

**Testimony of Nina Lavin**  
**Hearing of the Subcommittee on Superfund and Environmental Health,**  
**Senate Committee on Environment and Public Works**  
**June 20, 2007**

Chairman Clinton, Ranking Member Craig, and members of the Committee:

My name is Nina Lavin. I am a resident of lower Manhattan who experienced first hand the devastation that the collapse of the World Trade Center wreaked upon my neighborhood. I would like to tell you my story with the understanding that it is a stand-in for thousands of others like it. I also want you to know of our serious lingering concerns that toxic contaminants still remain in our homes.

I do not always remember the precise dates of events anymore and the story of what happened downtown is hard to summarize in one statement. But what remains crystal clear is that Christie Todd Whitman's words on September 18, 2001, assuring New York and the nation that "the good news is the air is safe to breathe," was reckless and false and set dangerous chaos in motion for all of us living downtown.

Her statement is directly at odds with what she, her agency, and the administration already knew: that out of 143 bulk samples collected out of doors in the days immediately following 9/11, 76% of the tests contained asbestos and 34% of those tests met the regulatory definition of asbestos containing materials, or ACMs as they are known.

And EPA would also have understood that while outdoor toxins may dissipate over time with wind, rain and sunlight, those that make their way indoors can build up and remain in high concentrations, settling on surfaces only to be stirred up over and over, often invisibly, as people go about their daily lives. In addition, and importantly, those results were only for asbestos, the tip of the iceberg in terms of what we were exposed to down here.

Once the EPA shirked its responsibility to protect us at the federal level, there was an immediate trickle down effect to our local EPA Region 2, and to the City Department of Environmental Protection (DEP) and the City Department of Health (DOH). As a resident, I saw the way deception starting at the federal level, where policy-making begins, then permeated local policy making in all three of these agencies, putting the health and lives of so many people at risk.

This trickle down was demonstrated over and over in testimony given during the February 23, 2002 hearing convened by the EPA Ombudsman's office, an independent internal watchdog that no longer exists. Indeed, the only two EPA employees I witnessed trying to protect our health here in New York were

Ombudsman Robert Martin and his Chief Investigator Hugh Kaufman, who were stripped of their jobs while trying to expose the failures of the EPA after 9/11.

Without EPA acting as the lead agency, it was left to the city agencies to take the lead; but the city agencies weren't set up to handle the fall-out of what was in truth a super fund site. And those agencies have long standing, inbred relationships with real-estate interests so that they looked the other way and sanctioned use of passive air testing methods for indoor use, guaranteed to produce artificially low estimates of asbestos in indoor environments.

I was asked to tell you about ways in which the collapse of the Towers impacted my residence, my health, and to describe the EPA cleanup I received in 2003. Here is my history.

### **Residential Impact**

I have resided for the past 12 years at 105 Duane St, which is located in Tribeca and situated seven blocks directly north of the WTC site. I was home on September 11 and witnessed the collapse of both towers. I closed the windows and HVAC flu vents before the buildings fell; (little did I know that they even would). I closed them in an effort to keep the fumes from burning fuel, and the glass which visibly sparkled in the sky, from entering my apartment. After the collapse I waited a couple of hours to make sure my two cats would be all right – the sky outside had turned the most apocalyptic color I have ever seen, and I had the fear I might return home to find them dead, like canaries in a mine. Ultimately, having just witnessed the collapse of an urban Mt. Fuji before my very eyes, I was numb with shock, and fled. The next day I returned, making my way through pitch black hallways with a flashlight to rescue my pets, and collected a few belongings. When I returned home ten days later, a fine, glittery dust had settled on virtually every surface and belonging throughout my apartment. The wallpaper in the building, made of some type of synthetic fabric, was grayed throughout the building. I also noticed a dust accumulating around the doorframe to the entranceway of my apartment which looked completely different from the standard grimy dust I was familiar with periodically wiping away when house cleaning. Adding to the impact of the collapse, our recently hired building superintendent, the father of two small children who no doubt had panicked himself on 9/11, had failed to shut down the building's centralized HVAC system, which continued to run until mid afternoon, when the entire neighborhood finally lost power.

There were also noxious fumes we all inhaled indoors and out for months. Although I live seven blocks north of the site, the fumes were so intense indoors it was sometimes almost as though I had stuck my head inside an oil drum full of burning industrial materials, office furniture and whatever else was incinerating on that pyre. I knew several people who were having nosebleeds and I experienced headaches, burning in my eyes, nose, throat, and developed a painful hacking cough.

I did the best I could to clean my apartment using whatever information I could find at that time; I used wet wipe cleaning methods to avoid stirring up the dust, I purchased a HEPA vacuum cleaner, and ran a HEPA air filtration device.

In December 2001, a resident on the 10<sup>th</sup> floor of my building hired Ed Olmsted, a Certified Industrial Hygienist, to test the public air supply grille on that floor. Olmsted conducted a microvac test that revealed 550,000 structures of asbestos per cubic centimeter, a high finding, especially for a building built free of ACM's.

Meanwhile, the building owner, Related Management, hired Air Tech to do a standard air shaft cleaning. Not only was Air Tech not certified to do asbestos remediation, they had never cleaned a building this size.

Since stirring up the dust in the air supply duct would send the dust straight into hallways throughout the building, Joel Kupferman, an environmental attorney to whom one of my neighbors had turned for help, contacted the DEP and DOH and notified them of the asbestos finding. He also contacted Related Management and insisted that representatives of the two agencies be admitted to do an inspection.

Along with another tenant, I attended the walk-through of several hallways, pointing out the dust on the HVAC grille to the DEP and DOH inspectors and to Related Management's Head of Engineering Peter Hoyle. It should be noted that Related Management is one of the wealthiest and most politically powerful real estate entities in New York. In the meeting, Hoyle asked Carlstein Lutchmedial, a senior member of DEP's asbestos enforcement team, "Is it not so that Related Management has done everything which it is legally mandated to do?" Lutchmedial replied, "Yes, Related Management has done everything which is legally mandated."

Both agencies then permitted the cleanup to go forward in a building full of residents coming and going, who were largely unaware that this was even an issue.

By July of 2002 I finally had developed such a serious cough I felt as though my throat would fly out of my mouth. Since EPA wasn't doing any indoor testing to protect residents, the air being safe to breathe, I realized it was time for me to do what should have been the government's job. I privately hired Certified Industrial Hygienist Ed Olmsted, who had tested the 10<sup>th</sup> floor grille back in December and who headed air monitoring oversight at the Fresh Kills 9/11 debris removal site in Staten Island, to conduct asbestos testing inside my apartment.

I reside in a one bedroom apartment in which the windows and two individual HVAC units, located in my living room and bedroom, directly face the World Trade Center site. My building was constructed in the early 1990's and therefore can be presumed to have been constructed free of asbestos containing materials

and likewise free of corrosive lead containing paint and pipes. Due to the highly cost prohibitive nature of such testing (a written report, three asbestos tests plus one blank for control cost \$1,700.00) I tested for asbestos alone.

Testing using the microvac method revealed highly elevated concentrations of asbestos in dust clumps formed in the front doorway of my apartment which opens into an interior hallway of the building, and lesser levels deep inside the two HVAC units. The interior doorway finding is particularly significant because due to the design of airflow in the building, it definitively implicates the central air intake shaft as being the source of the contamination. Presumably it therefore entered other apartments as well.

I took my test report to FEMA in late July, believing they would move me with these results in hand. But again, because “the air was safe to breathe,” and because the building was structurally sound, FEMA would not move me. FEMA was not willing to move anyone without a doctor’s note, which meant people had to wait until they became sufficiently sick to obtain a doctor’s note before being moved. What I needed was not proof of exposure, it was a doctor’s note, and as I was becoming sick, that was my next step.

### **Health Impact**

In July of 2002 I was diagnosed with chronic bronchitis by a pulmonologist at NYU Medical Center, a diagnosis corroborated by my primary care physician. Doctor’s letter in hand, I was finally moved out of my apartment for almost ten months with funding from FEMA. I should add that even with this letter, it took the intervention of Congressman Nadler’s office to get FEMA to comply in a timely manner and relocate me. (I wonder how many others whose health was impacted didn’t know they could turn to their elected officials for help.) By the time I was moved out I had an uncontrollable racking, painful cough and my sinuses and esophagus were chronically inflamed. I had also developed acid reflux.

Currently I am receiving treatment at the Bellevue WTC Clinic from its medical director Dr. Joan Riebman. Initially I had hoped my symptoms might begin to subside, but unfortunately five and a half years after the event, I like so many others continue to have a lingering group of symptoms, now recognized by the medical community as being linked to WTC exposure. My particular symptoms are sinusitis, esophagitis and acid reflux. My voice has changed slightly and I frequently become hoarse at night; I do not have asthma, but subtle changes in my small airways have shown up on x-rays. I am sorry to say I am not seeing diminishment of symptoms.

These health problems are not life threatening at the moment but no one knows what’s in store down the road. We certainly know of the exposure related deaths

of first responders and recovery workers. The big questions remain: what were we exposed to, for how long, and does the exposure continue?

### **EPA Cleanup**

Months after the collapse, in May of 2002, EPA finally announced they were offering a voluntary residential cleanup program. Comprehensive testing and remediation of indoor residences and office spaces should have been mandatory to protect the health of citizens and to prevent recontamination of cleaned spaces by nearby un-remediated spaces.

Voluntary enrollment implied there was no problem; I spoke with neighbors who trusted the government assurances and who read “voluntary” to mean having their homes cleaned was unnecessary and a waste of time. To also quote from one of the outreach fliers created by EPA for public distribution: “While scientific data does not point to any significant long-term health risks, people should not have to live with uncertainty about the future.”

<http://www.epa.gov/wtc/flyers/onepagead.pdf> This quote implies there is no problem with air quality because if there were, there would be long-term health risks.

Another voluntary choice thrust upon residents by EPA was between two different options, with no explanation given for choosing one over the other. They were:

- “to have your residence professionally cleaned and then tested for asbestos in air.”
- “to have your residence tested for asbestos in air without professional cleaning. (If – and only if – asbestos is found during testing, you may then ask that your residence be professionally cleaned.)” Again, the air testing methods used for this determination were of questionable use in revealing presence of asbestos, and were not adequate for uncovering other kinds of contamination.

While individuals could elect to have their homes cleaned, cleanup of building common areas, hallways, lobbies, laundry rooms, etc. was entirely at the discretion of building owners. Many landlords did not want to participate in the EPA cleanup since this could be seen as suggesting that their buildings were contaminated, potentially setting off tenants’ fears and even flight, raising the specter of litigation or possible devaluation of their property.

There was the further, key issue of residual contamination in central HVAC systems. EPA and DEP avoided cleaning those by devising a visual inspection method. Sometime in early 2003 I witnessed the inspection in my building. A duct cleaning contractor climbed up a ladder and peered into several of the building’s 10” x 10” hallway vent openings, using a home owner’s flashlight. The evaluation was based on the color of the dust. Looking inside the dark air shaft, my contractor described our dust as, “kind of brownish grey....” Later I was extremely

dismayed to learn that this description was being used by EPA to claim that our HVAC was free of WTC dust.

Not content to accept this conclusion based on this preposterous and unscientific determination, a neighbor of mine and I reached out to Congressman Nadler for help. So Linda Rosenthal of Congressman Nadler's staff accompanied us to a meeting with Kathy Callahan, EPA Region 2 Assistant Administrator. We argued that EPA was required to clean the ductwork, particularly since testing of the duct, seven months after Related Management's supposed cleanup job, again showed the presence of asbestos. Callahan acknowledged she was aware of the asbestos in our building and stated she knew it originated from the collapse of the World Trade Center. Nonetheless, she staunchly refused to remediate the building's air supply duct. I believe this refusal stemmed from her awareness that it would set a precedent for cleaning of duct work in other buildings, particularly large ones.

On the day of my cleanup in late April of 2003, several work crews arrived on my floor, the goal being for several units to be cleaned simultaneously per day. Many of the workers appeared to be quite young. They were not equipped with dual cartridge respirators as this was conceived of as a "courtesy cleanup," not a remediation. My apartment was an exception; armed with my test results, I was able to make the case that the workers wear respirators; cleaning crews elsewhere on the same floor wore none. The contractor had not supplied the crew with sufficient amounts of filter cartridges on hand, so I distributed some of my own.

Towards the end of the day the On Scene Coordinator (OSC) stopped by my apartment to check on the proceedings; I learned the mandatory air filtration device in my apartment, required in order to capture airborne particulates during cleanup, had been improperly set-up; so no air filtration had occurred. It is a good thing we were all wearing respirators.

And the wet wiping methods used to clean surfaces in my home? They were all dark colored, cheap synthetic bathroom towels, purple and forest green, which just dragged the wet dust around without picking it up. The same was true for their disposable, synthetic paper towels.

But on advice I had previously gathered from environmental cleanup professionals, I had a backup cleaning plan – Huggy Wipes. When I purchased my respirator from a major supplier to the environmental cleanup industry I explained to them my apartment had been impacted by the WTC; they advised me the very best thing I could use for wet wiping cleanup was Huggy Wipes. And they were right.

I brought out the Huggy Wipes and once the crew began using them, the dust and dirt just kept coming off and coming off – the same surfaces that had already been “cleaned” with the cheap supplies they had brought.

They cleaned wall surfaces and floors, and objects, but they didn’t clean interiors of closets, cabinets or drawers, because the EPA protocol excluded those places. And they didn’t remove the HVAC units from the walls to get at the contamination behind them, that had penetrated from outdoors.

When the cleanup crew left at the end of the day, I looked down at the door jam and saw a large clump of dust, fallen from around the same doorway where independent testing had found the asbestos.

And it stands to reason that dust was left behind in hard to reach places. The cleanup protocol had no provision for inclusion of window tracks, so my sliding windows were not removed from their tracks, and the dust reservoirs were left untouched.

That has ramifications to this day. The exterior of my windows are depressingly dirty, but they must be removed from their tracks in order for the exteriors to be cleaned. Removal of them for standard cleanup may well re-contaminate my apartment with underlying dust deposits; if dust is still there, it may be seeping into my apartment slowly instead.

Six months after the EPA cleanup of my apartment I had testing done again, for asbestos, lead and numerous heavy metal analytes. While asbestos was found in a low level in one window well, lead was found to be elevated in both window wells and in one of them, just below the cutoff point for which immediate lead remediation would have been required. To quote the written report on the finding of heavy metals, “The heavy metal sampling revealed the presence of various heavy metals found in the apartment. Published standards for acceptable levels of heavy metals on surfaces within the space do not exist. Standards have not been developed because the presence of most of these contaminants is neither a normal nor an acceptable condition in commercial or residential space.”

It is now 2007. Is the air safe to breathe? No one knows and the newly devised cleanup plan is as poor as the last. Members, I implore you to see to it we get the science based, effective cleanup we so desperately need and thank you for reading my testimony.