

**Testimony
Of
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The Lower Manhattan Development Corporation**

Submitted to

**The New York City Council
Select Committee on Lower Manhattan Redevelopment**

**Demolition of 9/11 Contaminated Buildings:
Which Government Agencies are Responsible?
February 17, 2005**

Thank you for the opportunity to testify regarding the deconstruction of 130 Liberty Street, also known as the Deutsche Bank building. With me this morning is Amy Peterson, LMDC Senior Vice President for Memorial, Cultural, and Civic Development, who is overseeing the deconstruction project. I'd like to provide you with a brief overview of the project to date, after which we'd be happy to answer any questions.

The Deutsche Bank building was heavily damaged on September 11, 2001. Subsequently, the condition of the building was the subject of litigation between Deutsche Bank, its owner, and two of its insurers for approximately two years. At the core of the disagreement was a dispute between the parties as to the condition of the building and, ultimately, whether it could be repaired or needed to be deconstructed. After extensive environmental testing by RJ Lee, Deutsche Bank claimed that the injection of building debris and dust caused by the September 11th attacks left the 40-story building unable to be reoccupied safely. The insurers also had Young Laboratories perform environmental tests and argued that the building could be cleaned for reoccupation and did not need to be demolished. In October of 2003, Governor Pataki appointed former U.S. Senate Majority Leader George Mitchell to mediate discussions between Deutsche Bank and its insurers. This mediation was critical to prevent this stalemate from lingering for decades. What could have happened? I think that while our case is unique, the experience of the City of Philadelphia with a heavily damaged building, One Meridian Plaza, is instructive. In February of 1991, the 38 story tower in the center of town, right across from City Hall, burned for 19 hours. The building was heavily damaged by the fire and its fate was stalled in litigation, with no progress, until November of 1997. That could not happen on the site of the worst terrorist attack in the history of the United States and in the 3rd largest Central Business District, and it did not.

In early 2004, as a result of Senator Mitchell's involvement, an accord between Deutsche Bank and the insurers and LMDC was reached to bring down the Deutsche Bank building. Under the agreement, LMDC purchased the land and the Deutsche Bank building for \$90 million and the cost of cleaning and deconstructing the building was capped at \$45 million for all legally required demolition measures. The LMDC, as owner, has moved to remove the shrouded building that has been a constant grim

reminder of the events of September 11, 2001. This action is critical for full implementation of the master plan for the World Trade Center site. The addition of the 130 Liberty Street parcel to the development reduces density on the site by moving the proposed fifth office tower to the property, and provides approximately 30,000 square feet of additional open space in front of the tower. The acquisition also allows vehicle security and bus parking to be located below ground and away from the area dedicated to the memorial. It also provides space for the new St. Nicholas Greek Orthodox Church, which was destroyed on September 11th.

The LMDC took possession of the building at 130 Liberty Street from Deutsche Bank on August 31, 2004 and completed the initial testing shortly thereafter. The LMDC also began testing of previously inaccessible areas. All information about the proposed cleaning and deconstruction has been - and will continue to be - shared with the public and the regulatory agencies as it becomes available. This public engagement will continue and coordination with the applicable regulatory agencies will continue until the deconstruction is completed. Among the elements of our multi-faceted outreach campaign are the creation of an advisory committee to initiate public involvement, regular meetings with the community board, providing a community liaison on the LMDC staff, conducting public outreach sessions at local venues, creating a 24-hour hotline – 917-715-6790, posting of all relevant information on our website, www.renewnyc.com, sending e-updates on the projects and ongoing meetings with adjacent property owners, schools, and residents.

The LMDC as the owner of 130 Liberty Street is responsible for the deconstruction of the building. LMDC's priority in this project is the health and safety of the community and the workforce. We must also, however, deconstruct the building in a way that ensures the wise spending of limited rebuilding monies and deconstruct it in a timely fashion. We are working in concert with all of the applicable regulatory agencies to ensure that we meet regulatory requirements. That is not only our legal responsibility but our obligation to a scarred community. We will continue to take all necessary measures to ensure we meet this obligation to workers, residents, and visitors of Lower Manhattan.

The LMDC continues to be engaged in a formal dialogue with the U.S. Environmental Protection Agency as well as the other regulatory agencies including, the Occupational Health and Safety Administration, New York State Department of Labor, New York State Department of Environmental Conservation, New York City Department of Environmental Protection, New York City Department of Buildings, and the New York State and New York City Departments Of Health. As a City/State agency that is federally funded through HUD, LMDC must satisfy all city, state and federal regulations for construction activities. The regulatory agencies have worked together to oversee this project along with LMDC, its consultants, and other interested parties.

The EPA has played a strong leadership role and will continue to work closely with the other federal, state and city agencies to ensure that the deconstruction of the Building is done safely and in a manner that protects the health of people who live and

work in the area. The EPA has encouraged us to continue deconstruction planning in a transparent manner to keep the members of the public fully informed and involved in the process.

NYS DOL regulates asbestos through Industrial Code Rule 56. Per the State Department of Labor, "all handling or disturbance of ACM or WTC dust/residue at the site is considered an asbestos project as defined by Industrial Code Rule 56 (ICR 56)." LMDC will be complying as required with Industrial Code Rule 56 and applying for any variances necessary and appropriate to permit the deconstruction project to proceed in a safe and timely manner.

LMDC will obtain all necessary permits from the New York City Department of Buildings for the deconstruction and will file an Asbestos Project Notification with the New York City Department of Environmental Protection Asbestos Control Program.

All of the regulatory agencies have reviewed and are continuing to review all relevant information and LMDC's proposed cleaning and deconstruction procedures in accordance with their respective regulatory requirements.

On September 14, 2004, the LMDC released the results of the Initial Building Characterization study. This study was performed to characterize the levels of contaminants in the building prior to developing a plan for cleaning and deconstructing. It was found that several contaminants were detected at levels above the available criteria and they consisted of asbestos, dioxin, lead, quartz, polycyclic aromatic hydrocarbons (PAH's), chromium, and manganese.

In connection with the release of the characterization, LMDC held meetings on September 14th with elected officials, representatives of the regulatory agencies, the LMDC 130 Liberty Advisory Committee, as well as Community Board 1 to discuss the results of the study. LMDC then held a public information session on September 23, 2004 to hear public testimony regarding the community's questions and concerns. As LMDC began developing deconstruction plans, we continued to engage community discussion on the characterization results and we continued to listen to what concerns resonated with the community.

On December 13, 2004 the LMDC released a draft Phase I Deconstruction Plan and officially submitted the plan to the team of regulatory agencies for review. On that day, LMDC again provided a briefing to elected officials, representatives of the regulatory agencies, the LMDC 130 Liberty Advisory Committee, and Community Board 1. The presentation described the proposed components and the phased approach to the cleaning and deconstruction. The proposed plan states that Phase I will involve abatement of identified interior Asbestos Containing Building Material, cleaning and removal of specified World Trade Center (WTC) dust within the building, and "soft strip and interior gut" of most interior non-structural materials, as well as the erection of the tower crane and hoist on the site. Phase II is proposed to include the abatement of identified Asbestos Containing Building Materials (ACBM) associated with the exterior of the structure, the disassembly and removal of some remaining interior non-structural

materials, removal of rooftop mechanical equipment and the remaining building envelope, and then finally the structural components of the building.

Upon release of the Phase I Deconstruction Plan on December 13, 2004, the regulatory agencies were asked to review the deconstruction plan and provide us with their specific comments so that the LMDC and its contractors could propose necessary amendments and submit applications for required permits prior to beginning work.

On January 24, 2005, the LMDC held a public information session to further inform the public about the project and to solicit public input on the draft Phase I deconstruction plan. On January 31, 2005, the LMDC received the official comments from the EPA, which were submitted jointly along with comments from DOL, DEP and DEC. The LMDC has also been meeting with other State and City agencies that will or may be involved in the project, including the Office of Emergency Management, the Fire Department, the Police Department, the Department of Health and Mental Hygiene, the Department of Transportation, and the MTA. We will continue to meet with these agencies as necessary and expect to receive collective comments from additional city agencies regarding the deconstruction plan prior to beginning work. At this time, the LMDC is thoroughly reviewing the technical comments from the regulatory agencies and has begun the process of amending the deconstruction plan as necessary based on those comments as well as the results of supplemental testing. This supplemental testing that was performed in the previously inaccessible areas of the building includes the HVAC system, interstitial wall spaces, and exterior caulking to name a few. The results of this supplemental testing are consistent with the findings of the initial characterization and will require the LMDC to employ additional control measures in remediation of these spaces.

At this point in time, with a comprehensive understanding of the contaminants we are facing within the building the anticipated work related to the project will exceed the original scope of work. LMDC expects that Deutsche Bank and/or its insurers will meet their respective obligations to pay for any additional work necessary to meet applicable regulatory requirements. Specifically, the prior insurers are obligated to pay for any work associated with WTC dust and September 11 related conditions, while Deutsche Bank would pay for any added costs related to the abatement and removal of all Asbestos Containing Building Materials that were present in the building prior to September 11th.

In closing I wish to reiterate that, as the owner of 130 Liberty Street, the LMDC is committed to cleaning and deconstructing this building in a manner that is protective of the community, the workers on this project, and the environment, and to do so in a timely manner. To these ends, we have engaged the public in a transparent process and will continue the dialogue with the community until that final beam is removed from that site. We will continue to work closely with the regulatory agencies as they provide us with comments and feedback on our plans. They are the experts in their specific fields and we are grateful for their coordinated response to date. We look forward to working with all the agencies until completion of this project. Thank You.

