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OFFICE OF THE COMMISSIONER

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Patrick Nucciarone, Esq.
Suite 107, 1540 Highway 138
Wall, New Jersey 07719

Dear Mr. Nucciarone:

We are writing to you again in your capacity as Federal Monitor of NYC Department of Environmental Protection to apprise you of the current situation regarding the existence of asbestos and other pollutants in our offices on the 10th floor at 66 John Street, New York City and DEP's improper actions.

Our building, within 2 blocks of the World Trade Center, was severely affected by 9/11. The building was re-opened one week later on 9/18, and we had substantial concerns about the adequacy of the cleaning of the interior and exterior of the building. Some of us developed unexpected and unexplained physical symptoms at work, such as newly onset asthma, nosebleeds, rashes, coughs and decreased lung capacity. These concerns were verbally raised numerous times and we were repeatedly assured that management had been advised that the building was safe (however, documentary evidence supporting the claim that the building had been adequately cleaned and no pollutants existed was unavailable for our review)¹. However, we found WTC debris in the radiators, indicating that a mere surface cleaning had been done. We requested on numerous occasions that the office be re-cleaned, but were always responded to with denials of the problem.

Finally, one of our staff members contacted Dr. Cate Jenkins, an EPA scientist (you have a couple of her e-mails) with experience in asbestos (Jenkins.Cate@epamail.gov). She advised us that the best way to tell if asbestos is present in a residence or office is the EPA-approved "ultrasonication" method for carpeting, draperies or upholstery (the method number is EPA600/J-93/167, the Millette ultrasonication carpet method). According to Dr. Jenkins, over 100 times the amount of asbestos present will be found in carpet using EPA's ultrasonication test, compared even to another approved test, the ASTM microvacuum sampling method; in addition, all air testing is problematic for determining whether there is an asbestos problem, and often produces completely negative results, even when asbestos is later discovered.

Thus, on January 31, 2003, we obtained a carpet sample and sent it for ultrasonication testing to an EPA-approved laboratory at our own expense. The lab determined that the sample was found to have a "significant" (according to the lab's regional director Ed Cahill) amount of asbestos: 393,060 structures per centimeter square (s/cm²) (EMSL Analytical, Inc. [212])

¹We were informed that the air filter had been changed once. It is our understanding, that because of the continual disturbance of toxic debris at Ground Zero, it should have been changed monthly.

290-0058), "average amounts in buildings known to contain asbestos, using microvac test is + 1,000 s/cm2.

It is our understanding, as administrative law judges who enforce asbestos abatement regulations (and the EPA agrees), that asbestos-contaminated carpeting and upholstery cannot be effectively cleaned, but must be removed. Such removal is to be done as an Asbestos Abatement Project, with safeguards for workers, employees, and other occupants in place.²

One DEP attorney told us that the asbestos test results that so alarmed both Dr. Jenkins and Mr. Cahill, and who both recommended abatement, "was not worth the paper it was printed on". Instead, DEP management undertook a "cleaning" on three different evenings beginning on 4/2/03, and some sort of air sampling with no one present. We were not informed as to what resulted from this cleaning and are concerned that it may have further re-entrained asbestos fibers.

At this point, we are desperately concerned with DEP's actions and inactions, its refusal to release any information and, most of all, its failure to act to protect its employees and members of the public from a known carcinogen. It has been established that a substantial amount of asbestos is embedded in the carpeting.³

EPA statutes and policies dictate that ANY exposure to asbestos is hazardous, but no attempt to abate the problem is planned. According to scientific authority:

"Special precautions must be taken for buildings containing asbestos.

This conservative approach is necessary because asbestos is a known human carcinogen. In the absence of contradictory data, health scientists feel that the carcinogenicity of asbestos follows a linear, zero-threshold model, which means that inhaling a single fiber represents a risk, and doubling the exposure doubles the risk, and so on.

The inhalation of asbestos can result in the following diseases:

1. Asbestosis – a debilitating lung disease similar to silicosis;
2. Lung cancer – a usually fatal malignancy; and/or
3. Mesothelioma – an incurable fatal cancer of the mesothelial lining of the chest.

Activities like dusting, sweeping, and vacuuming are mechanically aggressive and are most likely to re-entrain dust and presumable asbestos." Pp 179-180, Settled Asbestos Dust, Sampling & Analysis, (1994). James R. Millette and Steven M. Hays (Lewis Publishers, CRC Press).

²As Administrative Law Judges, we enforce the provisions of New York City's Asbestos Control Program, Title 15, RCNY.

³We do not know how objects such as files on desks, moveable furniture, or bookshelves were initially cleaned, but fear that what was done was inadequate

Our test of the carpet at our work place conclusively proved the presence of a significant amount of asbestos (there may be other toxic substances such as PCBs, dioxin, lead, mercury, etc, but we only tested for asbestos). We feel that we have sent you enough data and information to demonstrate that the DEP has put thousands of people at risk, and has done so knowingly. This is unlawful, and we are appealing to you, as required by law, to intercede on our behalf.

You may contact Gloria Johnson, President, Civil Service Bar Association, 216 W 14th Street, New York, New York 10011, telephone number (212) 685-0519 who is acting as a mediator on our behalf.

cc: Hon. Michael A. Bloomberg
Hon. Christopher Ward, Commissioner, Department of Environmental Protection
Gloria Johnson, President, CSBA