

Government's Post-9/11 Actions Questioned

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BY SARAH PORTLOCK

A federal appellate judge questioned the government's accountability with respect to air quality in Lower Manhattan in the aftermath of the terrorist attacks of September 11, 2001, during oral arguments yesterday in the 2nd U.S. Circuit Court of Appeals in Manhattan.

The arguments before a panel of federal judges focused on whether a former head of the Environmental Protection Agency, Christine Todd Whitman, should be held liable for saying the air was safe in Lower Manhattan.

An attorney for the federal government, Alisa Klein, said holding Ms. Whitman liable would encourage other officials to be silent in the wake of future emergencies.

"If government officials could be made personally liable, the consequence would be a default to silence," Ms. Klein said. "If you speak, you will be potentially held liable. Then the clear message for government officials is to say nothing."

That point did not seem to impress one of the judges on the panel, Jon Newman.

"There's an important government interest in a false reassurance, seems to be what you are saying," Judge Newman said.

"There may be," Ms. Klein responded.

In the weeks following September 11, Ms. Whitman maintained the air was not safe at ground zero, but was fine in surrounding areas. Scientists with the EPA have said they still do not have conclusive data to support those statements. Rep. Jarold Nadler, a Democrat of Manhattan whose congressional district includes Lower Manhattan, attended the oral arguments and said later that given a choice of lies or silence from the federal government, he would prefer silence.

"If Christine Todd Whitman had said nothing, people would have used their own sense of self-preservation to make decisions for themselves to keep free from harm," Mr. Nadler said. "People trusted the government, and by extension may have made decisions that put themselves in harms' way."

In April, a separate panel of judges dismissed a similar lawsuit brought by first-responders who cleaned up the site in the months after the attacks. An attorney for the residents, Sherrie Savett, argued that this case was different because the clean-up workers inherently knew of their dangerous job conditions.

The appeals court did not immediately issue a ruling yesterday.