

OSHA's "Non-traditional" 9-11 Enforcement Effort Again Under Fire

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OSHA's failure to enforce compliance with its Respiratory Protection Standard during the months of cleanup operations that followed the collapse of the World Trade Center came under scrutiny once more in a Congressional hearing held last month by the House Committee on Education and Labor. The hearing was entitled "Why Weren't World Trade Center Rescue and Recovery Workers Protected?"

"It is clear that OSHA chose not to enforce its safety and health standards -- particularly its respiratory protection standards -- even in the months following 9/11," said Committee Chairman George Miller (D-GA) in his opening remarks. "Were there legal obstacles to enforcement or political issues, or both? Was focusing on technical assistance better than also enforcing the law?"

In addressing Patricia Clark, Regional Administrator, OSHA Region II, Miller noted that in October 2001, with cleanup and recovery operations underway, multiple requests were made to OSHA from the New York City Department of Health and Mental Hygiene (NYDOHMH) and other agencies to enforce compliance with OSHA standards at the site.

The OSHA act "gives us discretion to do non traditional enforcement and that is what we did here," Clark said in her response. She repeated previous statements that the decision was made not to issue citations at the Ground Zero site because of the length of time involved in the appeal process when a citation is contested by the employer.

Issuing citations "would not have provided immediate protection [to the workers] because the law allows employers to contest," she said, noting further that "contest periods can take two to seven years to go through the appeal process." Under the law, if appealed, the hazard is not abated until the citation is upheld.

In her prepared testimony, Clark said that following the WTC attacks the NYDOHMH "requested that OSHA be the lead agency for distributing, fitting, and training for respirators for the recovery workers...During the ten-month recovery period, OSHA distributed more than 131,000 respirators."

She said further that OSHA conducted "more than 7,500 quantitative fit-tests for respirators, including nearly 3,000 for FDNY personnel. Fit-testing included a facial analysis and a user-seal check as well as instruction on the best way to store and maintain the respirators. OSHA also advised employers and workers on the proper use and limitations of respirators."

The OSHA Respiratory Protection Standard requires that employers provide respirators, training, fit-testing, and medical evaluation when such an evaluation is

necessary to protect the health of an employee. The impact of OSHA's failure to enforce this standard was cited by NYCOSH Industrial Hygienist David Newman in a Congressional hearing this summer before the Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties.

"The percentage of workers 'on the pile' observed to be wearing respirators ranged from 20 to 50 percent; the percentage of immigrant day laborers and unionized building maintenance workers who wore respirators while cleaning up dust and debris outside Ground Zero was virtually zero. As a result, tens of thousands of workers suffered avoidable and illegal exposures to highly toxic contaminants, including a robust array of carcinogens. Many are today experiencing persistent, disabling respiratory illnesses, and some are dying," Newman told the committee.

"The lack of more comprehensive OSHA involvement at the World Trade Center site, including enforcement, contributed to the development of these health problems," Dr. James Melius, chair of the Steering Committee for the World Trade Center Medical Monitoring and Treatment Program, testified at last month's hearing. "A serious health hazard was not recognized and properly controlled."

Currently over 21,000 workers and volunteers who participated in rescue, recovery, and cleanup operations have been examined by the World Trade Center Medical Monitoring and Treatment Program, Dr. Philip Landrigan, who oversees the program, told the House Education and Labor Committee.

He said further that 46 percent of the workers examined have suffered lower respiratory problems, 62 percent have upper respiratory problems, and 69 percent have one or the other. "Respiratory illness, psychological distress, and financial devastation have become a new way of life for many," he said, noting also that between 400 and 500 new persons are now registering in the program every month.

In comments made following the hearing NYCOSH Chairperson William Henning, vice president, Local 1180, Communications Workers of America said, "We agree with Pat Clark that if employers contest OSHA citations, workers would be forced to work under hazardous conditions until the citations were resolved. But she is wrong to suggest that voluntary compliance is an effective means of addressing the law's deficiency. OSHA was enacted into law 37 years ago because voluntary compliance did not work. Now thousands of workers are sick -- and some dying -- in part, because OSHA did not enforce its standards."

Serious Flaws in EPA's Second WTC 'Test and Clean' Program

The EPA's second voluntary 9-11 indoor "test and clean" program misled the public about asbestos contamination, did not provide downtown residents with sufficient information to encourage their participation in the program, excludes workplaces from testing, and ignored recommendations from its own technical review panel that

would have made it possible to assess the true extent of contamination in the New York metropolitan area from the collapse of the World Trade Center.

These were among the findings in a report released by the Government Accountability Office (GAO) last month.

The GAO investigation into EPA's current "test and clean" program was undertaken following disclosures of critical flaws in the agency's first testing program, under which downtown residents living near the WTC site could register with EPA to have their homes professionally cleaned and/or tested for airborne asbestos – one of the primary hazardous substances released into the air following the collapse of the World Trade Center.

"EPA did not provide the public with complete information in its second plan to allow the public to make informed choices about their participation in its voluntary program," the GAO report said.

It further noted that EPA created a misleading description of asbestos contamination by noting that the number of samples from its initial program which exceeded risk levels for airborne asbestos was "very small," and did not disclose the fact that over 80 percent of the samples were taken after apartments had been professionally cleaned.

"EPA's conclusions were based only on tests for asbestos, rather than other contaminants, and the conclusions focused on airborne contamination rather than contamination in dust inside residences," the report also stated.

Participants dropped from 4,200 residents and 144 building owners in the first program to 272 residents and 25 building owners in the current program. There are an estimated 20,000 apartments in Lower Manhattan eligible to participate.

EPA continues to confine testing to an arbitrary geographical area bounded by Canal and Pike Street and is not following review panel recommendations to expand testing north of Canal Street or into Brooklyn. EPA is also not testing in building heating, ventilation, and cooling systems (HVACs) or inaccessible areas within an apartment, such as behind dishwashers or rarely moved furniture.

"The findings of the GAO report confirm and validate virtually all of the concerns raised by the labor and residential communities, and by the members of the technical review panel," said NYCOSH Industrial Hygienist David Newman, who served as a member of the EPA's World Trade Center Technical Review Panel.

"The fact that workplaces are not included in the program points to the lack of any concern for workers. It was clear to everyone but the EPA that we need environmental sampling in workplaces, as well as residences – and that there was no

scientific basis for limiting sampling to the arbitrary geographical area in the EPA's plan," Newman added.

"Do I Do an MRI for my lungs or put food on the table for my kids?"

Firefighter Roger Montalvo put those words to the crowd as one of the many sick 9-11 rescue and recovery union workers who spoke out at this year's Labor Day Rally about feelings of betrayal by the federal government and the price they are paying for their efforts following the collapse of the World Trade Center.

The rally, organized by the New York State AFL-CIO, the NYC Central Labor Council, and the Building & Construction Trades Council, was held Sept. 8 near Ground Zero, in support of newly introduced federal legislation that would provide medical aid and financial benefits to all victims of 9-11.

New York City labor leaders introduced the 9-11 victims who included firefighters and an EMS worker, an ironworker, a transit worker, a telecom worker, and a local resident and student from Stuyvesant High School.

"The government has to stop making us beg," said Montalvo. A firefighter for almost for almost 10 years, he was stationed at Engine Co. 201 in Brooklyn, joined in rescue efforts shortly after the collapse of the towers, and spent months in recovery efforts. A firefighter for almost 10 years, he was forced into retirement early last year because of chronic lung problems.

Among the elected officials present at the rally were Sen. Hillary Clinton (D-NY) and Representatives Carolyn Maloney (D-NY), Jerrold Nadler (D-NY), and Vito Fossella who introduced the new 9-11 aid bill, named the James Zadroga 9/11 Health and Compensation Act. Zadroga was a New York City police detective who spent over 400 hours at the site and is believed to be the first emergency responder to die as a result of exposure to World Trade Center dust and debris.

Nadler said, "Christie Whitman from the EPA lulled all of us into an extremely dangerous false sense of safety by irresponsibly declaring that the 'air was safe to breathe,'" He added that "government officials at all levels took perilous shortcuts on worker safety. You were unnecessarily exposed to hazardous toxins because of what the government said and what the government did."

"Six years is long enough," said Denis Hughes, president, New York State AFL-CIO. Urging support for the new 9-11 bill, he noted that "until now, any funding we have received has been on an emergency basis. Today we're here to see that this legislation gets passed."

Senator Clinton pledged to stay with 9-11 victims "every step of the way until we get every single person the health care they deserve." She added that this would remain "her highest priority whether I am your senator or your president."

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NYCOSH Extends Reach-Out to 9-11 Workers with Fall Subway Poster Campaign

With no more than 25,000 of the estimated 200,000 9-11 workers and volunteers registered with the New York Workers Compensation Board, NYCOSH is spearheading a fall subway poster campaign to send out the message: "***Protect Your Future...Register Now! Go to www.nycosh.org.***"

That's the message on two posters – one in English and one in Spanish – that will greet riders on all subway lines through November. The campaign is a reach-out effort to tell 9-11 workers and volunteers they must register with the Compensation Board to protect their right to file a claim for workers' compensation benefits – if they are sick now or become sick at any point in the future.

The deadline for registration is August 13, 2008. If workers or volunteers do not register with the Board before the deadline, they lose their eligibility to file, or re-file, a claim after the deadline.

In addition, any person who filed a claim, but was turned down in the past because the claim was filed too late, can re-file the claim under the law. Workers who filed an initial claim are also being urged to register in case they develop a new disease in the future.

NYCOSH coordinated the poster campaign with help from the United Church of Christ, and New York Disaster Interfaith Services (NYDIS). It was financed with a grant from the American Red Cross. The campaign was unveiled at a NYCOSH press conference held near Ground Zero on Sept. 4.

Among speakers at the press conference was New York State Commissioner of Labor M. Patricia Smith. She said the state Labor Department has launched a reach-out effort to locate 9-11 workers by dispatching Labor vans into neighborhoods throughout the city to provide information in foreign languages about Workers Compensations benefits and the registration deadline. At the Department's 66 one-stop centers, questionnaires are also being given out asking if people who come in to the centers if they participated in the 9-11 rescue and recovery efforts.

Other speakers included William Henning, Jr., NYCOSH Board Chairperson and vice president of CWA, Local 1180; Dr. John Howard, Director of the National Institute for Occupational Safety and Health (NIOSH) and Coordinator for World Trade Center Programs in the U.S. Department of Health and Human Services; State Assemblyman Jonathan L. Bing; State Senator Serphin R. Maltese; Arthur Wilcox, Director of the Public Employee Division of the New York State AFL-CIO; and Peter

Gudaitis, Executive Director and CEO of New York Disaster Interfaith Services (NYDIS).

TV public service ads promoting registration are being distributed by BALCONY, Business and Labor Coalition of New York. The ads feature actress Sigourney Weaver, director Jim Simpson, and boxing legend Jose Torres urging anyone who participated in cleanup and recovery efforts to register with the Compensation Board.