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Air Masks at Issue in Claims of 9/11 Illnesses

By ANTHONY DePALMA

With mounting evidence that exposure to the toxic smoke and ash at ground zero during the nine-month cleanup has made many people sick, attention is now focusing on the role of air-filtering masks, or respirators, that cost less than \$50 and could have shielded workers from some of the toxins.

More than 150,000 such masks were distributed and only 40,000 people worked on the pile, but most workers either did not have the masks or did not use them.

These respirators are now at the center of a federal lawsuit filed on behalf of more than 8,000 firefighters, police officers and private workers who say they were exposed to toxic substances at or near ground zero that have made them sick or may eventually do so. While residents and office workers in the area also suffered ill effects, the work crews at the site who had the greatest exposure are thought to have sustained the greatest harm.

From legal documents presented in the case, a tale emerges of heroic but ineffective efforts to protect workers, with botched opportunities, confused policies and contradictions that failed to ensure their safety.

Lawyers representing the workers say that there was no central distribution point for the respirators, no single organization responsible for giving them out, and no one with the power to make sure the respirators that were distributed got used, and used properly.

By contrast, at the Pentagon, workers not wearing proper protective gear were escorted off the site.

"Employers are responsible for providing a safe workplace," said David Worby, the lawyer whose firm represents the workers. "But the majority of workers at ground zero were given nothing, or had masks that didn't work."

The allegations are based on the lawyers' review of more than 400,000 pages of official documents and the testimony of 30 government witnesses.

The city, which is the principal government defendant, has moved to have the lawsuit dismissed. It argues that it and the private contractors it hired to help in the cleanup did their best to provide adequate equipment and to get workers to use it, but many workers ignored the warnings. Many workers cited reasons for not keeping the masks on, like the stifling heat and the difficulty of communicating while wearing them.

Even if the response to an unprecedented emergency was flawed, the city's lawyers argue, a firmly established legal immunity under the State Defense Emergency Act and other laws protects New York from legal liability.

Kenneth A. Becker, head of the city's World Trade Center litigation unit, declined to comment on the charges in the complaint, saying it was "inappropriate to comment on pending litigation," beyond what is contained in documents already filed with the court. In those papers, the city argued that its "concern for the health and safety of all workers and volunteers at the W.T.C. site began immediately after the September 11 attacks and continued until the end of the rescue, recovery and debris removal operations."

Oral argument on the city's motion to dismiss the case is scheduled for June 22 before Judge Alvin K. Hellerstein of United States District Court in Manhattan.

Workplace Hazards

Ground zero was about the most dangerous workplace imaginable: a smoking heap of nearly two million tons of tangled steel and concrete that contained a brew of toxins, including asbestos, benzene, PCB's, and more than 400 chemicals. Indeed, recent health studies have found that many people who worked on the pile have since developed a rash of serious ailments, including gastrointestinal and respiratory problems.

In the chaos of the first 48 hours after the twin towers collapsed, only the city's firefighters had any personal protective equipment suitable for such an environment. But even that equipment was not sufficient.

Each firefighter is issued a full-face mask that is part of a Self-Contained Breathing Apparatus, also known as a Scott pack, which functions like scuba gear, supplying air while sealing out hazards.

But the tanks contain no more than 18 minutes of oxygen. The system works well if a firefighter is dashing into a burning building to rescue a baby. For a nine-month recovery operation, it was useless.

Once their Scott packs were exhausted, the first firefighters on the scene had no backup gear. That is why Firefighter Palmer Doyle and the crew from Engine Company 254 in Sheepshead Bay, Brooklyn, stopped at a hardware store on the way into Manhattan on Sept. 11 to buy every paper dust mask in stock.

When he returned to ground zero with 50 other firefighters on a bus a few days later, Firefighter Doyle looked for respirators. He was told there was just one left for the entire crew. It was given to the youngest among them.

Firefighter Doyle, now 51 and retired with mild asthma, a recurring cough and other work-related problems, said that the firefighters never thought for a second of refusing to work without respirators, but they did wonder when they were going to be available. Records produced in the lawsuit indicate that the Fire Department put in an order with the city for 5,000 P100 Organic Vapor/Acid Gas half-face masks, which cost less than \$50 each, and 10,000 replacement filter cartridges on Sept. 28. But the order was not processed for almost two months.

Such delays remain a sore point. "Firefighters worked during the 9/11 rescue operation with little or no respiratory protection, and anyone who claims differently is lying," said Stephen J. Cassidy, president of the Uniformed Firefighters Association. "The department further failed to supply anything but particle masks to its workers until much later."

In the first few days after Sept. 11, the only types of breathing protection generally available to people at ground zero were surgical masks and paper dust masks, often distributed by volunteers. Even Mayor [Rudolph W. Giuliani](#) and Deputy Mayor Rudy Washington, who has qualified for workers' compensation for Sept. 11-related ailments, wore paper masks at that time, although industrial safety officers say they were practically useless.

When private construction crews first arrived to help with debris removal, they had no air-filtering equipment with them because they do not usually work in such hazardous conditions.

"For the average Joe, there was nothing," said Robert Gray, a crane operator who is co-author of a new book about the cleanup called "Nine Months at Ground Zero" (Scribner, 2006). Mr. Gray said that after several days, the International Union of Operating Engineers, to which he belongs, brought in a trailer to provide half-face masks and testing to make sure they fit and functioned properly.

Outside the pile, most workers in the early days of the cleanup had only paper masks, and many of the laborers hired by cleaning contractors to vacuum the asbestos from buildings downtown had nothing at all. The New York Committee on Occupation Safety and Health, a union labor organization, provided checkups and respirators to more than 400 of these laborers, many of them illegal immigrants.

David M. Newman, an industrial hygienist with the labor committee, said that when federal environmental officials announced that it was safe for people to return to Lower Manhattan so that Wall Street could reopen a week after the towers collapsed, employers suddenly "had a green light to say, 'We don't need to use respirators because the [E.P.A.](#) says the air is OK.' "

He was referring to a statement made on Sept. 18, 2001, by [Christie Whitman](#), the Environmental Protection Agency administrator, that air sampling done by her agency showed that the air was safe to breathe. The agency's inspector general concluded in 2003 that Ms. Whitman's statement was far too broad and could not be scientifically supported at the time she made it.

According to the inspector general's exhaustive recounting of the environmental consequences of Sept. 11, a federal emergency response team prepared a report on the day of the attacks recommending that respirators be used at ground zero.

But the report was never issued because it was decided that New York City, and not the federal government, should handle worker protection issues.

As the magnitude of the recovery operation grew clearer, attempts were made to bring order to the operation. On Sept. 20 the city issued its first safety plan, and it asked the Occupational Safety and Health Administration to take charge of distributing respirators. In what would become a controversial move, OSHA used its discretionary powers to decide not to enforce workplace safety regulations but to act in a supportive role that would not slow down operations.

"Given that the site was operating under emergency conditions, it was normal that we should suspend our enforcement action and assume the roles of consultation and technical assistance," Patricia Clark, OSHA regional administrator for New York, said in a 2003 OSHA publication.

OSHA placed emergency orders for tens of thousands of P100 half-face masks with replaceable filters. They cost from \$25 to \$50 at the time, and were certified to be effective protection against asbestos and most of the dust on the site.

But Mr. Worby, whose White Plains-based law firm, Worby Groner Edelman Napoli Bern, is handling the workers' joint action suit, said that even these masks were not adequate protection against the chemicals released by the collapsed buildings. He, and others, believe that ground zero should have been declared a toxic waste site, with workers required to wear hazardous-material suits.

Records produced in the lawsuit indicate that the city did receive 75,000 Tyvek suits, white protective overalls often used at hazardous waste sites, but never distributed them at ground zero.

Ms. Clark, the OSHA administrator, testified before Congress in October 2003 that the agency distributed 131,000 half-face respirators before the cleanup ended in June 2002, more than three times the number of workers on the site. In addition, the Environmental Protection Agency provided 22,000 respirators and the operating engineers' union distributed 11,000.

There has been no clear accounting of where they all went. But based on witness accounts and reports by safety officers at the site, it appears that most were used improperly and then discarded. OSHA's own regulations require that masks be tested for fit on each individual wearer, and that men with facial hair must shave for the masks to fit properly.

The lawsuit against the city claims that most of the masks were simply handed out, without instructions or testing for fit. "Respirator fit testing done around the World Trade Center was illusory at best," the lawsuit says.

A separate lawsuit filed on behalf of downtown residents and schoolchildren exposed to ground zero contamination is pending in federal district court in Manhattan.

Several health studies have shown that the closer people came to the debris pile in the early days and weeks after the twin towers collapsed, the more serious are the ailments they develop. A city registry of 71,000 people — including responders and residents — exposed to the dust showed

that people who live downtown have developed respiratory and mental health problems. But they generally have not been as serious as those reported by people who worked directly on the pile.

OSHA refused to answer questions about its handling of the respirators. John M. Chavez, a spokesman, said lawyers from the Department of Justice's environmental torts branch, which is handling trade center litigation, advised against talking to reporters about respirators because "the question goes to the heart of the issue of the litigation."

Going Without

After the masks arrived at ground zero, it soon became apparent that distributing them was easier than getting workers to wear them. At that time of passion and heroism, putting on any kind of respirator or mask was an expression of concern about personal safety — and for many that seemed selfish and unpatriotic in the midst of unimaginable disaster.

By contrast, more than 90 percent of the workers at the Fresh Kills landfill on Staten Island, which was overseen by the Army Corps of Engineers, wore respirators.

There were other reasons for not wearing the respirators. Scorching temperatures on the pile made working in the masks unbearable. It was nearly impossible for the workers to communicate with each other with masks on, so they pulled them down and many later kept them off. The filters clogged easily in the thick, powdery dust, and replacements were not always readily available.

But perhaps the greatest impediments to compliance were the confusing guidelines and spotty enforcement efforts. Overseeing the work, and worker safety, was a horde of government entities that, at its peak, exceeded 30 city, state and federal agencies with overlapping jurisdictions and, at times, contradictory policies.

Statements from the E.P.A. about the air being safe contradicted respirator requirements. OSHA eventually established a green line, which it actually painted around the pile, and ordered respirators to be worn inside the green line. But in November 2001 the various government agencies and private contractors entered into a partnership: OSHA agreed not to issue fines or citations, and the contractors vowed to follow regulations.

The city, in its legal defense, says it issued advisories, distributed pamphlets and put up signs telling workers to wear respirators. But observers from unions and labor safety organizations,

some using binoculars, found no more than half of the workers ever used their respirators. At times, no more than one in five workers were in compliance.

The compliance problem at ground zero was regularly brought up at daily safety committee hearings held by the city with other agencies and private contractors. But without strict enforcement, the situation never improved. Frustrated contractors doubted that anything short of "having workers' mother on site to admonish them to comply would be effective," according to records of one of the meetings cited in the legal documents.

Mr. Worby, the lawyer, says attempts to blame the workers for not wearing respirators go against the spirit of New York labor laws, which oblige employers to provide safe working environments. He argued that even if doing so was impractical in the first chaotic days after the attacks, rigorous standards could have been imposed in the many months that followed.

Lawyers for the injured workers are looking to recoup monetary damages for their pain, suffering, lost days and troubled nights.

The city and the 190 private companies named in the lawsuit, which was filed last year, say they did the best they could to balance safety with expediency. They point out that in nine months at ground zero, there was not one fatality.

But several recent health studies have shown that exposure to ground zero dust has caused serious respiratory and gastrointestinal problems in hundreds of people who worked at the site. Doctors have also started to notice an unusual number of lung-scarring diseases, especially among firefighters. So far there has been only one death officially linked to dust exposure, that of Detective James Zadroga, whose death early this year was attributed to lung scarring caused by the work he did at ground zero.

Both sides in the suit cast an uneasy eye on the future. The city clearly worries that if there is another attack it will not be able to hire contractors and respond to the emergency without fear of becoming entangled in legal liabilities, which could hamper its ability to restore order and protect the city.

In the same vein, the workers' representatives ask, if they are again called in to help, will the environmental and labor laws intended to protect them be enforced?