002.
See specifically comments by Mr. Steve Swaney.

if any, governmental response.[54] In fact, most tenants have repeatedly expressed extreme frustration when describing their attempts to access help from DEP.[55]

A particularly problematic issue is the fact that there is an inherent conflict of interest for building owners to actually do testing, which is expensive, because it might result in them having to hire a professional hazardous materials contractor to do proper remediation, which is even more expensive. Tenants have been forced to go on rent strikes to compel their building owner to test and remediate properly,[56] and at least one building (80 John Street) has already gone to court.[57] In the case of 50 Battery Place, the landlord (DeMatteis Battery Park Associates, LLC) gave a considerably larger rent reduction to those tenants who didn't go on a rent strike than those who chose to settle the case. Needless to say, those tenants who stayed in the suit to pursue proper testing and remediation were given no rent reduction at all.[58]

In a related problem, building owners may use testing methods that are either incapable of finding the type of hazardous materials emitted from the World Trade Center (see above-mentioned reference to problematic DEP-recommended testing approaches), or, if one takes a more cynical view, specifically designed to find nothing dangerous that would require expensive remediation. For example, in the case of Tribeca Tower (105 Duane Street), building management argued that by doing "200 ambient air tests" it had acted "extremely responsive[ly], despite the fact that tenants (supported by private contractors and an EPA scientist) have argued that hazardous materials in settled dust won't show up in air [passive] tests, and that only sensitive dust sampling or aggressive air sampling would yield useful information.[59]

With no guidance other than the lenient DOH guidelines, individual residential tenants were left to their own uninformed devices when deciding how to deal with the WTC dust in their apartments.[60] One resident described the chaos that reigned:

[54] "Official Transcript," EPA National Ombudsman First Investigative Hearing on World Trade Center Hazardous Waste Contamination," February 23, 2002. See for example testimony of Ms. Dawn Pryor, resident, p. 183-196 and Ms. Mary Perillo, resident, p. 197-228.

[55] "Official Transcript," EPA National Ombudsman First Investigative Hearing on World Trade Center Hazardous Waste Contamination," February 23, 2002. See specifically testimony from downtown residents and business owners.

[56] Drenger, Ronald, "Tenant-Landlord Battles Heat Up Downtown," *Tribeca Trib*, January 4, 2002.

[57] Rayman, Graham, "Tenants vs. Landlord In WTC Cleanup Case," *Newsday (Queens Edition)*, September 15, 2001.

[58] Press Release, "Silver, Nadler Denounce 'Shameful' Landlord in Rent Dispute," April 5, 2002.

[59] Drenger, Ronald, "At Tribeca Tower, Tenants Press Health Concerns," *Tribeca Trib*, January 4, 2002.

[60] Johnson, Kirk, "With Uncertainty Filling the Air, 9/11 Health Risks Are Debated," *New York Times*, February 8, 2002.

> We reluctantly made our own rules, divined from press reports, high school science as we remembered it and the advice of friends and neighbors. But even that was mixed. One scientist friend had his apartment tested and declared it safe for his family; the managing agent of his building, however, reported high levels of asbestos and lead. In the end, 248 stuffed animals, 8 handmade baby quilts, 5 mattresses, a trousseau's worth of sheets and towels, a kitchenful of food and 13 leaf-and-lawn bags of toys went into our trash, but not our books, draperies and upholstered furniture or our clothes, though the bill to dry clean them industrially was $16,500 . . .. We washed the walls, but didn't repaint. Some people we know repainted, but kept their mattresses. Some people kept their stuffed animals but threw away their furniture. Some people kept what they couldn't bear to lose and got rid of the rest. We have still not decided what to do about our floors: will stripping, sanding and resealing them contain the toxic mix of asbestos, fiberglass, concrete, human remains, heavy metals and the vague "particulates," or just release more of it into our indoor air?[61]

As the responsibility for indoor private spaces has been left to individual residential and commercial tenants, so too have been the associated costs. It has been estimated that a professional remediation for hazardous materials in an average apartment in Lower Manhattan would cost $10,000 to $30,000, and that does not include the cost of testing.[62] Covering the cost of testing and remediation in indoor private spaces would necessarily come from one of three sources: the tenant's own pocket, private insurance (if available), or a government or relief agency.

An expense of $10,000 to $20,000 is terribly burdensome, if not prohibitive, for individual tenants (and particularly residents) if it must come out of their own pockets. Therefore, where no other funds were available for proper testing or remediation, tenants either did not remediate or did not remediate properly.[63] In some cases, residents who had nowhere else to turn financially, accepted help from volunteer college students and members of the Southern Baptist Convention.[64] These untrained volunteers came into downtown apartments and cleaned, using methods as or less safe than the dangerous NYC DOH guidelines, and did so without proper protective gear.[65] To the extent that

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[61] Berger, Elizabeth (resident), "Testimony before the United States Senate Subcommittee on Clean Air, Wetlands, and Climate Change," February 11, 2002.

[62] EPA National Ombudsman First Investigative Hearing on World Trade Center Hazardous Waste Contamination," February 23, 2002. Testimony of Jeff Micheli and David Harvey, Tradewinds Environmental, p. 105-106.

[63] Statement taken from Constituent Services Staff Members, Office of Congressman Jerrold Nadler (NY-08) and "Official Transcript," EPA National Ombudsman First Investigative Hearing on World Trade Center Hazardous Waste Contamination," February 21, 2002. See for example testimony from Dawn Pryor, resident, p. 183-196.

[64] Cowan, Alison Leigh, "Doing Good Deeds, and Windows," *New York Times*, December 4, 2001 and Conley, Chris, "Dade Sends Help to New York City," *Dade County Sentinel*, October 31, 2001.

[65] Missouri Baptists Press Release, "Missouri Disaster Relief Works Assist in New York Cleanup," November 20, 200. Website address: www. Mobaptist.org/releases/2001/nycleanup.htm. (Note particularly pictures of workers without proper protective gear).

untrained tenants or relief workers have cleaned indoor spaces based on the NYC DOH guidelines or no guidelines at all, those spaces cannot be considered adequately remediated or safe.

According to tenants who do possess private insurance, insurance carriers have haphazardly settled claims with widely varying amounts paid.[66] In many cases, the amounts have been woefully inadequate.[67] Claims have been denied for a variety of reasons. One reason, described by a tenant in the Washington Post, describes a horrendous, vicious circle. Mr. George Tabb, a Tribeca resident, reported that his ". . .insurance company won't pay to clean his apartment of dust and asbestos until his landlord cleans up the building's ventilation system. Management started a cleanup last month, but not an asbestos abatement."[68]

Even more disturbing is the fact that some insurance companies have denied claims (for rental assistance, air purifiers, and hazardous materials testing and remediation) to both tenants and building owners on the sole basis of EPA's safety assurances.[69] Individual tenants have also reported that relief agencies, including the Red Cross, and the Federal Emergency Management Agency (FEMA) have also denied assistance for rental assistance and proper testing and remediation of common and private spaces on the basis of Ms. Whitman's statement.[70]

FEMA, in its "case-by-case" approach, has provided some assistance to individual residents for "cleaning," though many individuals have reported having their application denied or have received very few funds.[71] Moreover, FEMA announced in one of its own bulletins, that residents could be eligible for such funds, but only if the individual is willing to forgo rental assistance:

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[66] Statement taken from Constituent Services Staff Members, Office of Congressman Jerrold Nadler (NY-08) and "Official Transcript," EPA National Ombudsman First Investigative Hearing on World Trade Center Hazardous Waste Contamination," February 23, 2002. See specifically testimony from downtown residents and business owners.

[67] Statement taken from Constituent Services Staff Members, Office of Congressman Jerrold Nadler (NY-08) and "Official Transcript," EPA National Ombudsman First Investigative Hearing on World Trade Center Hazardous Waste Contamination," February 23, 2002. See specifically testimony from downtown residents and business owners.

[68] Haughney, Christine, "In N.Y., Taking a Breath of Fear: Illnesses Bring New Doubts About Toxic Exposure Near Ground Zero," *Washington Post*, January 8, 2002.

[69] "Official Transcript," EPA National Ombudsman First Investigative Hearing on World Trade Center Hazardous Waste Contamination," February 23, 2002. For examples see testimony of Ms. Catherine Hughes, resident, p. 317-318; testimony of Mr. Cooper, p. 681-682; testimony of Mr. George Tabb, resident, p. 151-152.

[70] "Official Transcript," EPA National Ombudsman First Investigative Hearing on World Trade Center Hazardous Waste Contamination," February 23, 2002. For examples see testimony of Former City Council Woman Kathryn Freed, p. 243-244; and testimony of Ms. Elona Klauppe [sic] (Ilona Kloupte), resident,p. 658-659; and testimony of Dawn Pryor, resident, p. 183-196.

[71] Statement taken from Constituent Services Staff Members, Office of Congressman Jerrold Nadler (NY-08).

> If you were affected by the World Trade Center attack and receive rental assistance from the Federal Emergency Management Agency (FEMA), you may use the funds to clean your residence. 'We're giving people the option to decide what makes most sense for them – either cleaning their dwellings or finding someplace else to live,' said Michael Cosbar, FEMA housing officer. Instead of using the check to rent another place, renters can use the funds to clean their residences. However, if you use the funds for cleaning, you will be ineligible for more FEMA rental assistance because you will be able to move back into your home.[72]

Unfortunately, for those lower income individuals whose apartments are highly contaminated (and therefore are neither habitable nor able to be remediated with the meager funds provided), this situation presents an untenable dilemma. FEMA rental assistance is quickly running out for these individuals and therefore, their temporary residences are no longer going to be available to them. The worst case result: either homelessness or forced habitation of residences known to be a direct health.

Commercial tenants, particularly smaller businesses, have had similar problems to those of the residential tenants (large financial services firms were necessarily in better shape -- they had the means to clean their own spaces and the leverage to get building owners to clean the common areas). Small commercial tenants were given the same, inadequate cleaning protocols, have lacked sufficient funds (most have received only loans, not direct grant assistance), and have had insurance claims denied due to Ms. Whitman's safety assurances. They also had the same trouble getting their building owners and managers to clean common spaces. But moreover, inaction on the part of less scrupulous employers or business owners have left individual employees at these firms with nowhere to turn if their employer chose not to test and remediate properly or at all. Congressman Nadler's office has received numerous calls from employees of both private and public entities who are concerned about the indoor air in their workplace, but fear job loss if they "make too many waves."[73]

Each of the problems noted above (and there are undoubtedly plenty of others) has contributed to the fact that there has been utterly uneven, if not totally inadequate, testing and remediation of hazardous materials in buildings in Lower Manhattan. This fact, in and of itself, presents the most troubling issue: even when public spaces or single apartments or offices are remediated appropriately, ventilation systems can move hazardous materials from unremediated spaces to those already remediated.[74] As one downtown resident put it, "Indoor air quality is a touchy issue in our building. Converted in the late 1970's, we have a primitive central air system that circulates air from apartment to apartment. Some people in our building hired professional cleaners. Others

[72] FEMA, "Disaster Assistance Guide: United We Stand," New York, November 2, 2001, FEMA Issue 2.
[73] Statement taken from Constituent Services Staff Members, Office of Congressman Jerrold Nadler (NY-08).
[74] Letter from R. Radhakrishman (P.E., Director of NYC DEP's Asbestos Control Program) to Building Owners, February 12, 2002.

did it themselves."[75] Therefore, tenants who may believe they are living or working in a "safe" environment because they have paid considerably for proper remediation, may well be living in recontaminated areas.

It goes without saying that hazardous materials emitted from the World Trade Center that remain inside buildings in Lower Manhattan pose a potentially serious public health threat to residents, workers and visitors. This threat has been detailed in various government hearings and numerous press accounts by a wide array of pre-eminent public health experts.

The EPA's Actions Violate Federal Law

By allowing indoor air quality in residential and commercial buildings to be handled by the City of New York, and by not properly exercising its oversight authority, the EPA violated federal law. The EPA has the clear authority to respond to the release of hazardous substances that may present an imminent and substantial danger to public health.[76] The National Contingency Plan (NCP), which is administered by the EPA and authorized by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), is the federal plan for responding to such a release.[77] The NCP lays out specific procedures and guidelines, including the designation of an On-Scene Coordinator (OSC) who is responsible for directing response efforts and coordinating all other efforts at the scene of a discharge or release.[78] The federal regulations make clear that the EPA has the authority to respond to the release of hazardous substances pursuant to the NCP, and that this authority is carried out by EPA On-Scene Coordinators.

When asked why the City has taken the lead on indoor air, and how that decision was made, the EPA has stated that mission assignments were made by FEMA.[79] The EPA claims that it is operating at the World Trade Center site under the Federal Response Plan (FRP), the FEMA plan which establishes a process for coordinating federal

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[75] Berger, Elizabeth (resident), "Testimony before the United States Senate Subcommittee on Clean Air, Wetlands, and Climate Change," February 11, 2002.

[76] 42 U.S.C 9604. The President is authorized to act: 1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time…or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment. This authority is also cited in 40 CFR 300.130 (c). This authority is delegated to the EPA Administrator pursuant to Executive Order 12580, later amended by Executive Order 12777.

[77] CERCLA is codified in Chapter 103 of Title 42 U.S.C. The NCP is authorized in 42 U.S.C 9604; 40 CFR 300.

[78] 40 CFR 300.135 (a)

[79] Whitman, Christine Todd, Letter to Congressman Jerrold Nadler, transmitted via fax February 22, 2002.

assistance pursuant to the Stafford Act.[80] EPA claims that, under the FRP, local governments have primary responsibility for responding to an event.[81]

However, EPA's statement that it is merely following FEMA and the Federal Response Plan, and its characterization of this plan, is misleading for a number of reasons. First, the Stafford Act does not supercede the EPA statutes.[82] All activities under FEMA must comply with national environmental policies.[83] The Federal Response Plan also clearly states that other federal emergency response plans cannot be disregarded, but rather implemented concurrently when there is an incident involving hazardous substances.[84] The FRP specifically lists the NCP as one such emergency response plan.[85] Second, and most importantly, the FRP actually **triggers** the National Contingency Plan.[86] According to the Code of Federal Regulations, "the NCP applies to and is in effect when the Federal Response Plan and some or all its Emergency Support Functions (ESFs) are activated."[87] Therefore, if the EPA is not acting pursuant to the National Contingency Plan, it is in clear violation of the law.

Third, even if, for the sake of argument, the Federal Response Plan is the only plan in effect (which is clearly not the case), federal assistance is coordinated along thirteen Emergency Support Functions. The EPA is the primary agency responsible for coordinating Emergency Support Function #10: Hazardous Materials.[88] As the primary agency, the EPA has "operational responsibility" for orchestrating federal agency support and managing mission assignments in this area.[89] The EPA has no legal basis to shirk its responsibility in this regard. In fact, EPA Region II Administrator, Jane Kenny, testified before the U.S. Senate that "Acting on FEMA's mission assignments, EPA is the lead agency for hazardous waste disposal."[90] Yet, the EPA claims it has no responsibility to remediate inside homes and businesses. Why does the EPA have the authority to dispose of hazardous waste, but not hazardous waste that made its way inside buildings? Under this logic, if a steel beam from the World Trade Center coated with asbestos and other hazardous materials fell on top of someone's house, the EPA would be required to remove it. However, if that same steel beam, and the hazardous materials coating it, are pulverized into little pieces and blasted into peoples' homes, the EPA no longer has jurisdiction. The EPA has yet to provide a statute or regulation that supports this logic.

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[80] 42 U.S.C 5121, et seq. The Stafford Act is the statute under which FEMA operates.
[81] Whitman, Christine Todd, Letter to Congressman Jerrold Nadler, transmitted via fax February 22, 2002.
[82] 44 CFR 206.5 (f)
[83] 44 CFR 10.4
[84] Federal Response Plan: Basic Plan, April 1999, p. 11. (http://www.fema.gov/r-n-r/frp/frpbpln.htm)
[85] Ibid.
[86] 40 CFR 300.3 (d)
[87] Ibid.
[88] Federal Response Plan: Basic Plan, April 1999, p. 14. (http://www.fema.gov/r-n-r/frp/frpbpln.htm). Also cited at 40 CFR 300.130 (i).
[89] Ibid., p. 28.
[90] "Official Transcript" U.S. Senate Committee on Environment and Public Works, Subcommittee on Clean Air, Wetlands, and Climate Change, New York, NY. Testimony of Jane M. Kenny, Regional Administrator, U.S. EPA Region II, February 11, 2002, p. 64.

The EPA might say, as it has in the past, that it does not have the proper legal authority to test and remediate all areas affected by the collapse of the World Trade Center because the Clean Air Act does not govern indoor air. This is, again, utterly misleading. Section 303 of the Clean Air Act gives the EPA authority to protect human health when there is an "imminent and substantial endangerment" presented by a source of pollution.[91] The intent of Congress is clear in this regard. A 1970 Senate Report on Section 303 states, "The levels of concentration of air pollution agents or combination of agents which substantially endanger health are levels which should never be reached in any community. When the prediction can reasonably be made that such elevated levels could be reached even for a short period of time – that is that they are imminent – an emergency action plan should be implemented."[92] In short, the EPA should not wait for people to get sick before it acts, and it clearly has the authority to act under this law. An EPA memo entitled "Guidance on the Use of Section 303 of the Clean Air Act" was issued to the Regional offices on September 15, 1983, outlining these very points.[93]

Although the Clean Air Act is primarily intended to address source pollution, Section 303 illustrates that EPA has authority under several statutes to respond to the release of hazardous materials that pose a threat to human health. Also, the Clean Air Act is not the only governing statute. The EPA has the authority to act on indoor air under the National Contingency Plan, and this authority is not drawn into question by the Clean Air Act.

As administrator of the NCP, the EPA has the responsibility through OSCs to direct response efforts and coordinate all other efforts at the scene of a release.[94] These response efforts include indoor air and environments. The NCP mandates that the OSC, among other things, collect pertinent facts about the release, the nature, amount and location of released materials, the pathways to human exposure, and the potential impact on human health and the environment.[95] There is no delineation between indoor and outdoor air, particularly where there is a threat to public health. In fact, under the NCP, the EPA is authorized to "enter any vessel, facility, establishment or other place, property, or location…and conduct, complete, operate, and maintain any response actions authorized by CERCLA or these regulations."[96] In other words, a response under the NCP is not limited to outdoor air, and the EPA has specific authority to remediate indoor environments.

Lastly, and most importantly, the counter terrorism policies of the United States dictate that the NCP applies specifically to acts of terrorism. Just weeks before September 11th, 2001 OMB sent its Annual Report to Congress on Combating Terrorism, which outlines each federal agency's primary role and activities in responding to such an event.

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[91] 42 U.S.C 7603

[92] S. Rep. No. 91-1196, 91st Cong., 2nd Sess. 36 (1970). Cited in EPA Memorandum: Guidance on the Use of Section 303 of the Clean Air Act, Edward E. Reich and Michael S. Alushin, September 15, 1983.

[93] EPA Memorandum: Guidance on the Use of Section 303 of the Clean Air Act, Edward E. Reich and Michael S. Alushin, September 15, 1983.

[94] 40 CFR 300.135(a)

[95] 40 CFR 300.135(c)

[96] 40 CFR 300.400(d)

According to the OMB, "EPA's first responders (On-Scene Coordinators or OSCs) from all 10 regions have been actively involved with local, State, and Federal authorities in responding to threats of terrorism. EPA's response to such threats is an extension of its existing hazardous materials response capability developed over more than 30 years as leader of the National Response System."[97] The National Contingency Plan is the framework for the National Response System and establishes how it works.[98] Thus, according to OMB, EPA's response to an act of terrorism is carried out by On-Scene Coordinators under the NCP.[99]

EPA's responsibilities in this regard are further supported by Presidential Decision Directive 62, which reiterates that the EPA is the lead agency for responding to the release of hazardous materials in a terrorist attack, and that the EPA has the specific responsibility to remediate inside buildings. On November 28, 2001, Administrator Christine Todd Whitman outlined the EPA's role in counter terrorism activities before the Senate Appropriations Subcommittee on VA, HUD, and Independent Agencies. Administrator Whitman testified that "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." (emphasis added).[100] Administrator Whitman went on to say that "This role is a natural fit for EPA's on-scene coordinators, managers who are experienced in assessing contamination in structures," and who "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."[101]

This testimony was given to Congress over two months after the September 11th terrorist attacks, at the same time EPA told elected officials and citizens that New York City had responsibility for indoor environments in Lower Manhattan. In fact, just two months ago, Administrator Whitman wrote "I believe that Congress and the Administration need to revisit the issue of authority and responsibility for indoor environmental conditions in the wake of a terrorist attack. While the current practice is to vest responsibility in local and state government for indoor environmental conditions, perhaps this approach is not appropriate in the wake of an event like September 11th."[102] This statement does not seem to comport with EPA's responsibilities under the National Contingency Plan, the OMB Annual Report to Congress, or PDD 62, as outlined by Administrator Whitman in testimony before Congress.

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[97] U.S. Office of Management and Budget. *Annual Report to Congress on Combating Terrorism*. Washington, 2001. 108 p.
[98] U.S. EPA National Response System (http://www.epa.gov/oerrpage/superfund/programs/er/nrs/)
[99] "EPA Anti-Terrorist Role Falls Primarily On Superfund Officials," *Inside EPA*, September 19, 2001.
[100] Whitman, Christine Todd. Testimony before the U.S. Senate Appropriations Committee, Subcommittee on VA, HUD, and Independent Agencies, November 28, 2001.
[101] Ibid.
[102] Whitman, Christine Todd. Letter to Congressman Jerrold Nadler transmitted via fax February 22, 2002.

While it is not clear what discretion EPA has to delegate response efforts under PDD 62, the EPA may delegate response efforts under the NCP. However, the EPA retains oversight of all response actions, and all such decisions must be made through the organizational structure of the NCP.[103] Therefore, any actions taken by any agency in response to the release of hazardous substances produced by the collapse of the World Trade Center fall under EPA oversight. If the City takes the lead on indoor air, the EPA is not relieved of its responsibility in this regard. In fact, according to EPA's own website, "The procedure for determining the lead agency is clearly defined so there is no confusion about who is in charge during a response. The OSC determines the status of the local response and monitors the situation to determine whether, or how much, federal involvement is necessary. It is the OSC's job to ensure that the cleanup, whether accomplished by industry, local, state, or federal officials, is appropriate, timely, and minimizes human and environmental damage."[104]

Clearly, EPA should be operating in New York City pursuant to the National Contingency Plan and PDD 62, and those authorities must be carried out by On-Scene Coordinators. In evidence obtained through Freedom of Information Act (FOIA) request, and at EPA National Ombudsman Investigative Hearings, it appears that EPA did begin to implement the NCP by dispatching On-Scene Coordinators to New York City.[105] These OSCs were involved in sampling and assessments to determine the level of contamination in residential and commercial buildings and schools. However, Administrator Whitman and EPA officials have yet to answer formal inquiries on whether or not the EPA has implemented the NCP, and if so, to what extent.[106]

In documents obtained by the New York Environmental Law and Justice Project, pursuant to a FOIA request, it appears that EPA OSC's did environmental assessments of at least some residential and commercial buildings at the request of the Ground Zero Elected Officials Task Force.[107] The GZTF made the request on September 21, 2001.[108] According to the documents in the FOIA request, the EPA did assessments of some apartments in Lower Manhattan, Three World Financial Center, and schools in late September and early October.[109] However, the EPA never informed anybody on the GZTF that this assessment was actually performed, or of the results of this assessment. It was only discovered through the FOIA request in late February, 2002.

Furthermore, in testimony provided at the EPA National Ombudsman Investigative Hearing on March 11, 2002, it was discovered that OSC's took indoor air

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[103] 40 CFR 300

[104] U.S. EPA National Response System: How the System Works, www.epa.gov/oerrpage/superfund/programs/er/nrs/nrsworks.htm

[105] Martin, Robert J. "Interim Finding: National Ombudsman World Trade Center Hazardous Waste Case" March 27, 2002.

[106] Nadler, Jerrold. Letter to Administrator Whitman transmitted via fax March 7, 2002; Martin, Robert J. "Interim Finding: National Ombudsman World Trade Center Hazardous Waste Case" March 27, 2002.

[107] EPA Region II Document (via FOIA request by the New York Environmental Law and Justice Project), "Preliminary Assessment of Residential & Public Buildings," October 3, 2001.

[108] Ground Zero Elected Official Task Force, Memorandum #4, September 21, 2001.

[109] EPA Region II Document (via FOIA request by the New York Environmental Law and Justice Project) "Preliminary Assessment of Residential & Public Buildings," October 3, 2001.

samples at Stuyvesant High School, and were involved in the decision to reopen the school on October 9, 2001.[110] Sign-in sheets document that two EPA On-Scene Coordinators, the same two OSCs that did the assessments of residential and commercial buildings, were in fact at the meeting on whether or not to open Stuyvesant.[111] However, in an email to Ombudsman Martin denying a request for the OSC's testimony, the OSC's supervisor, Doug Lair, stated that the OSC had spent only "two weeks in New York in September" and that he had "minimal knowledge" of World Trade Center response activities.[112] This statement cannot be true given even what little we know about OSC involvement in Lower Manhattan in September and October. More importantly, the statement by Doug Lair provides confirmation that OSCs were present in New York following September 11th, and that they have knowledge of response activities.

Clearly, the EPA began to implement, at least partially, the National Contingency Plan. The EPA has been given numerous opportunites to provide evidence that these legal obligations have been fulfilled, and it has provided no such evidence. Quite the contrary, the testimony and correspondance of numerous EPA officials that FEMA made delegations of authority argues that EPA did not fulfill its mandated oversight responsibility through On-Scene Coordinators.

As mentioned previously, the EPA, on its website and in public press releases, has referred people to the New York City Department of Health (NYC DOH) recommendations for guidance on reoccupying their homes and businesses.[113] These recommendations advise people to remove dust using a "wet rag or wet mop."[114] This advice is clearly illegal for a number of reasons. First, as noted above, OSHA Assistant Secretary Henshaw issued a letter stating that the settled dust from the collapse of the Twin Towers "must be presumed to contain asbestos" and therefore, OSHA federal regulations apply to the remediation of this material.[115] Asbestos-containing material is a hazardous substance, and falls under the requirements of the NCP.[116] Therefore, EPA must exercise oversight of all the settled dust from the collapse of the World Trade Center, including dust that settled inside people's homes and businesses.

Second, the NYC DOH recommendations are for people reoccupying commercial offices, as well as homes, yet the recommendations omit any mention of applicable

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[110] "Official Transcript," EPA National Ombudsman Second Investigative Hearing on World Trade Center Hazardous Waste Contamination," March 11, 2002, Testimony of Bernard Orlan, p. 307-309, 389-390.
[111] Martin, Robert J. "Interim Finding: National Ombudsman World Trade Center Hazardous Waste Case" March 27, 2002.
[112] Ibid
[113] EPA Region II Press Release, "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," October 3, 2001.
[114] "Recommendations for People Re-Occupying Commercial Buildings and Residents Re-Entering Their Homes," (www.ci.nyc.ny.us/html/doh/html/alerts/wtc3.html), printed on January 24, 2002 3:42pm.
[115] Letter from John Henshaw (Assistant Secretary for OSHA) to Mr. Lowell Peterson, January 31, 2002.
[116] 40 CFR 302.4; CRS Report RS21042, *Asbestos: Federal Regulations of Uses*, by Edward Rappaport, October 9, 2001; CRS Report RL30798, *Environmental Laws: Summaries of Statutes Administered by the Environmental Protection Agency*, by Martin R. Lee, January 4, 2001.

OSHA regulations, or that all of the dust must be presumed to contain asbestos.[117] All of this is under EPA oversight.[118] Yet, not only does the EPA allow these recommendations to be made by NYC DOH, the EPA actually refers people to them. As a result, the people of Lower Manhattan are being advised to clean asbestos-laden dust with wet rags and mops, with no enforcement of OSHA regulations or EPA regulations requiring the use of properly trained personnel to abate hazardous materials. This is clearly not the intent of federal law, for if average citizens could remediate hazardous substances, pollutants or contaminants with a wet rag, there would be no need for a National Contingency Plan in the first place.

The EPA has the ability to correct these wrongs and act in accordance with the law. Even if a decision had been made for the City to take responsibility for indoor air, federal statutes provide for the EPA to act when nonfederal authorities are either unwilling or unable to do so, and to do so in a timely manner.[119] The EPA is aware of the inadequate measures taken by the City. It was the EPA that faxed us the initial September, 2001 DEP notice to building owners, which contained no enforcement measures or resources for remediating homes and businesses. The EPA received independent test results in October, 2001 that showed elevated levels of hazardous materials inside people's apartments. The EPA heard testimony from residents at the Senate field hearing in New York. The press accounts from the last two months alone should make the agency aware that hazardous materials are still contaminating peoples' homes. The EPA cannot plead ignorance, nor can it point fingers at FEMA. To do so is to misrepresent the law.

As stated before, the EPA should be operating in New York City in accordance with the National Contingency Plan and PDD 62. The NCP exists so that there is a transparent, accountable and coordinated decision-making process. If decisions were made in Lower Manhattan pursuant to the NCP, the EPA has provided no evidence of the process. Because the Federal Response Plan activated the NCP, the EPA has the responsibility to manage hazardous materials remediation. The NCP is authorized by CERCLA, despite the fact that Lower Manhattan is not a Superfund site, nor does the EPA need to use Superfund Trust Fund money in exercising its authority under the law.[120] The NCP gives the EPA the authority and the resources to ensure that hazardous substances, pollutants and contaminants do not pose a threat to public health. The EPA has failed to uphold this law in response to the collapse of the World Trade Center. It must remedy this situation by complying with the NCP now.

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[117] "Recommendations for People Re-Occupying Commercial Buildings and Residents Re-Entering Their Homes," (www.ci.nyc.ny.us/html/doh/html/alerts/wtc3.html), printed on January 24th, 2002 3:42pm.

[118] 40 CFR 300.135 (l); 40 CFR 300.150; Executive Order 12580, later amended by Executive Order 12777; 40 CFR 300

[119] 40 CFR 300.410 (c)(1)(v); 42 U.S.C 9604 (a)(4); CRS Report RL30798, *Environmental Laws: Summaries of Statutes Administered by the Environmental Protection Agency*, by Martin R. Lee, January 4, 2001.

[120] 40 CFR 300

Why Is the EPA Treating New York City Differently?

The EPA's inaction in New York City downtown residences and commercial buildings stands in stark contrast to its response in its own building at 290 Broadway and to other non-Superfund hazardous materials contamination sites around the country.

The issue of the EPA's double standard, with respect to its own building at 290 Broadway, was first raised by Dr. Cate Jenkins, in a memo in which she described a conference call in which EPA Region II Counsel Walter Mugdan stated that the building had been "professionally cleaned." Jenkins thus charged that the EPA had better protected its own employees than it had the residents of Lower Manhattan, who had been referred to the lenient DOH guidelines which recommended cleaning with wet rags and mops.[121]

Upon learning this, Congressman Jerrold Nadler, the New York Environmental Law and Justice Project, and the EPA National Ombudsman each separately requested documents from the EPA related to the alleged cleanup. Congressman Nadler's request was answered in a letter from EPA Administrator Christine Todd Whitman on February 22, 2002. In that letter, she dismissed the double standard charge:

> EPA did not set a more stringent standard of cleanup for these federal buildings, and the lobby cleanup was consistent with the New York City Department of Health advisory. After noting significant amounts of dust tracked into 290 Broadway and 26 Federal Plaza by workers responding. . ., the General Services Administration asked EPA to clean the lobbies. The work was done by EPA contractors using HEPA vacuums already operating in the same area. As outlined in the enclosure, EPA collected seven air samples at 26 Federal Plaza and six air samples at 290 Broadway, and found results below levels of concern [emphasis added]..[122] (Note that there is no mention of dust sampling.)

The enclosure to which Ms. Whitman refers is entitled "U.S.EPA Air Analytical Results from 9/13/01 Sampling Event." Under the section "methodology," the document indicates that both air and dust samples were taken. Air samples were "analyzed by TEM EPA 40CFR763 AHERA" and dust samples were "analyzed by PLM EPA-600 R-93/116."[123] Ms. Whitman's letter implies that, because the tests found only results below the "level of concern," there was no special action taken in the buildings.

But in reviewing the documents obtained under FOIA by the New York Environmental Law and Justice Project (documents that Ms. Whitman did not include in her correspondence to Congressman Nadler), Dr. Jenkins found that positive results for

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[121] Haughney, Christine, "House Member Questions EPA Office Cleanup," *Washington Post*, January 18, 2002.

[122] Letter from Christine Todd Whitman (EPA Administrator) to Congressman Jerrold Nadler (NY-08), February 22, 2002.

[123] Ibid., enclosure, "U.S.EPA Air Analytical Results from 9/13/01 Sampling Event."

hazardous materials were indeed detected by EPA tests. In fact, the documents show that the EPA used a much more sensitive "TEM" method for settled dust sampling which found a "positive" result for hazardous materials, despite Ms. Whitman's enclosures in the Nadler letter that said it had used the "PLM" method. According to Ms. Jenkins, this high sensitivity transmission electron microcopy or TEM method for dust sampling was used nowhere else in Lower Manhattan, and "but for the results from the more sensitive tests, Region 2 would not have abated asbestos from its building." That "abatement," according to Jenkins, included, but was not limited to, HEPA vacuuming and an evacuation for some period of time.[124] This is, indeed, in stark contrast to the DOH cleanup guidelines that EPA officials directed Lower Manhattan residents to follow: i.e., use of a wet rag or mop.

Either the testing and cleanup measures used at the EPA office were necessary to protect its workers, or the EPA wasted tax-payer dollars on an unnecessary cleanup. If such sensitive testing is used in EPA's own building, why not in the rest of downtown Manhattan?

The EPA is also treating New York City differently than it has treated many hazardous contamination sites around the country. While the EPA has stated it lacks jurisdiction to test for and remediate hazardous materials in private space in lower Manhattan, it has acted on indoor air in locales without Superfund designation in numerous places such as Herculaneum, Missouri; Kellog, Idaho; and MacFarland, California.[125]

Furthermore, in Libby, Montana (a town only recently designated a Superfund site) Administrator Whitman told residents at a September 7, 2001 town hall meeting that, **"It has <u>never</u> [emphasis added] been our plan to look to you to pay for any part of this clean-up, including the clean-up of residential properties."** [126] As previously discussed, Dr. Cate Jenkins has asserted that the levels of asbestos in lower Manhattan are comparable or in excess of those found in Libby, Montana.[127] Why, then, are the residents of lower Manhattan, who were victims of the worst terrorist attack in American history, not receiving similar assurances from the EPA? How can the EPA continue to deny that it has jurisdiction for indoor environments when only four days before 9/11, Administrator Whitman asserted that very jurisdiction?

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[124] Jenkins, Cate (Ph.D., Environmental Scientist, Waste Identification Branch, HWID, Office of Solid Waste, U.S. EPA), "3/6/02 Draft: Asbestos in Settled Dust and Soils," March 6, 2002. See also Jenkins, Cate, (Ph.D., Environmental Scientist WIB, HWID, Office of Solid Waste, U.S. EPA) "Memorandum, Subject: Status of Air and Dust Asbestos Testing After WTC Collapse, March 11, 2002."

[125] Martin, Robert J. (National Ombudsman, U.S.EPA) "Testimony before the United States Senate Subcommittee on Clean Air, Wetlands, and Climate Change," February 11, 2002.

[126] Whitman, Christine Todd, EPA Administrator, "Remarks of Governor Christine Todd Whitman, Administrator of the U.S. Environmental Protection Agency, at a Town Hall Meeting," Libby, Montana, September 7, 2001.

[127] Jenkins, Cate (Ph.D., Environmental Scientist WIB, HWID, Office of Solid Waste, U.S. EPA) "Memorandum, Subject: Preliminary Assessment, January 11, 2002."

A Call to Action

The EPA must act in accordance with the NCP, and take action immediately to systematically and properly test and remediate all downtown buildings affected by the World Trade Center tragedy, using properly trained personnel, the best-available equipment and methods tied to genuine, established health-based standards. Seven months after the attacks, it is now clear that the EPA is the only governmental entity with the authority, resources, expertise and mandate to do this job. This is the only course of action if the EPA is to restore the public trust and protect the public health.

The Ground Zero Elected Officials Task Force on November 19, 2001 called for then-Mayor Giuliani to designate "one city agency to oversee all environmental aspects of the debris cleanup in Lower Manhattan based on the ongoing work at the World Trade Center site, complaints by residents and business owners in the Lower Manhattan area about poor air quality, and their ongoing difficulty in obtaining information from the agencies involved in monitoring air quality."[128]

By that time, it was abundantly clear to the local elected officials, through extended contact with constituents and outreach to agencies and other decision-makers, that confusion reigned regarding air quality. Among residents, building owners, small businesses, commercial tenants and workers, there was a paucity of information on proper testing procedures, cleaning protocols, funding sources and the myriad facts and instructions needed to cope properly with the environmental effects of the attack. At the time, it seemed that the most logical and appropriate remedy to the confusion would be for the City to provide a "one-stop shopping" agency that could oversee and guide the cleanup. This would have been a move from crisis mode management to ongoing, permanent administration.

The Task Force envisioned government functioning at its best: as a clearinghouse of information, a guidance center for the most complete and up-to-date rules, procedures and standards, and an enforcement unit to ensure that the strictest standards were observed to best ensure the public's health.

However, the full extent of the chaos and the enormity of the call were not clear at the time. It was not known, for instance, that the EPA had delegated all responsibility for the indoor environment to the City. It was not known that the City, in turn, had abrogated its responsibility by relying on building owners to test and clean public spaces of buildings (with little enforcement) and on individual residents and commercial tenants for private spaces (with no enforcement). The City's negative reaction to the mere hint of mishandling of this situation, or to any constructive suggestions based on ongoing, empirical evidence inhibited success in the pursuit of this one-agency designation. Indeed, letters and phone calls to the City's Office of Emergency Management went unheeded and unanswered. In the City's quest to present the image of a neighborhood

[128] Ground Zero Elected Officials Task Force (Congressman Jerrold Nadler, Chair) Press Release, "Ground Zero Elected Officials Task Force Calls for Cleanup Oversight Agency, Releases Independent Air Quality Study," November 19, 2001.

"getting back to normal," the mayhem in its own backyard persisted untamed, while the EPA continued to proclaim that the "air was safe."

Now, seven months later, it is clear that the EPA's statement that "the City of New York took the lead on the reoccupancy of buildings" incorrectly attributes actions to the City and wholly overestimates its capability to assume responsibility for oversight and supervision for that very task.

Even today, the City's mission does not seem clear, even to itself. According to the City DEP's website, the "DEP is monitoring the ambient outdoor air for asbestos. This effort is augmenting ambient air asbestos sampling being done by the EPA and other state and city agencies."[129] If the EPA had delegated the lead on the indoor air and reoccupancy of buildings to the City, why does the City continue to improperly handle that job and instead expend resources on monitoring the outdoor air, the supposed province of the EPA? This leads to the question, "which agency must assume responsibility for this situation?" The answer is the agency whose legal mandate and mission is "to protect human health and safeguard our environment" – the EPA.

According to federal regulations, once the Federal Response Plan was activated in New York following the events of September 11th, the National Contingency Plan went into effect.[130] United States counter terrorism policies, as seen in PDD 62 and the OMB annual terrorism report, further support that the NCP applies to terrorist activities. Therefore, the EPA, and all other agencies responding to the release of hazardous substances produced by the collapse of the World Trade Center must follow NCP procedures. This includes the designation of an On-Scene Coordinator, a chain of command for all response efforts so that there is a transparent, accountable, and coordinated decision-making process, and compliance with federal laws, regulations and standards.

Through administration of the NCP, the EPA must systematically and properly test and remediate all downtown buildings. We cannot call Lower Manhattan "safe" until such systematic testing and remediation is done. There has been inadequate testing and remediation thus far and the threat of recontamination to theoretically "safe" environments is real.[131] The EPA has failed to uphold the law in response to the collapse of the World Trade Center. The EPA has On-Scene Coordinators, Environmental Response Teams, contractors, procedures, and the resources necessary to do the job. It must come into compliance with the NCP now, and remedy this situation.

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[129] NYC Department of Environmental Protection website on Air, Noise and Hazardous Materials—Air Monitoring in Lower Manhattan.

[130] 40 CFR 300.3(d)

[131] Letter from R. Radhakrishman (P.E., Director of NYC DEP's Asbestos Control Program) to Building Owners, February 12, 2002. See also "Interim Working Findings on the National Ombudsman World Trade Center Hazardous Waste Case – Schools Located Near the Hazardous Waste Barge in Lower Manhattan," February 27, 2002.

New York City has suffered in many ways as a result of September 11, not least financially. A budget deficit of $4 billion is forecast for next year, and City agencies are being forced to make reductions and sacrifices to keep minimal services at acceptable levels. The City may also have future financial costs to face. By providing residents with inappropriate guidance regarding apartment cleaning, the city may amass huge contingent liabilities. Similarly, New York State, by providing incentives for individuals to move into Lower Manhattan (via the Lower Manhattan Development Corporation) —at a time when the area may not be safe—may also be accruing these liabilities.

It is evident from agency testimony and the City's documented fiscal frailty that it would be unreasonable to expect it to underwrite the tremendous cost of testing and cleaning every building contaminated in Lower Manhattan. This large-scale undertaking is one that only can be accomplished by the federal government. It is also morally right for the federal government to assume the cost.

The Citizens of Lower Manhattan -- residents, workers and building owners -- have been victims of a terrorist attack on this nation, and should not bear the burden of making their homes, offices, and businesses safe again President Bush has said repeatedly that "This attack was one perpetrated on America." Why should New York City or its citizenry, which already have borne so much sorrow, also have to bear the cost of an obligatory cleanup? Administrator Whitman must ensure the victims of 9/11 who live and work in downtown Manhattan what she told the residents of Libby, Monana: that she would provide a legal guarantee "that will protect them from EPA's ever seeking to have them assume the costs of cleanup"[132]

It is utterly absurd that the federal government would pay for removal costs if a steel beam from the World Trade Center fell into a home or workplace, but not so if that same beam were broken into a million pieces because of an explosion due to the same attack. This is not the intent of federal laws and policies.

When the EPA engages in such a testing and remediation program, it must do so utilizing the best science, techniques, and equipment and the strictest health-based standards to call indoor environments "safe." The EPA and the entities to which it has inappropriately delegated authority have already been found to use approaches that are less than adequate. New York deserves the highest level of treatment, just as EPA's own building and other areas of the country have received.

In mid-February, Administrator Whitman announced a new EPA plan to establish a Task Force on Indoor Air in Lower Manhattan, "working with our local, state, and federal partners."[133] Shortly thereafter, Mayor Michael Bloomberg announced the formation a city-wide Lower Manhattan Air Quality Task Force and telephone hotline. In the past two months, there has been little action made by these entities. On March 25, the

[132] Whitman, Christine Todd, EPA Administrator, "Remarks of Governor Christine Todd Whitman, Administrator of the U.S. Environmental Protection Agency, at a Town Hall Meeting," Libby, Montana, September 7, 2001.
[133] Letter from Christine Todd Whitman to Senator Hillary Clinton, Feb. 12, 2002.

EPA task force, announced that it will "remove residual debris from rooftops and facades around the World Trade Center site,"[134] a task, while important, has little to do with the specific question of indoor air. In addition, the EPA task force said it would "work to build on an indoor air study conducted in November and December,"[135] the results of which are still unavailable months later. It is a fervent hope that the creation of these groups was not an attempt to muffle the issue, which demands immediate action, not ponderous meetings and discussions. The public's trust in government has already been severely weakened. The acts of unresponsive agencies damage the integrity and honor of government service, and despoil the trust necessary for government to be effective.

Now, seven months after the World Trade Center disaster, there is still time for the EPA to redeem itself and to make Lower Manhattan truly safe. The opportunity is here and now for the EPA to fulfill its purpose by accepting the mantle of protector of public health. A failure to act immediately may result in mammoth future health care costs—as victims of the disaster are faced with increasing health problems. By acting now, the EPA can help to avoid the costs, as well as maintain its role as public health defender. The EPA has the power, the knowledge, the means, the mandate, and the moral obligation to rise to the challenge.

There are some who urge a swift "return to normal" and who protest that raising the specter of contaminated indoor areas is scaring people. That attitude and those claims are short-sighted and irresponsible. It is certainly important to get New York City back on track, but to pretend that health hazards do not exist is foolhardy and reckless – both from a public health perspective and from the vantage point of economic redevelopment. If we act immediately and decisively, we can still safeguard both the City's future and the public health. Surely the expense of cleaning properly is worth the health of this and the next generation.

[134] U.S. Environmental Protection Agency-Region 2 Press Release, "Federal, State, and City Agencies Announce Actions For Lower Manhattan Air Quality," March 25, 2002.
[135] Ibid.