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February 28, 2024

**FOIL Appeals Officer**

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**FOIL Appeals Officer**

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**Re:** Appeal of Denial of Freedom of Information Request  
Supplemental Submission  
Appeal Submission Date: February 13, 2024  
**Date of Incident:** Concerning Preparation For/Response to  
Collapse of World Trade Center, September 11, 2001  
**Location:** Lower Manhattan  
**Request Number DEP:** FOIL-2023-826-03980  
**Request Number OEM:** FOIL-2023-017-00064

Dear FOIL Appeals Officers of OEM and DEP:

As you know, our law offices represent the interests of the following: Benjamin Chevat, Director of 9/11 Health Watch; Karen Klingon, Executrix of the Estate of Robert Klingon (resident of lower Manhattan); Yvonne Baisley, Executrix of the Estate of FDNY Firefighter Robert Fitzgibbon; Phil Alvarez on behalf of his brother, NYPD Detective Luis G. Alvarez, deceased; and Charlotte Berwind, Executrix of the Estate of volunteer firefighter Charles E. Flickinger, Jr.

On February 13, 2024, we appealed the denial of the Office of Emergency Management (“OEM”), dated January 16, 2024, and the denial of the Department of Environmental Protection (“DEP”), dated January 31, 2024, of our clients’ Freedom of Information (“FOIL”) Request, dated September 8, 2023.

This letter supplements the original February 13, 2024 appeal. We demonstrate, yet again, that OEM and DEP created records responsive to the FOIL Request, notwithstanding their stark denials.

## **The Subject FOIL Request**

Pursuant to the Freedom of Information Law, on September 8, 2023, we requested various records from OEM and DEP concerning the response of the City of New York to the September 11, 2001 collapse of the World Trade Center, along with historical records and disaster preparation materials.

On January 16, 2023, OEM denied the subject request, explaining in an “auto-generated response”:

*A diligent search for records responsive to your request did not locate any such records. Accordingly, your request is denied.*

*You may appeal the decision to deny access to material that was redacted in part or withheld in entirety by contacting the agency's FOIL Appeals Officer: [foilrequests@oem.nyc.gov](mailto:foilrequests@oem.nyc.gov) within 30 days.*

OEM produced no records whatsoever. The entirety of the denial is reprinted, above.

On January 31, 2023, DEP denied the subject request. Like its sibling agency, OEM, DEP provided an “auto-generated response”:

*The Department of Environmental Protection (DEP) has **closed** your FOIL request [FOIL-2023-826-03980](https://www.foia.gov/foia/2023-826-03980) for the following reasons:*

- *Your request under the Freedom of Information Law (FOIL) is being closed because this agency does not have the records requested. You should direct your request to a different agency.*

*Please contact the Mayor's Office for this request.*

Since submitting the February 13, 2024 appeal, we secured additional confirmation that DEP and OEM do, in fact, have responsive records. Available historical accounts demonstrate that DEP and OEM clashed over air quality, public messaging and the reopening of lower Manhattan. They also reveal that the **federal EPA**, long criticized for *its* own response, **actually warned** the City about conditions at the WTC site. DEP also describes its efforts to assess air quality in the aftermath of the September 11<sup>th</sup> attacks in NYC Water, an internal DEP publication. Certainly, this important information is responsive to our FOIL requests. Compliance with FOIL requires DEP and OEM to reconcile their denials with the following narratives:

**Exhibit 1: CNN coverage, September 7, 2006 *Memos: NYC told Ground Zero air was Unsafe*** <https://www.cnn.com/2006/US/09/07/nyc.air/index.html>

The city allowed people to return to Manhattan after the collapse of the World Trade Center towers even though officials were told the air was not yet safe, according to an internal memo from a New York City Health Department official. ***The October 6, 2001, memo states that the city Office of Emergency Management -- called OEM -- and the Department of Environmental Protection -- referred to as DEP-- disagreed over the air quality following the September 11, 2001 terror attacks.*** But it suggests commercial interests trumped safety concerns.

Kelly McKinney, associate commissioner of the health department, wrote that the mayor's office was under pressure from building owners and business owners to open more of the "red zone." ***"According to OEM, some city blocks north and south of Ground Zero are suitable for re-occupancy. DEP believes the air quality is not yet suitable for re-occupancy. I was told the mayor's office was directing OEM to open the target areas next week,"*** McKinney wrote.

In a letter dated the day before the memo was written, ***the U.S. Environmental Protection Agency told the city's health department that there were concerns about worker safety at the World Trade Center site. "In addition to standard construction/demolition site safety concerns, this site also poses threats to workers related to potential exposure to hazardous substances,"*** including building materials, hazardous materials stored in the buildings and combustion products emitted from the smoldering rubble, the letter states.

**Exhibit 2: NY City Water, September 11, 2017:  
#NeverForget: A Look Back at DEP's 9/11Response**

Meanwhile, *DEP's Hazardous Materials Specialists arrived on the scene, establishing a command post at Reade Street* after taking shelter from the collapse in the World Financial Center parking garage. The *specialists took bulk samples of asbestos-containing materials from the surrounding area and had them analyzed by our asbestos lab. Through this sampling, a perimeter was established with a comprehensive asbestos air-monitoring program of 38 monitoring stations in the downtown area. DEP specialists would remain onsite for months,* overseeing operations over 16-18 hour shifts. Among DEP's Environmental Compliance staff on scene was Chief of Enforcement Joe Scafidi, an integral part of emergency operations throughout the recovery effort.

For its part, City Hall contradicts the position of OEM and DEP. New York Daily News reported, on February 26, 2024, that the City will not release any records, including those from DEP and OEM, until "extensive legal review" is made by its Law Department. According to the Mayor's spokeswoman, quoted by the Daily News:

*"We are aware of requests to produce city documents on the aftermath of the attacks, which would require extensive legal review to identify privileged material and liability risks."*

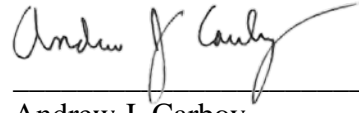
New York Daily News, February 26, 2024, *I Won't Release 9/11 Toxin Data: Eric*

Twenty-three years after the September 11<sup>th</sup> attacks, a public seeking answers about the City's reopening of lower Manhattan is entitled to far more than this "mixed messaging" from the Mayor's office, OEM and DEP. The agencies did not deny the FOIL request by citing attorney or liability considerations. Instead, OEM and DEP professed not to have any responsive documents. The historical record and the Mayor's 2024 statements contradict the agencies' assertions.

The February 26, 2024 comments from City Hall confirm that the documents do, in fact, exist. The City simply has no interest in releasing them, now; however, fear of litigation and "liability risks" are not bases to withhold disclosures mandated by the Freedom of Information Law.

We respectfully request that the FOIL denials be reversed in their entirety and the subject FOIL request be granted, immediately and in full.

Very truly yours,

A handwritten signature in cursive script that reads "Andrew J. Carboy". The signature is written in black ink and is positioned above a horizontal line.

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Andrew J. Carboy

*Matthew McCauley*

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Matthew McCauley

# **SUPPLEMENT: EXHIBIT 1**

# **Memos: NYC told Ground Zero air was unsafe**

**POSTED: 10:38 p.m. EDT, September 7, 2006**

**NEW YORK** (CNN) -- The city allowed people to return to Manhattan after the collapse of the World Trade Center towers even though officials were told the air was not yet safe, according to an internal memo from a New York City Health Department official.

The October 6, 2001, memo states that the city Office of Emergency Management -- called OEM -- and the Department of Environmental Protection -- referred to as DEP -- disagreed over the air quality following the September 11, 2001 terror attacks. But it suggests commercial interests trumped safety concerns.

Kelly McKinney, associate commissioner of the health department, wrote that the mayor's office was under pressure from building owners and business owners to open more of the "red zone."

"According to OEM, some city blocks north and south of Ground Zero are suitable for re-occupancy. DEP believes the air quality is not yet suitable for re-occupancy. I was told the mayor's office was directing OEM to open the target areas next week," McKinney wrote.

In a letter dated the day before the memo was written, the U.S. Environmental Protection Agency told the city's health department that there were concerns about worker safety at the World Trade Center site.

"In addition to standard construction/demolition site safety concerns, this site also poses threats to workers related to potential exposure to hazardous substances," including building materials, hazardous materials stored in the buildings and combustion products emitted from the smoldering rubble, the letter states.

# **SUPPLEMENT: EXHIBIT 2**





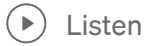
# #NeverForget: A Look Back at DEP's 9/11 Response



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Published in NYC Water

5 min read · Sep 11, 2017



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As the city reflects on the 16th anniversary of the September 11 attacks, we especially honor the work of our first responders on that tragic day. Whether they came from the New York Police Department, Fire Department of New York (FDNY), Office of Emergency Management, the Port Authority, National Guard, Army Corps of Engineers or Department of Environmental Protection (DEP), the city will forever owe a debt of gratitude to those whose dedication was boundless in the hour of our greatest need.

Just like many other City agencies, DEP played a critical role in the emergency response to 9/11. With all large-scale fires, DEP ensures that the Fire Department has sufficient water pressure to fight the flames. September 11 was no different. DEP immediately provided support to FDNY crews around the site perimeter, jointly commanding operations to check and maintain the necessary pressure levels. After the towers collapsed, DEP shut down a radius from Rector Street to the Battery and from Broadway to the Hudson River, controlling the flow of water into Ground Zero from broken mains and an interceptor sewer pierced by one of the south tower's steel girders. The surrounding infrastructure had to be inspected and repaired expeditiously, as the compromised pipes could not support the heavy machinery needed to proceed with rescue and recovery. In addition, the thousands of first responders and evacuees taking shelter in the surrounding buildings were in need of fresh water and sanitary sewers.



As described by Water and Sewer Operations Supervisor **Dennis Delaney**, “Very

quickly, it became a situation where you had to get water back to the recovery effort.” In 12–16 hour shifts, the bureau worked to repair damage and restore service, resting only when the site’s lack of electricity prevented them from continuing after dark. DEP steadily reduced the size of the restricted area, eventually reaching the base of the fallen towers to re-activate needed fire hydrants.

Meanwhile, DEP’s Hazardous Materials Specialists arrived on the scene, establishing a command post at Reade Street after taking shelter from the collapse in the World Financial Center parking garage. The specialists took bulk samples of asbestos-containing materials from the surrounding area and had them analyzed by our asbestos lab. Through this sampling, a perimeter was established with a comprehensive asbestos air-monitoring program of 38 monitoring stations in the downtown area. DEP specialists would remain onsite for months, overseeing operations over 16–18 hour shifts. Among DEP’s Environmental Compliance staff on scene was Chief of Enforcement **Joe Scafidi**, an integral part of emergency operations throughout the recovery effort.

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“We were at every interagency meeting, every day, until Christmas,” Scafidi said.

Shortly after the collapse, a potential crisis came to the attention of DEP: A Freon tank seven stories underground. If heated, the Freon could produce deadly phosgene gas and further endanger the lives of first responders working above. A team that included Specialist **Chris Haas** descended below ground with an inflatable raft, navigating the wreckage of the building’s foundation to secure the tank. To the relief of everyone on site, the crew ascertained that the tank had not been breached, and the Freon was secure.



As recovery operations continued, DEP was instrumental in the effort to clean public spaces — most notably in the re-opening of the New York Stock Exchange just days after the attacks. Our Environmental Compliance staff undertook the methodical process of cleaning building roofs and facades, performing door-to-door inspections and providing informational materials to owners. In addition to notifying owners of available assistance programs and subsidies, DEP helped establish an 800-number hotline for downtown tenants that matched callers with federal, state and local assistance programs. Led by Asbestos Control Program Director **Krish Radhakrishnan**, the program ultimately cleaned more than 1,000 buildings downtown over the following two years.

Back at headquarters, after witnessing the events from the windows of Lefrak City during a weekly senior staff meeting, then Chief of Staff **Charles Sturcken** coordinated emergency response teams with then First Deputy Commissioner **Diana Chapin**.

Sturcken also undertook a three-pronged communication effort between our Water and Sewer Operations staff and the Commissioner, DEP and the Mayor's Office, and DEP and state and federal agencies. When our Water and Sewer operations staff could not drive their emergency response vehicle below Canal Street, they proceeded to the site on foot before eventually relocating to an Emergency Command Center at Broadway and Vesey Street. DEP also joined representatives from federal, state and city agencies uptown at the Emergency Command Center established at Pier 96; nearby was a resource center for families of the missing, an effort manned by dozens of DEP staff with colleagues from across city government.

As it became clear that the emergency was the result of a terrorist attack, DEP moved to swiftly shut down public access to the watershed in an operation extending 125 miles north. DEP's Police and Security Administration Inspector **Frank Milazzo** was then Commander of the Hillview Precinct, and helped execute the bureau security action plan. All of DEP's 124 police officers were assigned to fixed posts at critical infrastructure and directed security patrols. Officers began working 12-hour shifts and six-day weeks, a schedule which continued through December. DEP closed roads and bridges over dams, thoroughfares which remain closed to this day for security purposes. Like many of his colleagues, Milazzo began sleeping on a cot in his office after 16-hour work days.

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The long hours were necessary given the enormity of the task; as Milazzo put it, "More than half the state's population relies on us."

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All New Yorkers relied on the work of DEP in the days, weeks and months following the September 11 attacks. The agency's critical operations led efforts to maintain and repair our in-city infrastructure, clean the homes and offices of downtown tenants, and protect our air and water supply from future threats.

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As Dennis Delaney summed up the work of his colleagues, "Our guys did a wonderful job — a very commendable job," adding succinctly: "They did what was required."

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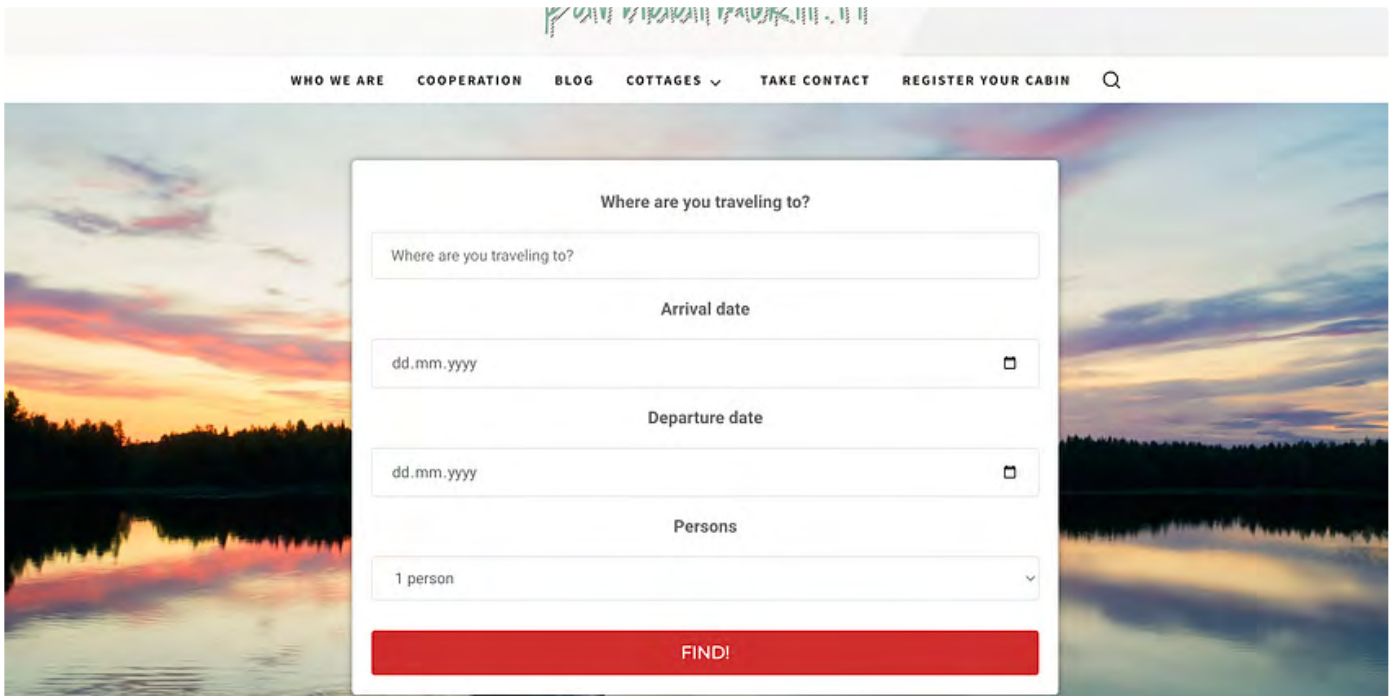
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