

EPA WORLD TRADE CENTER EXPERT TECHNICAL REVIEW PANEL

comments of

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with regard to:

**EXCLUSION OF EMPLOYEES AND EMPLOYERS
FROM “TEST AND CLEAN” PROGRAM**

in:

**Proposed Sampling Program to Determine Extent
of World Trade Center Impacts to the Indoor Environment -
Draft Final Plan (June 30, 2005)²**

July 15, 2005

Many pressing issues did not receive adequate attention at the July 12 meeting of the EPA WTC Panel. Discussion of EPA’s most recent Proposed Sampling Program was again limited by time constraints and by our failure to establish a structured agenda that would facilitate focused assessment of each of the major components of the sampling proposal in turn. As a result, the major elements of the plan could not be collectively assessed by the panel. These include the issues of signature validation, peer review, sampling methodologies, spatially balanced sampling design, quality control, adequacy of sample size (i.e., access to property/community participation), and regular worker entry into “inaccessible” spaces.

Most importantly, there was not adequate opportunity for discussion of Jeanne Stellman’s and David Prezant’s proposals to reevaluate the plan’s statistical sampling model and to proceed with an immediate, initial, limited sampling effort in uncleaned buildings, coupled with a promise of cleanup where warranted, without application of signature criteria, to ensure participation and to gather preliminary data to inform efforts to follow.

To move the sampling effort forward in a timely and productive manner, and with community support, I would hope that these important discussions be continued as expeditiously as possible.

¹ New York Committee for Occupational Safety and Health (NYCOSH).

² www.epa.gov/wtc/panel/pdfs/sampling_plan_06300505.pdf

I would like to comment further at this time on another aspect of the sampling proposal which received greater but still inadequate scrutiny at the July 12 panel meeting - the exclusion of employees and employers from the “test and clean” program that is proposed for implementation in a reduced geographic area in the event that a WTC signature is not scientifically validated. In this event, EPA proposes to engage in an alternate effort that would address residential spaces only, while at the same time implying that OSHA and NIOSH are available upon request to provide adequate testing and cleaning of places of employment.³

Because our panel is charged with characterizing any remaining exposures and risks, identifying unmet public health needs, and recommending steps to further minimize risks associated with the aftermath of the World Trade Center attacks,⁴ I believe it is our responsibility to evaluate, from a public health perspective, the validity and ramifications of EPA’s proposal that different standards of environmental sampling and remediation be applied to different categories of (potentially) impacted indoor spaces.

EPA has not supported its proposal with any scientific argument or data to indicate that workplaces were impacted differently or less severely than residences. I believe no such data exist and no such assertion could be plausibly made.

Nor has EPA presented any data that indicate that in the period from September 11, 2001 to the present day, a significant number (or any number) of workplaces benefitted from employer-conducted and -financed cleanup efforts, or that these efforts were effective.

In fact, EPA is in no position to present such data because since 9/11, EPA has consistently declined, despite repeated requests from the community, unions, public health advocates, and members of this panel, to engage in comprehensive, systematic collection and evaluation of non-governmental post 9/11 environmental sampling results and cleanup histories. Lacking such data, EPA is unable to offer any scientific evidence that its revised proposal to shift responsibility for sampling and cleanup, as well as to shift responsibility for the cost of sampling and cleanup, from government to employers, will result in workplace cleanup efforts equivalent to what the agency proposes to undertake in residences, or indeed, that it will result in any additional cleanup of workplaces at all.

Comments at the July 12 panel meeting by representatives from OSHA and NIOSH made clear that while these agencies, as always, will be responsive to queries from workers, unions, and employers, neither agency will be able to provide technical assistance to numbers of workplaces comparable to the number of residential spaces proposed for sampling and cleaning by EPA.

(In its previous “test or clean” program, EPA cleaned or tested 4,167 of an estimated

³ Pages 20-21.

⁴ Council on Environmental Quality, letter to Senators Clinton and Lieberman, October 27, 2003, page 2, www.epa.gov/wtc/panel/pdfs/Clint-Lieb-ltr.pdf.

23,000 eligible residences. There are an estimated 1,500 commercial and institutional buildings in Lower Manhattan, most housing multiple industrial spaces, offices, schools, fire houses, and government operations. According to the comments of the NIOSH representative at the July 12 panel meeting, NIOSH nationally conducts at most several hundred Health Hazard Evaluations [HHEs] each year and does not anticipate any increases in funding to allow it to conduct additional HHEs beyond that number. OSHA last year conducted 5,519 workplace inspections in all of New York State, in the over 500,000 workplaces statewide.^{5,6)}

Neither OSHA nor NIOSH engages in or funds remediation of workplace contaminants. OSHA, if it finds violations of OSHA standards, may require employers to engage in cleanup, or in other protective measures short of cleanup, at employer rather than government expense. NIOSH may recommend but cannot require remediation, nor can it provide funding for remediation.

OSHA standards are primarily based on inhalation risk and are less protective than EPA standards in general and than EPA cleanup benchmarks under this proposal in particular. Further, there is no correlation between OSHA standards for contaminants in air and EPA benchmarks for contaminants in dust. In addition, OSHA does not have standards for all four COPCs that the EPA plan proposes to address. As a result, it is possible or even likely that indoor environmental conditions in downtown workplaces may not be violative of OSHA Permissible Exposure Limits (PELs), or that there may be no applicable OSHA standards, while at the same time exceeding EPA benchmarks for settled dust. In such situations, OSHA could not compel remediation. In prior versions of the sampling plan, EPA proposed to offer cleaning to workplaces that exceed benchmarks for contaminants in dust. The most recent version of the plan withdraws that coverage.

It is clear that the practical result of the current EPA proposal, which essentially shifts the burden of sampling and cleanup to employers, will be that fewer workplaces will be sampled or cleaned than would be the case if government maintained responsibility for the sampling and cleanup of 9/11 environmental contamination, as it has in prior versions of the sampling plan which implicitly acknowledged that neither employers nor landlords were responsible for 9/11 contaminants, the source of which was beyond their control.

In addition, the opportunity to obtain environmental sampling data from dust in workplaces will have been lost.

This change in EPA's sampling proposal should not be supported by a panel charged with reducing remaining 9/11 risks to public health. I would appreciate hearing from other panel members on this issue.

⁵ AFL-CIO. Death on the Job: The Toll of Neglect - A National and State-by-State Profile of Worker Safety and Health in the United States, 14th Edition. Washington, D.C., April 2005, page 101, www.aflcio.org/yourjobeconomy/safety/memorial/upload/death_on_the_job_2005.pdf.

⁶ The number of workplaces actually inspected may be significantly lower than the number of inspections because numerous workplaces may have been inspected more than once.