UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

November 8, 2007

BY ELECTRONIC AND REGULAR MAIL

Avi Schick, Chairman
Lower Manhattan Development Corporation
One Liberty Plaza
New York, New York 10006

Re: 130 Liberty Street

Dear Mr. Schick:

The Lower Manhattan Development Corporation (LMDC) recently submitted two variance reopening requests and a proposed plan for a supplemental fireproofing investigation to the New York State Department of Labor (NYSDOL) related to the building at 130 Liberty Street. They include the November 7, 2007 Proposed Plan for the Removal of Compromised Bay Slabs (third version, approved by NYSDOL on November 7, 2007), the November 1, 2007 18th & 19th Floors Visual Inspection and Clearance Sampling and the revised November 2, 2007 "Sampling, Analysis and Quality Assurance Project Plan" for the Supplemental Fireproofing Investigation (second version). Implementation of the approaches in the referenced documents would result in material modifications of the September 7, 2005 "Deconstruction Plan" for the abatement and decontamination of 130 Liberty Street, and the September 19, 2006 "Implementation Plan" for the demolition of the building. The "Deconstruction" and "Implementation" Plans, and subsequent amendments thereto, had been reviewed and subsequently accepted by EPA, NYSDOL, New York State Department of Environmental Conservation, and New York City Department of Environmental Protection, in consultation with the U.S. Department of Labor Occupational Safety and Health Administration.

In the past, NYSDOL evaluated variance requests under Industrial Code Rule 56 and other documentary submissions for this project as part of the "Deconstruction" and "Implementation" plan process in consultation with and acceptance by EPA, to ensure that asbestos and other contaminants in the building were addressed in compliance with both federal and state environmental law. As part of the process during the past three years, proposed modifications to the "Deconstruction" and "Implementation" Plans were reviewed and, if accepted by EPA and others, became amendments to the plans. In EPA's view, LMDC has abandoned the review and acceptance process for the "Deconstruction" and "Implementation" Plans by meeting exclusively with NYSDOL and seeking NYSDOL's approval of these requests without EPA review and acceptance. At this time, LMDC needs to submit the "Sampling, Analysis and Quality Assurance Project Plan" for the Supplemental Fireproofing Investigation and the two variance

reopening requests as a proposed plan and proposed modifications for review, comment and acceptance by EPA.

The record reveals that asbestos and other contaminants of potential concern are known to be present in 130 Liberty Street. Comprehensive sampling and analyses of contaminants in the building were previously documented by R.J. Lee for Deutsche Bank and by the Louis Berger Group, Inc. in the "Initial Building Characterization Study Report" (the "Berger Study") and by TRC Environmental Corp., both for LMDC. The Berger Study at page 7, for example, cites constituents in WTC dust at 130 Liberty Street as including, among other things, asbestos, dioxin, lead, quartz and polyaromatic hydrocarbons. Consequently, any supplementary sampling at this time would require careful analysis.

EPA is prepared to utilize its statutory authorities, as necessary, including those under the Resource Conservation and Recovery Act and the Clean Air Act to ensure that LMDC and its contractors utilize best management practices in all phases of the work. One of EPA's primary goals for 130 Liberty Street is to prevent a situation that causes a release or threat of release into the environment of any asbestos and/or hazardous air pollutants, hazardous waste constituents, hazardous substances or contaminants which may present an imminent and substantial endangerment to public health and the environment. Accordingly, no work related to the two above-referenced variance reopening requests and the proposed Supplemental Fireproofing Investigation should proceed until the review and acceptance process by EPA is concluded. Moreover, any future proposed plans or modifications of the Deconstruction and Implementation Plans must include EPA review and acceptance.

EPA appreciates the importance and urgency of this matter, and my staff would be available to meet with your representatives and consultants as soon as practicable to initiate the necessary broader review of the modifications that LMDC has proposed. As in the past we will make every effort to expedite the review process.

Sincerely,

Alan J. Steinberg

Alan J. Steinberg
Regional Administrator

cc: Honorable Edward Skyler, Deputy Mayor
Patricia K. Clark, Regional Administrator OSHA
M. Patricia Smith, Commissioner NYSDOL
Pete Grannis, Commissioner NYSDEC
Emily Lloyd, Commissioner NYCDEP
David Emil, President LMDC
Robert Harvey, Director LMCCC
Irene Chang, General Counsel LMDC