

MEMORANDUM

DATE: November 15, 2001

SUBJECT: EPA National Standards vs.
New York City Guidelines,
Cleanup of Dusts from World Trade Center

FROM: Cate Jenkins, Ph.D., Environmental Scientist
Waste Identification Branch
Hazardous Waste Identification Division
Office of Solid Waste
US Environmental Protection Agency
Washington, DC 20460

TO: Monona Rossol, M.S., M.F.A., Director
Arts, Crafts, and Theater Safety (ACTS)
181 Thompson St., Suite 23
New York City, NY 10012

Please distribute this memo to interested persons. As we have discussed, the US Environmental Protection Agency (EPA) has effectively waived the EPA national regulations under the Clean Air Act for asbestos cleanup and removal. Dusts covering a large area of lower Manhattan, not just Ground Zero, contain 1% or more asbestos as a result of the World Trade Center disaster, and thus are subject to the EPA national asbestos regulations.

The mechanism EPA used to waive its own asbestos regulations was to refer parties to the extremely lenient (and arguably illegal) asbestos guidelines of the New York City Department of Health (NYC DOH). This was in lieu of referring affected persons to the strict national regulations for removal and disposal of asbestos contaminated dusts. As a result, EPA is preventing people from even knowing that the strict EPA national regulations exist.

Although states (and thereby some cities) can be authorized (delegated) by the EPA to enforce asbestos regulations and issue guidelines, any state regulations and guidelines must

be at least as stringent as the EPA national asbestos regulations. There is a process within the EPA for approving state/city asbestos programs, and there is also a process within the EPA for revoking the authority of the state/city to administer asbestos programs. Instead of taking action to correct the problems with the NYC DOH guidance, EPA wholeheartedly endorsed it by referring to it at the EPA web site.

This memorandum provides the web site pages so that any interested person can make the comparison between the lenient NYC DOH guidelines and the EPA national asbestos regulations.

NEED FOR SAFE CLEANUP OF TRADE CENTER FALLOUT

The EPA tested dusts from the Trade Center fallout covering streets and other surfaces. EPA found asbestos levels at 1 percent or greater (the action level) at over 30 locations, some five to seven blocks away from Ground Zero. EPA did not test for other toxic substances in these surface dusts, such as fiberglass, PCB's, dioxins, lead, etc.

Although the EPA did not find air concentrations of asbestos exceeding health standards outside of Ground Zero, this was undoubtedly because the tests were performed in the open streets, where uncontaminated fresh air mixes freely and dilutes any contaminated air. Inside of buildings contaminated with Trade Center dusts could have higher airborne concentrations, particularly when the dusts are disturbed during cleanup operations.

Thus, there is no data to support any claim that no hazardous exposures will result from the uncontrolled cleanup of these dusts.

STRICT EPA NATIONAL REGULATIONS FOR ASBESTOS CLEANUP AND REMOVAL

The EPA national regulations for the cleanup and removal of asbestos-contaminated debris from the demolition of buildings (the Trade Center fits into this category) may be found in Parts 61.145 and 61.150 of Title 40 of the Code of Federal Regulations (40 CFR 61.145 and 40 CFR 61.150). These regulations may be found in bound volumes in most large city libraries, and on the internet web site of the Government Printing Office (GPO) at:

<http://www.access.gpo.gov/nara/cfr/>

Scroll down the page to “Search or browse your choice of CFR titles and/or volumes”. After you bring up that page, scroll down to Title 40, and then bring up the specific pages for Parts 61.145 and 61.150:

The specific web address is the following, but this may get garbled in the transmission of this memo by email. Download only the text versions of the regulations, because the PDF versions have missing pages for some reason.

http://www.access.gpo.gov/nara/cfr/waisidx_01/40cfr61_01.html

These national asbestos regulations are part of the National Emission Standards for Hazardous Air Pollutants (NESHAP's), which are under the Clean Air Act. These regulations are designed to prevent untrained individuals from any practices which might either expose themselves or others in their community to unsafe levels of asbestos, including the exposures of waste handlers transporting asbestos wastes to landfills, and the persons in or around landfills or other disposal facilities.

These EPA regulations do not allow anyone to oversee and perform the asbestos removal, such as a resident in an apartment or a building owner. A management level person trained in both the EPA regulations as well as those of the Occupational Safety and Health Administration

(OSHA) is required. The expertise and training of the person must include at a minimum 1) how, who, and when to notify appropriate government officials prior to, during, and after the asbestos cleanup process, 2) identification of hazardous materials by laboratory analyses and other means, 3) control procedures for removals such as prior wetting of dusts, local exhaust ventilation that captures all hazardous small particulates with HEPA filters or other

devices, 4) waste disposal practices that prevent any leakage of asbestos during transport to a landfill or other disposal facility or leakage after disposal, as well as disposal at appropriate hazardous waste facilities, 5) reporting and recordkeeping to be submitted to appropriate officials at specified times, and 6) knowledge of asbestos hazards and worker protection through approved OSHA respirators, other protective clothing, medical monitoring, and other work practices. There are many other requirements contained in the EPA regulations as well, such as specific work practices, state and federal notifications and approvals, and waste handling.

The EPA regulations apply to any dwelling of 4 or more units, as well as all businesses. This means that the OSHA regulations are effectively applied to all those involved in the cleanup, even though residences and certain small business might normally be exempt from OSHA requirements. This is because the trained professionals overseeing the cleanup, described above, are mandated to follow approved and recommended OSHA practices for worker protection.

The OSHA asbestos regulations are in 29 CFR 1910.1001 and may be found at either of the following two sites. The www.osha-slc.gov site loads faster.

http://www.osha-slc.gov/OshStd_data/1910_1001.html
<http://www.access.gpo.gov/nara/cfr/>

Additional information on OSHA recommended work practices, testing for asbestos, technical details on HEPA (high efficiency particulate air) filtering equipment, etc. may be found at the general OSHA site for asbestos at:

<http://www.osha-slc.gov/SLTC/asbestos/index.html>

LENIENT NYC DOH GUIDELINES FOR TRADE CENTER DUST CLEANUP AND REMOVAL

As stated earlier, the New York City Department of Health (NYC DOH) issued special guidelines directed at “people re-occupying commercial buildings and residents re-entering their homes” after the Trade Center disaster. These may be found at the following web site:

<http://www.ci.nyc.ny.us/html/doh/html/alerts/wtc3.html>

The NYC DOH first claims that there is no health risk, stating:

“Based on the asbestos test results received thus far, there are no significant health risks to occupants in the affected area or to the general public.”

The guidelines advise wearing a dust mask, but do not specify what type of mask. The guidelines then claim “it should not be necessary to wear this mask if you follow the cleaning procedures detailed below.”

The NYC DOH then recommends the following cleanup procedures. They recommend that it is only “best,” not required, to use a wet rag or wet mop, or if the apartment is very dusty, a person should wash or use a HEPA (high efficiency particulate air filter) vacuum, and to take curtains down “slowly” to keep dust from circulating in the air. Air purifiers are recommended, but no specifications are given as to the volume of air that the purifier can process. HEPA air purifiers are also recommended, again with no guidelines as to the volume of air that can be processed by the HEPA air purifier.

The NYC DOH then recommends keeping outdoor dust from entering the home by keeping windows closed, and setting the air conditioner to re-circulate air and cleaning the air conditioner filter frequently. Removing shoes before entering the home for several days and avoiding sweeping or other outdoor maintenance.

In contrast, the EPA national regulations for asbestos cleanup and removal under 40 CFR Parts 61.145 and 61.150 are extensive. They do not even allow individual residents of apartments, coops, or condominiums, or renters of commercial spaces to perform their own cleanups, potentially exposing themselves or others to hazardous exposures. See earlier discussions of the EPA regulations.

The EPA national regulations do not allow optional respiratory protection, such as the NYC DOH suggestion of wearing unspecified types of “dust masks,” where the mask does not meet OSHA requirements. The suggestion of using an air conditioner to recirculate air would not be allowed because an air conditioner filter would not trap the small, harmful asbestos particles. Taking dusty curtains “down slowly” would not be sufficient under the national regulations to obviate the need for respiratory protection, which was claimed by the NYC DOH. There are too many other deficiencies of the NYC DOH guidelines to discuss here.

And, as discussed earlier, the EPA national regulations do not allow individual residents or even building owners to plan or oversee their own asbestos cleanup – a trained certified professional with qualifications specified in the national regulations themselves must be responsible.

The NYC DOH guidelines are contained on only two pages with fairly large typeface. The combined EPA and OSHA regulations, recommended practices, and supporting technical documents for asbestos control and removal are contained in hundreds of pages.

EPA DIRECTS PARTIES TO USE THE LENIENT NYC DOH GUIDELINES

The EPA set up web pages to give information on its involvement with the World Trade Center contamination problem and cleanup. These pages direct people to the NYC DOH lenient guidelines instead of the strict EPA national regulations.

Go to the EPA web site page titled "EPA Response to September 11" at:

<http://www.epa.gov/epahome/wtc/>

Look at the box to the right on the web page which has active links. Look under "Data Tables" and choose the link titled "Asbestos in Bulk Dust." Bring up that page.

You will see a map of Manhattan with green dots for the different locations where EPA tested for asbestos. Click on any one of the green dots. On the page that comes up, you will then see the following statement by the EPA:

"If dust or debris from the World Trade Center site has entered homes, schools or businesses, it should be cleaned thoroughly and properly following the recommendations of the New York City Department of Health."

An active link is then provided by EPA to the NYC DOH web page which provides their lenient guidelines. This link goes to the following web site:

<http://www.ci.nyc.ny.us/html/doh/html/alerts/wtc3.html>

In my personal opinion, the EPA had the option, and also the obligation, to direct all parties to the appropriate EPA national regulations for asbestos cleanup, not to the lenient NYC DOH guidelines. In my personal opinion, immediately upon reviewing the lenient NYC DOH guidelines for cleanup of Trade Center dusts, the EPA should have taken steps to require their change to be as strict as the EPA national regulations. If the NYC DOH did not upgrade its guidelines, then, in my personal opinion, the EPA should have publically announced its intent to revoke New York's authority to administer any asbestos control program, including issuing lenient guidelines such as it did.