



THE CITY OF NEW YORK  
MANHATTAN COMMUNITY BOARD NO. 3  
59 EAST 4TH STREET - NEW YORK, N.Y. 10003  
PHONE: (212) 533-5300 - FAX: (212) 533-3659  
WWW.CB3MANHATTAN.ORG - INFO@CB3MANHATTAN.ORG

David McWater, Board Chair

Susan Stetzer, District Manager

Int. No. 650-A: Permits for biological, chemical and radiological detectors

At its February 2008 monthly meeting, Community Board #3 passed the following resolution:

WHEREAS, New York City Council's Public Safety Committee is revising a bill (Intro 650) that will require the New York Police Department (NYPD) to allocate permits for all biological, chemical, and radiological atmospheric testing devices; and

WHEREAS, the stated purpose of this legislation is to avoid "excessive false alarms and unwarranted anxiety that a large-scale public emergency may be occurring"; and

WHEREAS, in the aftermath of the World Trade Center attacks, residents and workers were repeatedly lied to about the quality of the air they breathed by government agencies, and therefore, any concern about maintaining the right to independently test the air is certainly far from "unwarranted"; and

WHEREAS, residents should be empowered to hold the government accountable and confirm for themselves, in a timely fashion, that their air is free of hazardous chemicals; and

WHEREAS, the current form of this bill is too broad and will unfairly obstruct the independent collection of scientific data important for environmental health response; and

WHEREAS, Community Board 1 unanimously voted to oppose Intro 650 on the basis of the above considerations; and

WHEREAS, Community Board 3 (CB3) has particular air pollutant and environmental health problems arising from concentration of air pollutant emissions from the three Bridges, the FDR Drive, heavily congested intersections, on street bus idling, and the Con Ed Power Plant; and

WHEREAS, PlaNYC recognizes that the few NYC rooftop air monitoring stations does not and can not provide adequate information of the variation of air pollutant exposure on the ground or in buildings that people are actually exposed to; and

WHEREAS, PlaNYC recognizes the need for measuring variations of air pollutant exposure and identification of areas of concerns; and

WHEREAS, CB3 has approved and is sponsoring community based air pollutant reduction programs funded by the Con Ed Power Plant Environmental Settlement Fund (Asthma Free School Zone, Greening A Block, and LES Ecology Center proposal pending), with the objective of observable reductions of air pollutant exposure that make use of air toxic detection devices; and

WHEREAS, CB3 will benefit from the expansion of community based and independent environmental sampling and detection throughout the district; and

WHEREAS, requiring NYPD permits for environmental sampling instruments would be onerous, expensive and inhibit, and not expand the use of environmental pollutant detection devices; and

WHEREAS, the current form of this bill is too broad and does not effectively distinguish environmental pollutant detection instruments from weapons detection systems; now

THEREFORE, BE IT RESOLVED, that CB3 opposes the implementation of any permitting system that would restrict the use of environmental sampling and toxic detection instruments by non-governmental entities.

If you have any questions, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "David McWater". The signature is written in a cursive, flowing style.

David McWater, Chair  
Community Board #3

**STATEMENT OF  
DEPUTY COMMISSIONER RICHARD A. FALKENRATH  
DEPUTY COMMISSIONER, COUNTERTERRORISM  
NEW YORK CITY POLICE DEPARTMENT**

**BEFORE THE  
NEW YORK CITY COUNCIL  
PUBLIC SAFETY COMMITTEE  
APRIL 29, 2008**

**Good morning Chairman Vallone and members of the Council. I am Richard Falkenrath, Deputy Commissioner of Counterterrorism for the New York City Police Department. I am joined by Assistant Chief John Colgan, Commanding Officer of the Counterterrorism Bureau, and Assistant Chief Charles Kammerdener, Commanding Officer of the Special Operations Division. On behalf of Police Commissioner Raymond W. Kelly, we are pleased to be here to again express our support for our legislative proposal regarding biological, chemical and radiological weapons detectors, Intro. 650-A.**

**When we came before you in January to present this proposal, we spoke of the extensive efforts employed by the New York City Police Department to fight the threat of terrorism, focusing especially on our partnerships with the private sector. We discussed the emerging technology which inspired the bill, and the opportunity we see in leveraging the private deployment of biological, chemical, and radiological detectors to increase the City's overall security. Intro. 650-A will provide a permit structure and notification protocols, so that those wishing to utilize such detectors, with a purpose of providing an early warning of a biological, chemical or radiological weapons attack, will be able to knowledgeably select and deploy reliable devices, and will be able to know what to do if their detector indicates an alarm. As I emphasized in January, the NYPD wishes to support and encourage the private sector to deploy reliable, effective WMD sensor systems as part of the larger City-wide network of sensors.**

**We believe that the intent and scope of the bill were clear from the outset, but as you are aware, a number of concerns were raised about the bill, and we have engaged in an interactive process with a large and diverse group of advocates and institutions, in order to address the issues they raised. Some concerns were based on misinterpretation of the language of the bill, and some were based on valid observations regarding bill language which needed to be improved to better reflect our intent.**

**We discussed in depth, and at length, both the bill and the draft rules we created to implement the bill, and as a result, we significantly amended the bill and similarly amended the draft rules. The bill before you is very different from the bill you considered in January, incorporating changes both large and small, and offering innovative solutions to the concerns raised, while retaining the core intent of the bill. Some examples of our collaborative efforts follow.**

**In response to the expressed fear that the law would apply to detectors used in the aftermath of an attack for the purpose of checking for environmental dangers, we expanded the law to explicitly exclude detectors used by anyone responsible for or engaging**

**in testing or monitoring of workplace or environmental safety, including such testing or monitoring in the aftermath of a biological, chemical or radiological accident or attack.**

**We reduced the potential sentence for violation of the law from one year to a maximum of 20 days, and included a provision requiring that rather than making an arrest for a violation of the law, a police officer taking enforcement action promptly issue a summons. We also amended the bill to provide an affirmative defense for a person acting on behalf of a corporation, shifting the criminal liability onto the corporation itself.**

**We fixed a time limit of 60 days for the Department's consideration of permit applications, starting from receipt of a completed application, with a 30-day time limit if the same type of detector has already been approved.**

**We provided for the availability of consultation with the Police Department, and included in the rules 24-hour availability of Counterterrorism personnel for such consultation, by phone or e-mail, in order to provide guidance regarding whether a permit is required for a particular type of detector.**

**Finally, and perhaps most important to those who expressed concerns about the scope of the law, we included in the bill itself, rather than only in the rules, a listing of the broad categories of detectors which will not require a permit and will not fall within the scope of the law.**

**Although we made a good faith effort to address all reasonable concerns, there were some requests we could not accommodate, and it is important to note these. We have not recast the bill, as many have asked, to affirmatively state what types of detectors the law will cover. Instead, we must acknowledge the probability that over time, technology will change, marketing will change, and weaponry will change. We must provide for that change by broadly defining what types of detectors the law will cover, with sufficient flexibility to adapt the law's coverage through rulemaking.**

**We have also heard claims that the bill does not belong within the purview of the Police Department. We do not agree with the contention that any other agency is better situated to assess and permit biological, chemical and radiological detectors. The Police Department has the primary responsibility to protect New York City against terrorist attack, and to that end, we have proposed this cutting-edge legislation. Working with our partners in government, and particularly the Department of Health and Mental Hygiene and the Department of Environmental Protection, we will in fact encourage the responsible development of this new technology, and our hope is that Intro. 650-A will provide the structure and guidance needed to expand the use of such detectors in New York City.**

**We would like to thank you for the opportunity to discuss Intro. 650-A, and for your leadership in joining with us to better protect the people we serve. We welcome any questions you may have.**

**Political Action &  
Legislation Department**

Telephone: 212-815-1550

Fax: 212-815-1553

**District Council**  
**FOR THE RECORD**

**37**

**LILLIAN ROBERTS**

Executive Director

**VERONICA MONTGOMERY-COSTA**

President

**CLIFFORD KOPPELMAN**

Secretary

**MAF MISBAH UDDIN**

Treasurer

**Vice Presidents:**

Leonard Allen

Colleen Carew-Rogers

Carmen Charles

Santos Crespo

Sirra Crippen

Michael L. DeMarco

Cuthbert B. Dickenson

Alfred Edwards

Charles Ensley

Charles Farrison

Claude Fort

Michael Hood

Morris R. Johnson

David F. Moog

Eileen M. Muller

Walthene Primus

Darryl A. Ramsey

Eddie Rodriguez

Jackie Rowe-Adams

Kevin D. Smith

Cleveland G. Terry

John Townsend

James J. Tucciarelli

Esther (Sandy) Tucker

Shirley A. Williams

**Associate Director**

Oliver Gray

**P.A.L. Director**

Wanda Williams

**Retirees Association**

Stuart Leibowitz

**Testimony of District Council 37, AFSCME  
Before the City Council Public Safety Committee  
Regarding Int. 650-A  
April 29, 2008**

Good morning Chairman Vallone and members of the Public Safety Committee. I am here representing District Council 37 (DC 37), AFSCME. I am here before you today to testify in opposition of Int. 650-A, which pertains to chemical, radiological and biological weapons.

For the last three months a group of unions, environmental, civil liberties, public health and public interest organizations have met on numerous occasions with representatives of the New York Police Department (NYPD) to discuss concerns about the proposed legislation. DC 37 has been part of a coalition that sent a letter to the Mayor outlining our objections and provided the NYPD with a detailed critique of the legislation and suggested alternative ways by which the legislative intent might be realized without inhibiting the civil rights of individuals and organizations that monitor the environment.

In response to the torrent of criticism against the legislation, the NYPD has significantly modified the legislation from that introduced in early January. For example, the bill no longer requires the registration of smoke detectors, subjects those traveling through the City in possession of industrial hygiene equipment to arrest; and now excludes organizations that use equipment for monitoring the environment from the purview of the bill. However, the large number of drafts failed to produce a carefully crafted bill which narrowly achieves its legislative intent.

Despite the changes made by the NYPD, the proposed legislation is still fundamentally flawed. In our estimation, despite stated intention, the bill would leave the city less safe, not more. It would:

- establish a licensing regime that violates traditional principles of due process;
- hinder the flow of information regarding serious airborne pollutants and other environmental conditions;

- precipitate tension and conflict between well-meaning members of the public and police officers charged with enforcing a law whose proscriptions are poorly defined and framed in terms that are overly broad; and
- unreasonably burdening protected First Amendment activity.

In addition the bill would:

- give the Police Commissioner the right to confiscate equipment during periods of emergency;
- give the Police Commissioner the right to deny licenses to individuals or organizations to possess equipment based upon undefined criteria including, but not limited to, their good character; and
- establish reporting requirements which would subject individuals to self-incrimination.

NYPD would be setting not only standards for police response to criminal/terrorist activity but also standards for health-based response to populations impacted or potentially impacted by hazards. That is, NYPD, in essence, appears to propose a policy of non-response to alarms that indicate possible chemical, biological, radiological or nuclear activity unless pre-approved NYPD analytical methods are used and NYPD action levels are met. The NYPD has admitted it has no expertise in this area of public health. This bill would make it less safe since there will be fewer detection devices and fewer testers deploying detection devices in NYC and the fewer detectors are deployed the fewer opportunities there will be to detect chemical, biological, radiological and nuclear (CBRN) agents or other public health issues that do not implicate weaponized CBRN agents.

Fewer testers will be operating detection equipment because:

- many entirely legitimate and law-abiding individuals and entities do not have, do not want, or will not be able to obtain NYPD licenses under Int. 650 since NYPD is charged with screening the "character" of the applicant before deciding whether to issue a permit. This grant of discretion is inappropriate, unwarranted, standardless and subject to abuse;

- even for those persons or entities that may wish to obtain an NYPD license and could obtain one, the process would take a sufficiently long time as to preclude time sensitive environmental testing.

An appropriate legislative approach would be a registration process where:

- users self identify;
- users would coordinate with NYPD/DOH/DEP or other appropriate agencies to establish appropriate set technical standards regarding the minimum specifications of covered devices and to establish thresholds at which the presence of a chemical or biological agent or radioactive substance must be reported to the NYPD;
- users are deputized to alert to NYPD and participate in the development and deployment of emergency response plans;
- NYPD offers guidance to the public-at-large and to registrants concerning which devices are known to be reliable or unreliable; in all likelihood, people will tend to use those on NYPD's good list and avoid those on the bad list, but NYPD would not be in the business of setting legally binding standards it has no expertise to set;
- NYPD's expressed intent can be addressed under the registration process.

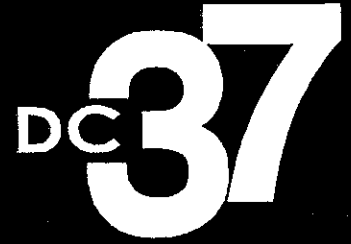
Alternatively, the City Council could establish a Task Force with all relevant stakeholders to address all of the difficult issues involved and work towards the crafting of appropriate legislation.

For your information, you should have received a copy of the opposition memo from District Council 37 along with my testimony.

Thank you for the opportunity to testify before you today.

# LEGISLATIVE MEMO:

# WE OPPOSE

The logo for District Council 37, featuring the letters "DC" in a small font to the left of a large, bold number "37".

## Int. 650-A

### FOR THE RECORD

Political Action and  
Legislation Department  
(212) 815-1550

District Council 37 (DC 37), AFSCME opposes Int. 650-A sponsored by Councilmember Peter Vallone, Jr. Int. 650-A relates to biological, chemical and radiological detectors.

This bill would require police officers in the field to determine the purpose for which detectors would be used and create the real possibility that the law would be applied over-broadly by NYPD officers who would be empowered to seize detector equipment attendant to the issuance of an appearance ticket.

If passed, NYPD would be setting not only standards for police response to criminal/terrorist activity but also standards for health-based response for impacted or potentially impacted populations. That is, NYPD, in essence, appears to propose a policy of non-response to alarms that indicate possible chemical, biological, radiological or nuclear activity unless pre-approved NYPD analytical methods are used and NYPD action levels are exceeded. This may or may not be acceptable in terms of police response to criminal activity but is an unwarranted intrusion by NYPD into a field of public health in which standards of safe human exposure (if any) are unknown or, at best, are subject to substantial uncertainty in the scientific community an area in which the NYPD has admitted it has no expertise.

The bill would leave the city less safe, not more. There will be fewer detection devices and fewer testers deploying detection devices in New York City. The fewer detectors that are deployed, the fewer opportunities there will be to detect chemical, biological, radiological or nuclear (CBRN) agents or other public health issues that do not implicate weaponized CBRN agents.

On behalf of the 121,000 members of DC 37 and 50,000 retirees, we vehemently oppose Int. 650-A.





**NEW YORK COMMITTEE FOR OCCUPATIONAL SAFETY AND HEALTH**

116 John Street, Suite 604, New York, NY 10038  
(212) 227-6440 fax (212) 227-9854

email [nycosh@nycosh.org](mailto:nycosh@nycosh.org)  
website [www.nycosh.org](http://www.nycosh.org)

Joel Shufro, Executive Director  
New York Committee for Occupational Safety and Health  
April 29, 2008  
New York City Council  
Public Safety Committee

I am here to submit for the record a letter submitted by more than 50 organizations who oppose Int. 650.

I am submitting the letter for the record, copies of which you have in front of you, and have no need to read it here. However, we hope that the broad breath of the organizations represented on this letter would give the Council pause about the wisdom of enacting this legislation.

The organizations who have signed on to the letter represent a wide range of public health, environmental, union, civil liberties and community based organizations who regard this proposed legislation as threat to their rights to monitor the environment. Rather than increase information needed to make informed decisions about their personal health and safety and those of their families, this legislation has the potential of significantly limiting it.

Since many environmental monitors can be used monitor both weaponized contaminants and “ordinary” contaminants, the process for enforcing the legislation inherently sets up conflicts between those using monitoring equipment and the police since it asks the police officer to judge the intent of those using equipment. Given the ability of the police to seize the equipment, the organizations see the provisions of this bill provisions of the bill as a grave threat to their ability to determine the extent and type of contamination to which they are being exposed – even during periods of emergencies.

You must remember that the experience of many of the organizations signing this letter has been shaped by the tragedy of September 11<sup>th</sup> in which the citizens of this city were lied to by members of government agencies at many levels. We are still dealing with the consequences of the mis-information; thousands of workers and residents of this city have had their lives disrupted, destroyed, and are sick .

On behalf of the more than 50 organizations submitting this letter, we ask that this bill be defeated. We need legislation which provides us more information about our environment, not less, allowing us to make informed decisions which would allow us to participate fully in the process of monitoring our environment to make it safe for ourselves and our families.



THE CITY OF NEW YORK  
**OFFICE OF THE PRESIDENT**  
BOROUGH OF MANHATTAN

**SCOTT M. STRINGER**  
BOROUGH PRESIDENT

**Testimony of Manhattan Borough President Scott M. Stringer**

**Before the New York City Council Committee on**  
*Before*

**New York City Council Public Safety Committee**

**April 29, 2008**

---

Good morning and thank you Chairman Vallone and members of the Committee for the opportunity to testify here today on Intro 650-A, and the use of biological, chemical and radiological detectors in New York City.

I first want to commend the New York City Police Department for its unparalleled work in protecting the public. Residents of New York City and the people who come here every day to work and to visit owe you an enormous debt of gratitude. There is no intention on my part to discount the reality of terrorism which the NYPD confronts on a daily basis, or the harm that that could be done by disseminating false information about a terrorist attack. I also appreciate the time that the NYPD and the City have taken to work with advocates, such as the New York Committee for Occupational Safety & Health (NYCOSH) and the many other environmental groups here today, and elected officials to address many of the concerns initially raised about this bill.

Yet for important matters of principle and precedent, I must continue to oppose the legislation being considered by the Committee.

In order to guard against the speculative and hypothetical danger of false alarms, Intro 650 would impose a number of large and unacceptable costs on our proud tradition of citizen activism regarding public safety.

The NYPD knows better than any agency the value of public vigilance in keeping our City safe. In explaining its support for Intro-650, the NYPD has cited numerous ways in which it has engaged the public, including: a terrorism hotline; training in terrorism awareness for community groups; and the NYPD SHIELD program. Every subway rider is familiar with the “if you see something, say something” ad campaign.

This reliance upon citizen engagement for our public safety taps into the finest traditions of American patriotism, dating back to April 1775 and the midnight ride of Paul Revere alerting the people of Lexington and Concord to the advance of British troops.

My concern and the concern of many citizens and public interest groups is that Intro 650 – even with the amendments that have been made – marks a fundamental departure from this proud tradition.

This bill elevates fear of bad actions that we have yet to witness above our trust in the best civic impulses of New Yorkers. If you pass this legislation, along with the safeguards you erect against false alarms will come heavy burdens on the citizen policing that has served New York City so well over the past six and a half years.

As I said when I testified before this Committee in January, the post-September 11 experience of residents and workers in Lower Manhattan weighs heavily in my opposition to this legislation. It is an essential fact that the accurate information these New Yorkers received about air quality came not from the government but from independent testers. Due diligence has been overlooked in the aftermath of emergencies, and I am concerned that advocates may confront undue burdens of proof or penalties should the city face another emergency in the future.

The burden imposed by Intro-650 on independent environmental testing has not been remedied adequately by the changes made to the legislation. The restraints on citizens and independent groups are inherent in the very nature of the enforcement system created by this bill. Both the permitting process and the penalties implemented by this legislation could produce a chilling effect on useful private activity.

There are other available avenues to guard against worries about false alarms, some of them already available to the NYPD and prosecutors, and others – such as self-registration – suggested in the course of this debate.

In lieu of these more modest steps to protect against a speculative problem, Intro 650 charges ahead with a significant expansion of police activity into the realm of public health decisions, and new government burdens on private activity that will almost certainly be challenged for violating the First Amendment.

Thank you for the opportunity to present this morning.



# ORGANIZATION OF STAFF ANALYSTS

220 EAST 23rd STREET - SUITE 707  
NEW YORK, NEW YORK 10010  
TEL.: (212) 686-1229 • FAX: (212) 686-1231  
WEB: WWW.OSAUNION.ORG  
HOTLINE: (212) 330-8833

FOR THE RECORD

## EXECUTIVE BOARD

OSA

*Chairperson*  
Robert J. Croghan

*Vice-Chairperson*  
Tom Anderson

*Treasurer*  
Richard Guarino

*Grievance Officer*  
Kimberly Vann

*Corresponding Sec'y*  
Jeanne O'Sullivan

*Recording Secretary*  
Jay W. Warshofsky

*Delegates at Large*  
Ronald Lehman  
Dolores Parson  
Wilfred St. Surin

OSART

*Chairperson*  
Robert J. Croghan

*Vice-Chairperson*  
Alfred Milton

*Treasurer*  
Michael Falzarano

*Grievance Officer*  
Sandra O. Thompson

*Corresponding Sec'y*  
Sherman Gould

*Recording Secretary*  
John Harper

*Delegates at Large*  
Barry Mandel  
Alice Moise  
Edward Price

*Executive Director*  
OSA/OSART  
Sheila Gorsky

*Ex Officio*  
Willie Bowman  
Elizabeth D'Aversa  
Joan Doheny  
A. William Douglas  
Marzie Eisenberg  
Stephen Gregor  
Robert Hershkowitz  
John Mazzarella  
Maude Oliver  
Mary Ellen O'Connell  
Michael Schady  
Josephine Valentin  
Jessica Woodcock

Testimony of Robert Spencer, Staff Representative  
Organization of Staff Analysts

Before the Committee on Public Safety, New York City Council  
Hearing on Proposed Int 650-A: A Local Law to amend the administrative code of the city of  
New York, in relation to biological, chemical and radiological detectors.  
City Hall Committee Room, April 29, 2008

I'm Robert Spencer, a staff representative of the Organization of Staff Analysts, a municipal workers union representing some 4,600 active and 1,400 retired employees of the City of New York and related employers. Thank you Chairperson Vallone and members of the committee for allowing us time to present our views today.

I am here today to speak on behalf of our union in total opposition to Int 650-A, legislation which would grant the New York City Police Department broad new powers in regulating environmental testing. We wrote to the chair and members of this committee on January 16, 2008 in opposition to an earlier version of this bill and we remain opposed, in spite of the fact that a range of exceptions have been introduced in the latest version of the bill.

The Police Department has argued that the purpose of the bill is to improve the safety of New York's citizens by preventing false alarms and unnecessary anxiety in response to reports of exposures to CBRN (chemical, biological, radiological and nuclear) agents. The NYPD has yet to identify even a single instance where a false alarm of exposure to CBRN agents has caused unnecessary anxiety or panic among New Yorkers.

Rather, we believe the effect of the bill will be to make New York City residents less safe by blocking access to essential public health information, especially in times of emergency. We believe that it will infringe upon citizens' First Amendment rights which surely include the right to measure their environment and report and share that information publicly, whether they do so as professionals or as interested private citizens.

We believe that a permitting scheme as proposed in this legislation will have a chilling effect even on those exempted from the bill's requirements and will create a new arena for police-community misunderstanding as police officers are forced to determine on-the-spot whether a monitoring device and the reason for its use fall under the requirements of the permitting process.

It also unnecessarily brings the Police Department into the sphere of public health.

Our union has been involved, in the aftermath of the attacks on the World Trade Center, in dealing with the impact on New York's citizens of the extensive misrepresentations about air safety made by federal and city agencies in the weeks after 9/11.

[continued, over]

Without independent monitoring, the truth about the level of toxic substances released on 9/11 might never have been known.

Protecting the right of individuals to measure their environment and to report their findings should be the goal of this Council. Creating a permitting regime that hinders the free exchange of information should not.

We urge you to withdraw Int.650A and recognize the fundamental flaws in the very conception of this bill. Thank you.



**NEW YORK COMMITTEE FOR OCCUPATIONAL SAFETY AND HEALTH**

116 John Street, Suite 604, New York, NY 10038  
(212) 227-6440 fax (212) 227-9854

email [nycosh@nycosh.org](mailto:nycosh@nycosh.org)  
website [www.nycosh.org](http://www.nycosh.org)



***New York City Council  
Public Safety Committee***

***hearing re:***

***INTRO 650A - PERMITS FOR  
BIOLOGICAL, CHEMICAL AND RADIOLOGICAL  
DETECTORS***

testimony of

David M. Newman, M.A., M.S.  
NYCOSH Industrial Hygienist

for

**New York City Central Labor Council**

**and**

**New York Committee for Occupational Safety and Health  
(NYCOSH)**

**April 29, 2008**

***New York City Council Public Safety Committee***  
***INTRO 650A - PERMITS FOR***  
***BIOLOGICAL, CHEMICAL AND RADIOLOGICAL DETECTORS***

testimony of  
**DAVID M. NEWMAN, M.A., M.S.**  
for  
**NEW YORK CITY CENTRAL LABOR COUNCIL**  
and  
**NEW YORK COMMITTEE FOR OCCUPATIONAL SAFETY & HEALTH**  
**(NYCOSH)**

**April 29, 2008**

This joint testimony is presented on behalf of the New York Committee for Occupational Safety and Health (NYCOSH) and the New York City Central Labor Council (NYCCLC).

The NYCCLC is a non-profit labor membership organization devoted to supporting, advancing, and advocating for the working people of New York City. The NYCCLC brings together 400 local unions from every trade and occupation in both the public and private sectors of the New York City economy. NYCCLC represents 1.3 million workers, including teachers, truck drivers, operating engineers, nurses, construction workers, electricians, firefighters, retail workers, janitors, train operators, bakers, and many more who are the face of today's workforce.

The New York Committee for Occupational Safety and Health is an independent, non-profit, union-based health and safety organization located here in Manhattan. Over 200 local unions and other labor and community organizations in the metropolitan area are members of NYCOSH, as are several hundred individual workplace safety and health activists, public health professionals and advocates, and concerned citizens. NYCOSH has provided technical assistance and comprehensive training in occupational safety and health to unions, employers, community-based organizations, and government agencies for almost thirty years. NYCOSH has also worked closely with a major medical institution to provide training for hospital-based first receivers of victims of mass casualty incidents that involve the release of hazardous substances and to provide

technical assistance with decontamination procedures and equipment.

NYCOSH and NYCCLC join other organizations, including members of the public health, industrial hygiene, public safety, academic, labor, environmental, and civil liberties communities, and several Manhattan Community Boards, in opposing Intro 650A. This legislation, if enacted, would undermine efforts to protect the public health by creating substantial and unnecessary impediments to the collection of scientific data in both routine and emergency situations.

NYCOSH owns and regularly deploys numerous handheld and portable environmental sampling devices, including devices that detect and measure chemical and biological agents in air, building materials, dust, and water. These chemical and biological agents include particulates, volatile organic compounds, oxygen, hydrogen sulfide, methane and other explosive gases, lead, asbestos, mercury, and mold. NYCOSH borrows or rents additional sampling devices as necessary, including from out-of-town vendors. NYCOSH also lends our equipment to other organizations, including unions and hospitals. NYCOSH may utilize environmental sampling devices according to a predetermined schedule or we may engage in sampling on a rapid response or emergency basis, as we did on 9/11 and other occasions.

We acknowledge that NYPD has a legitimate interest in obtaining timely, credible information that would indicate possible terrorist activity utilizing chemical, biological, radiological, or nuclear (CBRN) agents. However, the scope of Intro 650A goes well beyond that legitimate interest and, even in its current revised form, remains overly and unnecessarily broad.

NYCOSH and NYCCLC oppose Intro 650A for the following reasons:

1. *Intro 650A dangerously confuses criteria for NYPD response to criminal or terrorist activity with criteria for response by public health agencies to public health emergencies.*

The bill would give NYPD responsibility for setting technical standards and alarm levels for environmental monitoring devices capable of detecting CBRN agents, an expertise which NYPD cannot achieve and for which no scientific or regulatory consensus currently exists or is likely to exist in the near future.



Of greater significance, under this bill NYPD would effectively set standards not only for police response to criminal/terrorist activity but also for health-based response. That is, this bill appears to propose a policy of non-response to alarms that indicate possible CBRN activity unless NYPD action levels are met or exceeded.

This would constitute an unwarranted intrusion by NYPD into the field of public health. By comparison, we would not allow non-response by FDNY to a telephone call reporting a smoke condition on the basis that the smoke condition has not been confirmed. FDNY must respond to all alarms, even if they later turn out to be false, so as not to run the risk of overlooking a valid alarm. Potential CBRN incidents similarly warrant rapid public health response and investigation, regardless of whether they subsequently turn out to be false alarms and regardless of whether they warrant police investigation for criminal activity.

2. *Intro 650A criminalizes environmental sampling activities, allows NYPD to halt or prevent environmental sampling operations and to seize sampling instruments without due process, and will have a chilling effect on independent environmental and occupational sampling.*

The bill empowers NYPD to arbitrarily confiscate permitted sampling devices or to require that their use be discontinued. NYCOSH has asked NYPD for the criteria that have been used or would be used to determine if confiscation is appropriate. NYPD has been unable to provide such criteria or to explain the circumstances in which confiscation would occur. Although the current version of the bill exempts certain devices and activities from permit requirements, the onus will be on the person engaged in sampling activities to demonstrate to the police officer that s/he is not required to have a permit, a task that is likely to be difficult if not impossible on the spot.

Such interactions or the fear of such interactions will have a chilling effect on environmental and occupational health monitoring activities unrelated to CBRN weapons detection. The prospect of having to obtain NYPD permission to conduct environmental testing, either via permit or via advisory opinion that no permit is necessary, or to run the risk of seizure of equipment, issuance of an appearance ticket, and subsequent prosecution should a police officer incorrectly

assess activities in the field, will inevitably deter environmental monitoring.

3. *Intro 650A will undermine the ability of even exempt organizations and individuals to engage in environmental sampling.*

This bill will make it difficult or impossible to borrow, lend, or rent environmental sampling equipment, as the permitting process does not anticipate these circumstances. In addition, the threat of confiscation will make it more difficult to borrow or rent equipment.

4. *Intro 650A is aimed at fixing a problem that does not exist.*

The stated purpose of the bill is to reduce "excessive false alarms and unwarranted anxiety." No data are presented to support the claim of "excessive false alarms," nor are the types of alarms that are presumed to be excessive defined. No evidence is presented to document "unwarranted anxiety." It is likely that no such data or evidence exist. Neither press reports nor the scientific literature nor the city's own web site indicate that "excessive false alarms and unwarranted anxiety" have been or are real-world problems. Certainly, neither was a problem during the City's most recent catastrophic incidents - the events of 9/11 and the Grand Central asbestos steam pipe explosion.

In conclusion, the goal in science is generally to obtain more data, not less. Intro 650A would significantly impede independent collection of environmental sampling data, as well as the ability of the public to utilize independent data to assess the accuracy of government statements. There is no danger to public safety and health from the acquisition of additional data. There is, however, very real danger to public safety and health in allowing NYPD to set standards that could influence how public health agencies respond to emergencies. NYCOSH and NYCCLC urge this Committee and the City Council to reject this bill in its entirety.

Thank you.



## **TOXIN ALERTING BUILDING SYSTEMS**

My name is Charles J. Maikish. I appreciate the opportunity to testify in support of legislation Intro. 650-A. The matter before the Council is of the greatest import: it is intended to advance the development of legitimate and reliable anti terrorism technology.

I am, by training an Engineer and Attorney. I am here today because circumstances on the world stage have caused my professional life to be inextricably linked to the attacks on New York.

I began my career in the late 1960's as a Port Authority engineer assigned to the construction of the World Trade Center. It was with great pride that I was able to look at the skyline and know that I helped, in a small way, to shape the perception of the City held the world over.

I worked both as an Engineer and a Lawyer for the Port Authority until 1990, when I became director of the World Trade Department with overall responsibility for the World Trade Center including operations, capital investment, and redevelopment of the complex.

In 1993, foreign sponsored terrorism visited our shores for the first time in history. The truck bombing that occurred at The World Trade Center was our first wake up call. I was given responsibility by the Port Authority's Board of Commissioners for the reconstruction and recovery of the World Trade Center. As New Yorkers, we dealt with it and rapidly moved on.

Subsequent to the full reconstruction and strengthening of the WTC, I left the Port Authority for Columbia University, to launch over a period of 18 months, their 5 year \$650 million dollar capital program as the V.P. of Facilities at the University. Subsequently, I advanced in my career and became Executive Vice President of Global Real Estate Business Services at JP Morgan Chase, with responsibility for managing the firm's worldwide real estate and client services, physical facilities, strategic space planning, and security services, including Chase's many downtown office locations.

It was while I was at Chase that I watched in horror as my life's work was attacked, again, by men undeterred by their own deaths, in a well orchestrated event. My previous experiences gave me the knowledge that air quality could be compromised, threatening the lives of the people in the downtown area, so at the 1<sup>st</sup> incidence of the attack, I ordered all Chase building to shut down their outside air intake. That simple act protected Chase's buildings from the further internal damage that so many other downtown properties faced and mitigated the collateral damage from the attack on the Towers.



## **TOXIN ALERTING BUILDING SYSTEMS**

Following 9/11, I was called back into public service by Governor Pataki and Mayor Bloomberg, and asked to create and organize the Lower Manhattan Construction Command Center, and serve as its 1<sup>st</sup> Executive Director. The LMCCC is responsible for coordinating some \$30 Billion in public and private construction, South of Canal Street.

Since the initial attack in 1993 I have worked, both in the public and private sector closely with Law Enforcement and Fire Life Safety to help develop security initiatives surrounding both the rebuilding of the WTC in 1993 and subsequent to 9/11, security and life safety initiatives in the real estate industry in general. A specific area of focus for anti-terrorism activity is the prevention of an attack in the form of airborne dispersal of chemical, biological or radiological toxins. Key to protecting against such attacks, is the development of Technological that rapidly detects and contains such toxins with very low or no incidents of false positives.

As a Senior Executive in the private sector, I was tasked with managing employee anxiety at the workplace induced by a frequent false reports and alarms that followed the September 11, 2001 attack. Having trading floors and corporate operations self evacuate for no good reason can have severe economic impacts on the private sector. This proposed Legislation advances the goal of minimizing the incidents of such false reports.

Last year after I retired from public service, I committed myself to seeking a solution to the problem of reliable detection, rapid response and the elimination of false positives. A team of mechanical engineers that had hit upon a solution to the problem of detecting airborne Toxic substances, elimination of false positives and integrated into the control systems for the buildings HVAC System for rapid response sought my assistance. The Building Sentry One System, designated by the Department of Homeland Security as an anti-terrorism technology is designed to quickly and reliably detect toxins and take immediate action to protect a building, its assets, and the innocent people inside. We formed a company called Toxin Alerting Building Systems, LLC in order to advance the deployment of this technology in both the public and private sector.

Now that the City Council sits in consideration of the legislation before it, we give our wholehearted support. We are encouraged by the introduction of Intro 650B as it reflects the Council's understanding of the importance of deploying technology designed to detect the presence of certain chemicals, biological agents and radiation in an effective and responsible manner. Fortunately, the legislation recognizes that both the public and private sector has an interest in the reliability of these newly developed technologies and the City Council has undertaken to work with the NYPD to make certain they are deployed in a manner where they do not cause false alarms or unnecessary public anxiety.



### **TOXIN ALERTING BUILDING SYSTEMS**

Coordination is key: building to building, facility to facility, the sameness of detection protocols, degree of accuracy and methods of communication with first responders become the means of success for protecting all New Yorkers.

Toxin Alerting Building Systems looks forward to working with the Public Safety Committee and the entire City Council to raise awareness regarding the development and promotion of this important technology. The degree of regulation that will be necessary to protect the public interest against false reporting will be determined through pilot testing of this new and emerging technology. Currently, we are in discussion with the NYPD regarding the installation of the Building Sentry One System in One Police Plaza as a pilot program and we ask for the Council's support of such a pilot initiative.

FOR THE RECORD



**Testimony on Int. 650A to the New York City Council Public Safety Committee Tuesday, April 29, 2008  
Committee Room - City Hall**

The Building Owners and Managers Association of Greater New York represents over 400 million square feet of commercial properties and 3 million office occupants. BOMA NY has more than 850 members responsible for \$1.5 billion dollars in annual tax revenue and oversee annual operating budgets in excess of \$4 billion dollars. We wish to voice our concerns regarding the proposed Int. 650A.

BOMA/NY realizes that Int. No. 650A is groundbreaking legislation in nature and is important to public safety. We understand and support the underlying intent of this legislation. However, we see the need for changes in its current form. We would like to work with the Mayor's Office and NYPD to enact pragmatic legislation that protects the health and safety of our tenants and workers and is based on solid understanding of the technology under potential regulation.

BOMA/NY believes it's within the right of commercial building owners and managers to deploy detection equipment within the confines of their property to protect our greatest assets, their tenants and employees.

We believe that the legislation in its current form is far too broad, undefined and open to misinterpretation. It's far reaching immediate and future impacts to our membership are not even able to be considered or expressed due to its overarching nature.

**In order to be more broadly effective in its intent, the legislation should:**

- Clearly define instrumentation requirements with performance-based language rather than prescribing and excluding instrument categories by intended use (i.e. CBR detection versus environmental detection).
- The definitions should include envisioned analytical sensitivity, **accuracy** and **precision** requirements for instrument type based on the underlying detection principle and calibration of the device and not on the agent class (e.g. direct reading instruments used for organophosphate agents must be capable of detecting 1 part per billion of Sarin gas with 99% accuracy and 99% precision).
- The scope of required reporting should include only instrument types that are **permanently** or **semi-permanently** installed or affixed to a structure, facility or campus and exclude portable devices in their entirety. The alarm type of the instruments should be considered. Does the instrument alert first responders directly or is there an intervening quality control check?
- Consider changing this from a permitting system to a registry with the NYPD.
- Define who is liable for response costs in the case of a false alarm or real incident.

**BUILDING OWNERS AND MANAGERS  
ASSOCIATION OF GREATER NEW YORK, INC.**

11 Penn Plaza, 22nd Floor  
New York, New York 10001  
Telephone (212) 239.3662  
Facsimile (212) 268.7441  
E-mail [info@bomany.com](mailto:info@bomany.com)  
<http://www.bomany.org>

- Classify the human element and educational requirements of onsite personnel who will monitor the equipment or initiate the response.
- Detail how the costs of the permitting or registry system will be covered and how the department plans on funding this administrative process now and into the future?

We would like the opportunity to work with the Administration and the New York City Council to enact pragmatic legislation that protects the health and safety of our tenants and fellow citizens.

We welcome the opportunity to represent BOMA/NY members as stakeholders in a cooperative process to help resolve the difficulties posed by this proposal.

Thank You.

Sylvester A. Giustino  
Director of Legislative Affairs  
Building Owners & Managers Association of Greater New York, Inc.  
11 Penn Plaza, 22nd Floor Suite 2201  
New York, New York 10001  
(212) 239-3662 ext. 204

**Testimony of  
DAVE PALMER  
on behalf of  
NEW YORK LAWYERS FOR THE PUBLIC INTEREST  
before the  
NEW YORK CITY COUNCIL COMMITTEE ON PUBLIC SAFETY  
hearing on  
PROPOSED INT. 650-A, A LOCAL LAW TO AMEND THE NYC  
ADMINISTRATIVE CODE IN RELATION TO BIOLOGICAL, CHEMICAL  
AND RADIOLOGICAL DETECTORS  
April 29, 2008**

Good afternoon Chairperson Vallone and other members of the Public Safety Committee. Thank you for the opportunity to provide testimony today. My name is Dave Palmer, and I am a Staff Attorney with New York Lawyers for the Public Interest (NYLPI). NYLPI is a nonprofit civil rights law firm formed in 1976 to address the unmet legal needs of New Yorkers. In 1991, NYLPI formed its Environmental Justice & Community Development Project to represent communities facing disproportionate environmental burdens.

I represent a number of community organizations facing issues related to the siting of schools on contaminated properties around New York City. In this work, my clients and I have relied on data produced from independent environmental monitoring, which triggered our interest in this attempt by NYPD to regulate biological, chemical and radiological detectors.

**I am here today to testify in opposition to Int. 650-A, and to urge the Public Safety Committee to vote against passing this bill out of Committee.** We believe that Int. 650-A, as currently drafted and potentially applied, places at risk our clients' interest in access to timely independent environmental testing information – despite the statutory exemptions. NYLPI has helped to draft a sign-on letter to Speaker Quinn in opposition to Int. 650-A, and has signed-on to that letter along with over 40 other organizations. We understand that this letter will be submitted for the record at today's hearing, and we stand by the arguments set forth within it.

Thank you for the opportunity to testify on the record.



**TESTIMONY OPPOSING NYC CITY COUNCIL INTRO. 650-A,  
A LOCAL LAW TO AMEND THE ADMINISTRATIVE CODE OF  
THE CITY OF NEW YORK, IN RELATION TO BIOLOGICAL,  
CHEMICAL AND RADIOLOGICAL DETECTORS (3/28/08 Draft)**

**by David Kotelchuck,  
PROFESSIONAL STAFF CONGRESS OF THE CITY UNIVERSITY  
OF NEW YORK, AFT, AFL-CIO**

**Presented on April 29, 2008 at a Hearing of the New York City Council  
Committee on Public Safety**

**OFFICERS**

**Barbara Bowen**  
President

**Steven London**  
First Vice President

**Arthurine DeSola**  
Secretary

**Michael Fabricant**  
Treasurer

**Stanley Aronowitz**  
**Jonathan Buchsbaum**  
**Lorraine Coben**  
**John Pittman**  
**Nancy Homer**  
University-wide Officers

**Robert Cermele**  
Vice President Senior Colleges

**Kathleen Barker**  
**Marilyn Nelmark**  
**Alex Vitale**  
Senior College Officers

**Anne Friedman**  
Vice President  
Community Colleges

**Jacob Appleman**  
**Lizette Colón**  
**Susan O'Malley**  
Community College Officers

**Iris DeLuro**  
Vice President  
Cross Campus Units

**Donna Veronica Gill**  
**Steven Trimball**  
**Vera Weekes**  
Cross Campus Officers

**Marla Newfield**  
Vice President  
Part-Time Personnel

**Susan DiRaimo**  
**David Hatchett**  
**Diane Menna**  
Part-Time College Officers

**Peter Jonas**  
**James Perstein**  
Retiree Officers

**Irvyn H. Polshook**  
President Emeritus

**Israel Kugler**  
Deputy President Emeritus

**Peter L. Hoberman**  
Vice President Emeritus  
Cross Campus Units

**STAFF**

**Deborah E. Bell**  
Executive Director

**Faye H. Alladin**  
Coordinator,  
Financial Services

**Dorothee Benz**  
Coordinator, Communications

**Debra Bergen**  
Director, Contract Administration &  
University-wide Grievance Council

**Cynthia Campos**  
Coordinator, Contract Administration

**Barbara Gabriel**  
Coordinator, Office Services &  
Human Resources

**Peter Hogness**  
Newspaper Editor

**Kate Pfordresher**  
Coordinator, Research & Public  
Policy

**Diana Rosato**  
Coordinator, Membership

**Clarissa Gilbert Weiss**  
Director, Pension & Welfare Benefits

Chairman Peter Vallone, Jr. and Committee members:

My name is David Kotelchuck. I am the Co-Chairperson of the Health and Safety Committee of the Professional Staff Congress (PSC) of the City University of New York (CUNY), and Prof. Emeritus at Hunter College, where I taught occupational and environmental public health for over two decades. PSC-CUNY represents 20,000 faculty and staff members who teach, counsel, and assist students and administer operations on the 19 campuses of CUNY. Our union is member of the New York State United Teachers (NYSUT) and is a local (# 2334) of the American Federation of Teachers (AFT).

I speak to you today on behalf of the members of our Union to tell you that we strongly oppose New York City Council Intro 650-A (Draft Version dated 3/28/08) and urge members of the Public Safety Committee to reject this bill.

Since the first public hearing on this bill before the Public Safety Committee on January 9, members of this Committee, City Council staff members and representatives of the New York City Police Department have met those of us who testified against the original version of this bill and have amended the bill substantially to seek to meet our objections. These revisions have improved the bill, and our Union thanks the Councilmembers, their staff and the Police Department for their efforts.

However despite these efforts the proposed changes present an extensive patchwork on a suit made of poor quality cloth – that is, a patchwork approach to change in a bill whose fundamental approach is ill-conceived. The basic premise of the bill is stated clearly in Legislative Purposes (Section 1): “While the proliferation of these defensive capabilities may represent a positive development in furthering public safety, such instruments should be deployed only with the knowledge of the Police Department and other appropriate City Agencies.” [Our emphasis –DK] Then in the first sentence after the legislative purpose and definitions, the bill states unequivocally “It shall be unlawful for any person to possess or deploy a biological, chemical or radiological detector in the city of New York unless such person holds a valid permit therefor.” (§10-802(a))

Then the newly revised version of Intro 650 goes on to relax these requirements for registration and licensure for many groups of complainants. But at heart this bill would represent a massive increase in police power in this City, a major attempt to put all environmental and occupational measurements under government control through the City's police powers, whether or not these have anything to do with the detection of terrorism.

Public health is inextricably involved both with surveillance and communication – surveillance of diseases and chemical, biological and radiological exposures in our air, waters and soils, and communication of these findings to the public so that informed public policy can be made to prevent or control threats to the public's health and safety. Thus exposure measurements and their communication are essential elements of practice and speech in our field, and these are precisely the elements which Intro 650 seeks to restrict.

No matter how many circumstances of such speech are now exempted from the provisions of this bill, at its heart Intro 650 makes both the "possession and deployment" of detection devices a crime in New York City. Violations would then be made a misdemeanor, with violators subject to "a fine of not more than one thousand dollars or imprisonment of not more than 20 days or both". (§10-808(a)) [Please note that while much is made of the change in this draft that an alleged violator may not be arrested summarily, but rather will be issued an appearance ticket, this does not vitiate the serious penalties of fine and/or jail if the alleged violators are later found guilty.] Furthermore the last sentence of Intro 650 (§3) requires disposal of non-approved equipment. Indeed the proposed Police Rules established to implement Intro 650 explicitly authorize the Police Commissioner to confiscate any biological, chemical or radiological detector, whether permitted or not, if continued possession and/or deployment "may constitute a threat to public safety or exacerbate a condition of public alarm". (Proposed NYPD Rules §20-11 "Surrender of Possession or Discontinuance of Deployment") Together these provisions will have a chilling effect on those who routinely monitor environmental and occupational exposures in New York City, especially if confronted by a local police officer, who is concerned about possible terrorism and may only have a rudimentary knowledge of environmental measurement devices.

This bill with its sweeping assertion of police powers is presented without one single report of false alarm related to possible terrorism presented by the Police Department or other City representatives at the January 9 public hearings or in a host of private meetings thereafter.

Intro 650 simply takes the wrong approach, registering and regulating all measuring equipment and then exempting particular equipment and particular persons who have raised objections and demonstrated legitimate purposes. If Police Department representatives have identified a potential problem of "excessive false alarms and unwarranted anxiety" (§1 "Legislative purposes"), it is incumbent upon Department and/or the City Council representatives carefully to delineate what measuring equipment

might lead to false alarms, and affirmatively consider registration and possible licensure of these. The City Council may wish to do this by establishing a panel composed of city and state authorities with experience and competence in using such equipment, professionals and academics in the field, representatives of relevant City Council committees and some community organization representatives.

In a larger context, the New York City Police Department has been mired for many years now in major public controversies over its members' use of deadly force, police arrests at political demonstrations, police harassment of city bicyclists, and the role and countervailing powers of the City's Civilian Complaint Review Board. With such issues still open wounds on the body politic, legislation by the City Council greatly to expand Police Department powers, even in the name of the fight against terrorism, is unwarranted. Passage of such legislation will meet widespread approbation, as it already has among local representatives of many national professional, labor and civil liberties groups.

Please vote to reject Intro 650-A, and then let's approach the problems identified in this bill in a responsible way by carefully-considered, narrowly-targeted legislation.

Thank you.

**STATEMENT OF ROBERT GULACK  
BEFORE THE NEW YORK CITY COUNCIL  
APRIL 29, 2008**

**For Immediate Release:**  
April 29, 2008

**For Further Information, Call:**  
(201) 794-9322  
[zdenabob@optonline.net](mailto:zdenabob@optonline.net)

I would like to speak about Mayor Bloomberg's proposed bill giving the police control over air testing. When air monitors are outlawed, only outlaws will have air monitors.

Air monitors are not a threat to the public safety. We have no history of panics due to irresponsible air monitoring. It is the *lack* of independent air monitoring by concerned citizens that would constitute a threat to the public safety.

Charles Darwin once came home to find his son jumping on the furniture. He said, "You know I can't bear to see you jumping on the furniture." His son replied, "Well, Father, in that case, you must leave the room immediately."

Last year, the General Accountability Office of the U.S. Congress issued an official report, pointing out the danger to New York City from the World Trade Center debris, which has never been properly cleaned. The GAO report confirms what the Sierra Club, Congressman Nadler, and the EPA's own Inspector General have told us for many years: we are in danger in our schools, firehouses, police stations, homes, and office buildings.

What was Mayor Bloomberg's response? Did he clean up the schools, firehouses, police stations, homes, and office buildings? No. He responds like Darwin's son. "If you can't bear to see such things, stop looking." He comes up with this silly bill to stop us from finding out about contamination in our schools, firehouses, police stations, homes, and offices.

Mayor Bloomberg is sick and tired of independent testing that shows he and the EPA are lying about environmental safety. But facts remain facts, even if Mayor Bloomberg proves to be able to stop us from monitoring them. Poison remains poison. Our children are still being harmed.

In order to overcome the obvious constitutional problems with this insane legislation, this bill has now been watered down to the point where anyone doing environmental testing is listed as being exempt. Now, anyone who's looking for an unexploded dirty bomb can only find it by testing the environment. And, as soon as he tests the environment, he's exempt under the terms of this bill. So, if you're covered by this bill, you're not covered by this bill. Indeed, if a terrorist were ever arrested under this bill, he could argue he was doing environmental testing. Furthermore, it is crazy to talk, as some people have, about how terrorist bombmakers would be deterred by this bill. Obviously, this bill wouldn't deter al-Q'aida. It is not meant to deter al-Q'aida. It is meant to freeze and deter

independent testing. It is not an attack on terror. It is an attack on the citizens of New York.

The very presence of this law would frighten and intimidate innocent and lawful Americans who are trying to defend their homes and offices from the EPA's lies.

Note that the purported purpose of this bill is to register monitors aimed at detecting terrorist bombs that have not gone off. But the bill exempts any terrorist bomb that could possibly have already detonated. Now, it is in the nature of terrorists not to tell us exactly when their weapons detonate. So any bomb that could be detected prior to detonation is a bomb that could possibly have already gone off. Once again, the exemption swallows the rule. If you're covered by this bill, you're not covered by this bill. In short, this bill regulates absolutely nothing. But it is not intended to regulate anything. It is intended to freeze and deter independent scientific investigation, so that the government can no longer be embarrassed by facts collected by independent citizens.

When did the police become expert in defining which scientific tests are warranted? When did the police become expert in deciding who can be trusted to do testing without causing "unwarranted anxiety"? Isn't it self-evident that people who have blown the whistle in the past will be prevented from testing in the future? Isn't it self-evident that the only people the police will allow to test are people the police believe will rubber-stamp whatever environmental information is then being peddled by the Mayor? Isn't it obvious that this proposed law will put the fear of God into every environmental scientist and union steward and community leader, don't make trouble now or the police will forbid you the right to do air testing later on? The sole purpose of this vicious legislation is to create a government monopoly over environmental science. This bill removes every chance the community has to doublecheck the lies fed them by the government.

It is obvious why we in New York were chosen to be the first victims of this vile and unAmerican censorship. The EPA lied to us about the 9/11 contamination, and we in New York proved they were lying. The response of the government is to take away our air monitors, so that next time no one will be able to spot that the EPA is wearing no clothes. We in New York have made trouble for the EPA, so our civil liberties must be the first to go. If we fail to resist this legislation, however, have no doubt that its evil provisions will be imposed throughout our nation.

This country is founded on the eternal and self-evident premise that every human being has the right to life, liberty, and the pursuit of happiness – that he has the right to stand on his own two feet and look around him, using whatever instruments *he* decides to use, to figure out if, in *his* opinion, he is in danger.

Then, he has the right to speak about his findings, and attempt to persuade his neighbors that he is right. What good is the right of free speech, if Mayor Bloomberg can stop us from finding out facts to speak about? What good is the right to assemble and petition our government and vote, if our government can stop us from finding out what's going on?

An American doesn't need to ask the police for a permit to ask questions and investigate environmental safety. The moment you have to ask for a permit to do such things, you are not living in America, you are living in a police state.

Under our American system of freedom, science is a civil right, and truth does not require a government permit to be true.

It all comes down to whom you trust. Are you an American, and do you trust the people to govern themselves, to investigate and discuss matters without censorship by the police? Or have you lost all faith in American ideals, and feel that people are better off knowing only what the police believe they should know?

George Bush refused to acknowledge global warming, but he did not forbid people from owning thermometers. What's next? If people are worrying too much about running late to appointments, will the City of New York forbid us to own a watch? If the newspapers are stressing us out, will the government forbid us to put on our eyeglasses?

After Vermont outlawed slavery, a white Virginian bought a slave in Virginia and made the mistake of bring his slave to Vermont. The slave was declared to be free. The slaveowner's lawyer said to the court, "I showed you the Virginia bill of sale. Is there any document I could show you that would convince this court that my client owns his slave?" The judge answered, "Of course, there is such a document. Show me the bill of sale from Almighty God in which God conveyed to your client the right to own a human being."

And so I say to you today:

Show me the bill of sale by which Almighty God has conveyed our innocent schoolchildren to Mayor Bloomberg, so that he can continue to poison and maim them.

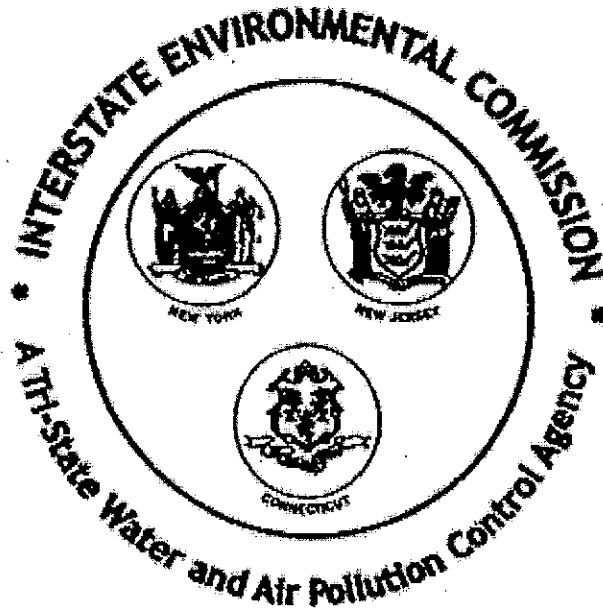
Show me the bill of sale by which Almighty God has conveyed our officeworkers to Mayor Bloomberg, so that he can continue to poison and maim them.

Show me the bill of sale by which Almighty God has conveyed our homeowners to Mayor Bloomberg, so that he can continue to poison and maim them.

And if you cannot show me that bill of sale, then what right does Mayor Bloomberg have to treat us as slaves who cannot test the world around us unless it's all right with Mayor Bloomberg?

# INTERSTATE ENVIRONMENTAL COMMISSION

*A TRI-STATE WATER AND AIR POLLUTION CONTROL AGENCY*



TESTIMONY OF  
ROSS BRADY  
COUNSEL  
OF THE  
INTERSTATE ENVIRONMENTAL COMMISSION

BEFORE THE  
PUBLIC SAFETY COMMITTEE  
OF THE  
COUNCIL OF THE CITY OF NEW YORK

NEW YORK, NEW YORK

APRIL 29, 2008

Good morning Chairman Vallone and Council Members. I am Ross Brady, Counsel of the Interstate Environmental Commission — the IEC. I am presenting today's testimony on behalf of the Commission and will answer your questions to the best of my ability; however, I may not be able to answer all your technical questions but I will get back to you with those answers after I consult with our Executive Director and Chief Engineer and the staff.

It is a pleasure to re-introduce the Interstate Environmental Commission and to discuss matters of public safety as well as environmental significance. The IEC welcomes such discussion on issues of environmental protection and safety.

For the record, we're the interstate water pollution control agency for this tri-state region with both regulatory and enforcement powers. Our overall responsibility is to look beyond local and state boundaries and take a regional approach to all matters affecting the environment — and especially the water quality in this tri-state area.

The Interstate Environmental Commission is a joint agency of the States of New York, New Jersey, and Connecticut. Originally named the Interstate Sanitation Commission until our name change in 2000, the IEC was established in 1936 under a Compact between New York and New Jersey and approved by Congress. The State of Connecticut joined the Commission in 1941. Our District of jurisdiction includes the waters in and surrounding all five boroughs of New York City.

But for the IEC, there would be no tri-state authority: to take a regional view of environmental matters, to have the ability to cross state borders, and to pass and enforce regulations that not only consider intrastate issues but also take account of what is best for the region.



While many of you are familiar with the Interstate Environmental Commission and its activities through our appearances before various bodies over the years, rather than taking time to more fully describe the IEC, I felt that it would be appropriate to attach to the end of my testimony a one-page, double-sided informational sheet for your information.

The IEC commends the City Council's efforts to protect not only New York City and its inhabitants, but also those of the tri-state region. The IEC, however, has serious concerns regarding proposed changes to the New York City code encompassed in Intro 650 in its present form.

We thank the Police Department and legislative drafters for their cooperation in discussing issues of concern regarding proposed Intro 650. Public meetings and re-drafts of legislation have occurred since the legislation was originally proposed. Parties have been working toward understanding the parameters of public safety and environmental concern, as well as what the law would cover and how it would work in terms of practice and enforcement.

While we believe our Commission and its personnel are exempt from the proposed legislation on principles of preemption due to our State and federal imprimatur, we believe the language of the legislation would benefit from specificity and consistency with respect to such exemption.

IEC objections to Intro 650 and the detriment to our environmental work were discussed in our submission to the Chair dated April 10, 2008. The submission includes, without limitation, objections concerning jurisdiction, burden on our Commission and its mandate, and the detrimental effect of enacting the legislation. The April 10, 2008, submission is incorporated by reference and attached to this testimony.

As the interstate enforcement agency in this tri-state region, the IEC opposes Intro 650 as an infringement of our authority and a detriment to our mission and operations. The issuance of permits and standards for use of detectors would impermissibly infringe on established standards of the IEC and, with all due respect, place our operations at the disposal and timetable of the process established by the proposed permit process.

Susan Petito, Assistant New York Police Department Commissioner, at an April 10, 2008, public meeting, confirmed her belief that the IEC, as an "entity," would be exempt from the legislation within the meaning of Section 10-809. However, there is no complementary listing under Section 10-802 permit exemptions. For the purpose of consistency and clarity, as well as to avoid jurisdictional issues that may arise, Intro 650 would benefit from amendment in both Section 10-802(b) and 10-809 to exclude federal, state and interstate entities from the scope of the bill. These exemptions should be in both sections to insure consistency and clarity, as well as complete exemption from this law.

Absent withdrawal of this legislation, we are strongly recommending that it be amended to exempt from the scope of the law all federal, state and interstate agencies, commissions or entities, their personnel, and any person employed or utilized by such entities; and to make the law inapplicable to any equipment possessed or deployed by such entities, their employees, agents, trainees, or interns.

I thank you and welcome your questions.

# INTERSTATE ENVIRONMENTAL COMMISSION

A TRI-STATE WATER AND AIR POLLUTION CONTROL AGENCY

311 WEST 43rd STREET, SUITE 201 • NEW YORK, NY 10036

PHONE: 212-582-0380 FAX: (212) 581-5719 WEB SITE: www.iec-nynjct.org

## COMMISSIONERS

### CONNECTICUT

John Atkin

Chairman

Richard Blumenthal

J. Robert Galvin, M.D., M.P.H.

Regina McCarthy

Patricia M. P. Sesto

### NEW JERSEY

Frank A. Pecci

Vice Chair

Heather Howard, J.D.

Lisa P. Jackson

John M. Scagnelli

### NEW YORK

Judith L. Baron

Vice Chair

Gerard J. Kassar

Treasurer

Donna B. Gerstle

Alexander B. "Pete" Grannis

Rose Trentman

Executive Director

Chief Engineer

Howard Golub

April 10, 2008

Hon. Peter Vallone, Jr.  
Chair, Public Safety Committee  
New York City Council  
City Hall  
New York, New York

Urgent: Via UPS Overnight

**Re: Intro 650 – "A Local Law to amend the administrative code of the city of New York, in relation to biological, chemical and radiological detectors."**

Dear Chairman Vallone:

The Interstate Environmental Commission (IEC) commends the City Council's efforts to protect not only New York City and its inhabitants, but also those of the tri-state region. The IEC, however, has serious concerns regarding proposed changes to the New York City code encompassed in Intro. 650 and 650B. Broadly worded and far-reaching, it is questionable, at best, whether the proposed legislation would achieve its objective, and in the process it unreasonably burdens entities protecting our air and water. It will significantly adversely impact the work of our Commission and other environmental protection, regulatory and enforcement entities and it may be inconsistent with State and Federal regulations. Arguably, the IEC as an interstate compact commission is not subject to this proposed legislation or to New York Police Department oversight of its operations and its environmental monitoring. However, for the purposes of clarity, and consistency in the law, we strongly urge that the legislation as written be withdrawn. Alternatively, the IEC, its personnel at all levels, as well as all equipment utilized should be specifically exempted from the application of this legislation. Wording for such an exemption may be stated in Sections 10-802b and 10-809.<sup>1</sup>

***Withdrawal of the legislation is the advisable option.***

The IEC is an environmental regulatory and enforcement agency empowered by the States of New York, New Jersey and Connecticut and its

<sup>1</sup> A possible revision or addition to Sections 10-802 b and 10-809 may read: "this section shall not apply to the Interstate Environmental Commission or any person employed or utilized by the Interstate Environmental Commission, and shall not apply to any equipment possessed or deployed by the commission, its employees, agents, trainees or interns.

compact has Congressional consent. Our District of jurisdiction includes the waters in and surrounding all five boroughs of New York City.

As the authority in the Interstate Environmental District, the IEC opposes Intro 650 as an infringement of our authority and detriment to our mission and operations. The issuance of permits and standards for use of detectors would impermissibly infringe on established standards of the IEC and, with all due respect, place our operations at the disposal and timetable of the process established by the proposed permit process.

Furthermore, Intro 650 proposes to permit the Police Department to decide what persons and what equipment may be possessed and deployed by our commission and employees. We respectfully submit that the Police Department has neither the jurisdiction nor the expertise to make those decisions with respect to the IEC. The burden that the proposed legislation places on the IEC is heavy and the legislative reach is too broad. The IEC must not be subject to a permit scheme whereby a time and manpower burden are imposed by a permit process in order to perform work authorized by the member States. IEC employees are trained professionals who use instruments and equipment to test and monitor air and water quality and who must take samples. Our experts find pollutants, toxins, and other materials that pose a threat to humans, animals and marine life. The application of the proposed law would jeopardize our ability to independently carry out our mandates, which are designed to protect our environment and our citizens.

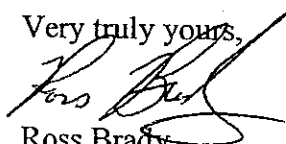
The legislation only exempts listed equipment possessed or deployed by certain City agencies already authorized by the Police Department to possess or deploy such without a permit, but does not specifically exempt the IEC, which never has needed or should be required to apply for a permit. The proposed legislation should be withdrawn or amended to specifically exclude the IEC workers, interns, trainees and any equipment used thereby.

The IEC shares the goals of protecting the environment as well as public health and public safety with the Mayor, City Council and the Police Department. Intro 650 and its revised version 650B as it applies to the IEC would be detrimental to achieving these objectives.

The IEC respectfully requests that the present proposal be withdrawn. The IEC would also welcome further discussion on issues of environmental protection and safety.

Thank you for your consideration.

Very truly yours,

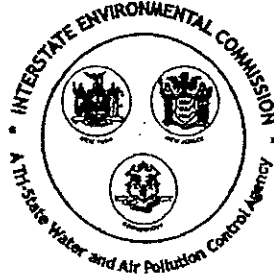


Ross Brady  
Counsel

cc: Hon. Christine C. Quinn

# INTERSTATE ENVIRONMENTAL COMMISSION

*A TRI-STATE WATER AND AIR POLLUTION CONTROL AGENCY*



In October 2000, the name of this agency was officially changed from the *Interstate Sanitation Commission (ISC)* to the *Interstate Environmental Commission (IEC)*. The name change not only brought the Commission into the 21st Century, it more accurately reflects the nature of the Commission's mandates, mission and responsibilities that embrace a broad range of programs and activities.

The Interstate Environmental Commission is a joint agency of the States of New York, New Jersey, and Connecticut. The IEC was established in 1936 under a Compact between New York and New Jersey and approved by Congress. The State of Connecticut joined the Commission in 1941.

The mandates of the Commission are governed by the Tri-State Compact, Statutes, and the IEC's Water Quality Regulations. IEC's responsibilities and programs include activities in areas such as air pollution, resource recovery facilities and toxics; however, *the IEC's continuing emphasis is on water quality, an area in which the Commission is a regulatory and enforcement agency.*

IEC's area of jurisdiction runs west from Port Jefferson and New Haven on Long Island Sound, from Bear Mountain on the Hudson River down to Sandy Hook, New Jersey (including Upper and Lower New York Bays, Newark Bay, Arthur Kill and Kill Van Kull), the Atlantic Ocean out to Fire Island Inlet on the southern shore of Long Island, and the waters abutting all five boroughs of New York City.

The IEC is a goal-oriented agency with a long list of solid accomplishments. The IEC is in a unique position to take the lead within the region in implementing the Commission's goals because it is an interstate agency. As such, the IEC views the region as a whole and can cross state boundaries in an impartial and unbiased manner.

The IEC is unique in that it is an interstate environmental agency that does not hesitate to use its enforcement and regulatory powers — whenever necessary, on both an interstate and intrastate basis — to improve the quality of life for all citizens throughout this environmentally fragile region.

The Commission is a multi-faceted agency whose programs and concerns reach far beyond its environmental mandates. IEC plays a significant role in adding jobs and dollars to the economy and by providing enhanced educational opportunities for students at all levels of study.

## *Mission and Goals of the IEC*

The mission of the IEC is to protect and enhance environmental quality through cooperation, regulation, coordination, and mutual dialogue between government and citizens in the tri-state region.

The goals of the IEC are to abate and control water pollution in the Interstate Environmental District and engage in the coordination of interstate air pollution problems and issues in order to achieve a healthy environment and a productive ecosystem. The IEC implements these goals by: coordinating interstate and region-wide programs and enforcing the IEC's water quality regulations; providing technical assistance and

support to its member States and to the US Environmental Protection Agency (EPA); taking the lead on region-wide issues; enhancing public and legislative awareness; and disseminating information.

In order to achieve its mission and its goals, the IEC has programs that lead to opening and/or keeping open waters for swimming, shellfishing and fishing. The IEC is proactive in enforcement of its Water Quality Regulations by sampling, laboratory analyses, research, and legal activities, and coordination of these with the IEC's member states and the United States Environmental Protection Agency. The Commission is an active participant in regional planning efforts including implementation of the Comprehensive Conservation and Management Plans (CCMPs) for the New York-New Jersey Harbor Estuary Program (NY-NJ HEP) and the Long Island Sound Study (LISS). The IEC has a program of public education and public outreach with citizen groups, schools, legislators and governmental agencies. The IEC is a leader on region-wide environmental issues.

### *IEC's Accomplishments Benefitting the NY-NJ-CT Tri-State Region*

The IEC's long list of tangible accomplishments providing benefits throughout the region includes:

- more stringent permit requirements to control and prevent pollutants from emptying into tri-state (NY-NJ-CT) waterways
- vastly improved operational procedures at the Fresh Kills Landfill (in Staten Island, NY) to prevent garbage from washing up along area beaches and shorelines
- response to citizens' pollution complaints
- active participation in the New York-New Jersey Harbor Estuary Program (NY-NJ HEP) and the Long Island Sound Study (LISS)
- adoption of year-round disinfection requirements for all discharges into this District's waterways which has led to lower bacterial contamination and, thus far, has resulted in thousands of acres of shellfishing waters now being opened year-round — and not just during warm weather
- the 1997 adoption of a regulation requiring advance notification to the IEC of all planned sewage bypasses
- spearheading, coordinating and partially funded a multi-state, multi-agency effort that resulted in regional notification and tracking procedures for unplanned sewage bypasses to ensure proper action for the protection of bathers and shellfisheries

Just as pollution knows no state boundaries, the Commission, as an interstate agency, crosses state lines. IEC's view is and has always been to look at the region as a whole — that is, it must be treated as a single environmental entity.

### *To Sum It Up . . .*

*In every essential area of activity — sampling, monitoring, coordination, regulation and enforcement — the IEC has carried the ball and saved its member states literally millions of dollars over the past decade alone. Clearly, year in and year out, the IEC's track record of accomplishments benefitting New York, New Jersey and Connecticut speaks for itself. IEC continues to prove its worth as a guardian of the environment — maintaining the integrity of our waterways and improving air quality on behalf of all citizens throughout the NY-NJ-CT tri-state region.*

April 21, 2008

Hon. Christine Quinn  
Speaker  
New York City Council  
City Hall  
New York, New York 10007

**Re: Letter in Opposition to Int. 650-A, a Local Law to amend the administrative code of the city of New York, in relation to biological, chemical and radiological detectors.**

Dear Speaker Quinn:

**We write to voice our collective opposition to Int. 650-A, and to urge you to oppose its passage in the New York City Council.** While improved over earlier drafts, Int. 650-A is still fundamentally flawed legislation that grants sweeping, overly-broad new powers to the New York City Police Department (“NYPD”) to regulate environmental testing. Despite assurances from officials at NYPD and the Office of the Mayor that Int. 650-A will protect public safety, we believe the bill, as written, would ultimately do more harm than good by hindering access to critical public health information – leaving New Yorkers less safe.

If enacted into law, Int. 650-A would hinder the flow of information regarding serious airborne pollutants and other environmental conditions; precipitate tension and conflict between well-meaning members of the public seeking to conduct environmental monitoring and police officers charged with enforcing a law whose proscriptions are poorly defined and framed in terms that are overly broad; unreasonably burden protected First Amendment activity; and establish a licensing regime that violates traditional principles of due process. A much more narrowly-tailored statutory framework would be needed to appropriately satisfy NYPD’s expressed interests without hindering the public’s interest in timely access to vital public health data.

Potential incidents of exposure to chemical, biological, radiological or nuclear (“CBRN”) agents in public places or workplaces will almost always warrant a rapid public health response, regardless of whether they warrant police investigation for criminal activity. Yet, Int. 650-A would put NYPD in a position to prevent private parties from using analytic methods of their choosing or from calibrating monitoring devices to detect CBRN contamination levels they believe indicate a reason for concern.

Int. 650-A charges NYPD with setting the health-based action levels for police response to affected or potentially affected populations. This is an unworkable and unwarranted intrusion by NYPD into a field of public health that would put the public at

risk, since standards of safe human exposure are often unknown in the scientific community or, at best, subject to substantial uncertainty.

Critically, implementation of Int. 650-A would also require police officers in the field to determine, on-the-spot, the purpose for which a detector is being used, as the applicability of key exemptions from the bill's requirements hinges on the intent of the user of a given detector. This creates the real possibility that NYPD officers -- who would be empowered to seize unlicensed detector equipment -- would apply the law over-broadly, to ordinary environmental and public health monitoring activities unrelated to CBRN weapons detection. Int. 650-A's grant of new powers to NYPD to regulate environmental monitoring devices would increase the likelihood of these public interactions with police. Each interaction carries with it the potential for abuse of discretion or the unintentional misapplication of the law by an officer leading to criminal prosecution. Either scenario could thwart the objective of individuals and organizations employing environmental monitoring devices, which is to test for and disseminate information about harmful environmental contaminants in a timely matter. We emphasize that this is a risk even to those expressly exempted by the bill. Moreover, the threat alone of such encounters with police, widespread in public perception, will be sufficient to have a profound chilling effect on monitoring activities, especially for those with no institutional affiliation.

In addition, the burdensome nature of both permitting requirements (*e.g.*, application process, character fitness test, advisory opinions, etc.) and penalties that Int. 650-A would now associate with mere information gathering and dissemination would also have a chilling effect on environmental monitoring. Enactment of Int. 650-A likely would cause an overall reduction in the number of CBRN detectors being deployed, and thus fewer opportunities to detect CBRN agents in either weaponized or non-weaponized form. And, since NYPD does not possess the technical expertise or capacity to identify reliable CBRN detectors, it is likely that few detection devices will be identified as "reliable," thereby further reducing the numbers of detection devices that would otherwise be deployed. The end result would surely leave the city less safe, not more.

The importance of independent environmental monitoring is undeniable. The public would never have learned of the misleading nature of the information disseminated post-September 11 by federal, state and local agencies without the independent monitoring that revealed dangerously high levels of contaminants present in the air in lower Manhattan. Yet, if such an emergency circumstance were to arise again, Int. 650-A would grant the Police Commissioner unilateral authority to direct the "surrender [of] possession" or "discontinu[ance] [of] deployment" of a monitoring device. Under such circumstances the probability of misapplication of the law by officers on the street -- *i.e.*, to seize detectors from persons conducting environmental monitoring that is actually exempt from Int. 650-A -- would be greatly heightened. We are gravely concerned that information the public needs to make informed decisions would be drastically limited.



The risk to important public interests posed by this unprecedented legislation begs serious consideration by you and your Council colleagues. **Again, we urge you to use the powers of your office to oppose Int. 650-A.**

We would be happy to meet with you about this matter at your convenience, and we would gladly work with the Council to create a new, more workable framework to address NYPD's expressed concerns.

Sincerely,

125 Cedar Street Residents  
9/11 Environmental Action  
Actors' Equity Association  
Asian American Legal Defense Fund  
American Littoral Society, N.E. Chapter  
American Lung Association of the City of New York  
Asthma Free School Zones (Real World Foundation)  
Battery Park Emergency Response Team  
Chinese Progressive Society  
Communications Workers of American, District 1 and Local 1180  
Concerned Stuyvesant Community  
District Council 37, AFSCME  
Environmental Defense Fund  
Environmental Toxicology Laboratory  
Friends of Brook Park  
Healthy Schools Network  
IATSE, Local 1  
Institute for Health and the Environment, University at Albany  
Long Island Soundkeeper  
Manhattan Community Board #6  
Maui Peace Action  
Natural Resources Defense Council  
Natural Resources Protective Association  
National Lawyers Guild, Environmental Justice Committee  
NYC Group of the Sierra Club  
New York City Central Labor Council  
New York Civil Liberties Union  
New York Committee For Occupational Safety and Health  
New York Law and Environmental Justice Project  
New York Lawyers for the Public Interest  
New York/New Jersey Baykeeper, Inc  
New York State Laborers International Union  
NYS Public Employees Federation  
Organization of Staff Analysts  
Professional Staff Congress, NYSUT, AFT  
Public Health Association of New York City  
Riverkeeper, Inc  
RWDSU/UFCW  
Staten Island Tax Payers' Association, Inc  
Stuy Health

Sustainable South Bronx  
The Environmental Health Clinic  
The Gaia Institute  
Transport Workers Union, Local 100  
Tribeca Community Emergency Response Team  
United Auto Workers, Region 9A  
United Church of Christ  
West Harlem Environmental Action  
Working Families Party  
World Trade Center Community Labor Coalition  
World Trade Center Environmental Organization  
World Trade Center Residents Coalition

Cc: Members of the New York City Council



Natural Resources Defense Council  
40 West 20<sup>th</sup> Street  
New York, NY 10011  
Tel: (212) 727-2700  
Fax: (212) 727-1773

**TESTIMONY IN OPPOSITION TO INT. 650**

**SUBMITTED BY LAWRENCE M. LEVINE OF THE  
NATURAL RESOURCES DEFENSE COUNCIL (NRDC)**

**BEFORE THE COMMITTEE ON PUBLIC SAFETY  
OF THE COUNCIL OF THE CITY OF NEW YORK**

**APRIL 29, 2008**

Thank you for the opportunity to testify today on behalf of NRDC and our over 20,000 New York City members. My name is Larry Levine and I am an attorney in NRDC's New York office. In addition to this testimony, I call the Committee's attention to the letter to Council Speaker Quinn, dated today, in which NRDC and well over 40 other signatory organizations – representing environmental, labor, public health, civil liberties, and other interests – state their opposition to Int. 650. For all of the reasons set forth in that letter, we ask this committee to withdraw Int. 650 from further consideration.

I wish to acknowledge the willingness of NYPD to meet and discuss with us and many other organizations our concerns about Int. 650. We likewise acknowledge the efforts of Committee Chair Vallone to obtain certain language changes to the bill. However, while NYPD has made a number of revisions in response to criticism from many quarters, the version of the bill under consideration today, Int. 650-A, remains unacceptable.

Underlying all of our objections to the bill is the concern that, good intentions notwithstanding, it will ultimately make New Yorkers less safe rather than more, and will curtail the collection and availability of independent environmental monitoring data. We fully recognize that revisions made to the bill since its initial introduction would, as a formal legal matter, put environmental and public health monitoring activities beyond reach of the law's permitting, reporting, and other requirements. However, while individuals or organizations wishing to conduct such monitoring, without prior approval from NYPD, could be reasonably confident that they are not in violation of the law, the same cannot be said of their actual freedom to engage in monitoring without undue interference from NYPD – including the risk of seizure of their monitoring devices and a summons requiring them to answer to criminal charges.

This problem arises from the inability of virtually a NYPD officer – no matter how well-trained – to: (1) distinguish between a device capable of detecting a possible chemical, biological, radiological, or nuclear (“CBRN”) attack and a device designed to sample air, water, or soil for environmental contamination; and (2) determine, in an encounter with an individual using such an unidentified device, whether the individual is using it for the purpose of detecting a possible CBRN attack or for purposes of environmental or occupational health monitoring. In other words, officers will be unable to distinguish the devices and activities that are covered by the law from those that are excluded.

Environmental detectors are unfamiliar devices to most people without a technical background, including NYPD officers, as highlighted by incidents related to NYPD over the course of several meetings on the bill in which we have participated. Moreover, a given device may serve multiple purposes and have multiple capabilities, and could therefore be used for both CBRN weapons detection and for other unrelated purposes. For example, organophosphate

insecticides are very similar chemically to sarin and other nerve warfare agents; as a result, the same equipment that might be used to test for residues of insecticides in public housing, for example, might also be used to detect a nerve gas attack. Likewise, chlorine gas is both a potential chemical terrorism agent and a pollutant that can be released from refineries, sewage treatment plants, and water treatment plants; therefore, a community group monitoring the air downwind from one of these facilities may use the same device as would be used to detect a chemical weapons attack with chlorine gas.

Further, because the applicability of Int. 650-A hinges on the intent of the user of the monitoring device (*see* § 10-809(a)(5)), an officer who suspects that a potentially covered device is in use, and determines that the user lacks a permit, will have to make a judgment about the person's subjective intent in using the device. Is the person to be trusted if he or she states that the device is being used solely for routine environmental monitoring? Will officers be likely, when acting within the realm of "anti-terrorism" laws, to "err on the side of caution" when evaluating such statements, by issuing a citation and seizing the detector, letting the courts or others sort out the situation later? And, especially, when the Commissioner directs NYPD officers to seize detectors covered by the law as a so-called precautionary measure (*see* § 10-807(b)(9)) – *i.e.*, under "emergency" circumstances, as proposed by the draft regulations NYPD has circulated with the bill (*see* proposed 38 RCNY § 20-11) – will officers be even more likely to be over-inclusive, rather than under-inclusive, in their on-the-spot judgments about whether a device is covered by Int. 650, and therefore lawfully subject to seizure?

These are very real concerns for individuals and organizations who presently conduct environmental monitoring in the city in support of efforts to protect the public health of their communities and their fellow New Yorkers. Any time such activities are halted by well-meaning

but mistaken enforcement efforts by NYPD, not only would the individual conducting the monitoring be unjustly caught-up in the criminal justice system, but the opportunity to take valuable environmental sampling at that place and time would be lost, as would the public benefit of the collection and dissemination of information about local environmental health risks. Moreover, the likelihood of this scenario will, itself, have a “chilling effect” on those who wish to undertake environmental sampling, as the risk of being subjected to police interference, criminal charges, and seizure of expensive monitoring devices will act as a deterrent to such lawful, indeed laudable, activities.

In response to these concerns, NYPD revised Int. 650 to limit enforcement actions to issuance of an “appearance ticket,” rather than arrest (§ 10-808(b)). But NYPD has refused – for no defensible reason we have been able to discern, after hours of conversation with representatives of NYPD and the Mayor’s office – to include language barring the seizure of the monitoring device upon issuance of the ticket. Also, despite the urging of a wide array of organizations, NYPD has refused to include a bright-line rule exempting all “handheld” and “portable” devices from coverage by Int. 650 – which would do much to decrease the chances of misapplication of the law by officers on the street. In fact, the exemption language in the current version of the bill is actually narrower than NYPD had previously proposed; the category of “portable” devices is now left out entirely from the exemptions (§ 10-809(a)(4)). That same provision also identifies only hand-held chemical or radiological detectors – but not handheld biological detectors – as subject to the exemption.

Finally, we invite the Committee to question, fundamentally, whether any permitting regime for CBRN detection devices is necessary at all. There is no credible threat of false alarms from un-permitted CBRN detectors causing panic in the City, as NYPD offered as its initial

justification for the bill. (In any event, building owners considering installing a CBRN weapons detector would surely be responsive to advice from NYPD to avoid certain detectors known to be unreliable, and NYPD has offered no reason why existing consumer protection laws are not a sufficient deterrent to hypothetical scams that falsely market alarms as CBRN weapons detectors.) Nor is pre-authorization of the possession and use of CBRN detectors necessary to meet NYPD's other asserted purposes, including the collection of information about the extent of the sensor network in place in the city, prompt notification to NYPD of alarms, and coordination of emergency response actions.

For these and all of the reasons stated in the letter we have joined over 40 other organizations in sending to Speaker Quinn today, we oppose Int. 650-A and urge this Committee to withdraw it from further consideration.

**JUDICIARY COMMITTEE**

SUBCOMMITTEES:

**CHAIRMAN**

CONSTITUTION, CIVIL RIGHTS AND CIVIL LIBERTIES  
CRIME, TERRORISM AND HOMELAND SECURITY

**TRANSPORTATION AND  
INFRASTRUCTURE COMMITTEE**

SUBCOMMITTEES:

HIGHWAYS AND TRANSIT  
RAILROADS, PIPELINES AND HAZARDOUS MATERIALS

ASSISTANT WHIP



**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515

**JERROLD NADLER**

8TH DISTRICT, New York

REPLY TO:

WASHINGTON OFFICE:  
2334 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
(202) 225-5635

DISTRICT OFFICE:  
201 VARICK STREET  
SUITE 609  
NEW YORK, NY 10014  
(212) 367-7350

DISTRICT OFFICE:  
445 NEPTUNE AVENUE  
BROOKLYN, NY 11224  
(718) 373-3198

Web: <http://www.house.gov/nadler>

**TESTIMONY OF U.S. REPRESENTATIVE JERROLD NADLER (D-NY 08)**

**Before the New York City Council  
Committee on Public Safety  
Regarding Intro. 650- Requiring Permits for Biological,  
Chemical, Radiological and Atmospheric Detectors**

**April 29, 2008**

Good morning. Thank you Chairman Vallone, Jr. and members of the Public Safety Committee for this opportunity to testify before you today on this important issue. Intro. 650 would require the New York City Police Department (NYPD) to issue permits for all biological, chemical, radiological and atmospheric testing devices. Despite numerous changes to the bill since its inception, it remains exceedingly broad and continues to infringe on individuals' rights. Therefore I call on the Council to reject Intro. 650.

As the Chairman of the Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties, I fight every day to ensure that the rights of Americans are not infringed upon by government actors. Last year, I held the first comprehensive House hearing on the actions of the Environmental Protection Agency (EPA) and other federal agencies that may have harmed the health of individuals living and working in the vicinity of the World Trade Center on or after September 11, 2001. At that hearing I examined whether the Federal Government, by its actions, violated the substantive due process rights of first responders, local residents, students, workers, and others. We looked at what was known about the quality of the air versus what was communicated to the public, and whether the Federal Government properly communicated the necessary precautions given the environmental impacts from the collapse of the towers. This hearing was only possible because of the countless advocacy groups that conducted independent monitoring of the air (both indoors and out), and the dust. Had Intro. 650 been the law at that time, the information that has been so crucial in establishing the malfeasance of the Federal Government in its response to the health impacts of 9/11 would have been nonexistent.

The collapse of the World Trade Center released many tons of toxic dust, including asbestos, heavy metals, glass fibers, mercury, benzene and concrete dust into the air. This poisonous dust settled into indoor spaces as well, including furniture, curtains, carpets, HVAC systems and ductwork in Manhattan, Brooklyn and parts of Queens and New Jersey. The fire that burned on the pile for weeks following the initial attacks released a toxic combination of smoke and soot into the air, which has been described as being worse than the Kuwaiti oil fires and as caustic as drain cleaner. As a result of independent environmental sampling conducted by



Thomas A. Cahill, Eric J. Chatfield and John R. Kominsky, in addition to Emilcott Associates, Advanced Environmental Corporation and the United States Geological Survey there was sufficient data to contradict former EPA Administrator Christine Todd Whitman whom repeatedly assured New Yorkers that the air was "safe to breathe."

It was only because of the independent testing data that residents throughout the affected areas were able to take appropriate precautions. All too often residents waited until they received testing data showing that their apartments were contaminated before having their apartments properly cleaned using OSHA recommended procedures for asbestos removal. If not for the private tests, they have used the wet rag and mop approach advocated by New York City Department of Health and Mental Hygiene. Additionally, at Independence Plaza North (IPN), the tenants conducted a testing program when management wanted to replace windows. RJ Lee, environmental and testing firm, conducted sampling and determined the presence of WTC dust. Thus residents were empowered and knew to ask that precautions be taken during the window replacement. The effects of legislation such as Intro. 650 would have been devastating under these circumstances, preventing citizens from testing their homes to ensure that they are safe and clean.

When first introduced, Intro. 650 was opposed by many elected officials, advocates, unions and educational institutions at this committee's original hearing on January 8, 2008. Since that hearing, attempts have been made to modify the bill to everyone's satisfaction. Unfortunately the bill remains flawed and would continue to infringe on people's rights to protect themselves in the case of another environmental disaster. The NYPD has stated that this bill is prophylactic and is written in such a way as to respond to the changes in the market, however employing this strategy infringes on the rights of individuals, businesses and institutions. While I appreciate many of the substantive changes to Intro. 650 from its original version, I firmly believe that the core deficiencies of the bill have not been adequately addressed, including the unnecessary infringement on protected First Amendment activities and a licensing regime that violates the core principles of due process. Additionally, Intro. 650 proposes that NYPD be responsible for setting technical standards and alarm benchmarks for environmental monitoring devices, but the NYPD has no expertise, in this area. This is a serious flaw in this bill, and leaves many questions about how the NYPD would allow citizens to acquire these vital pieces of environmental testing equipment.

I recognize that the intention here is to establish a proactive response to potential terror threats, and I applaud the NYPD and the Mayor's office for their efforts. However, the scope of the bill as currently presented is far too broad and is far reaching in its infringements on civil liberties.

Let me be clear, there is nothing more fundamental to being an American than the assurance against unwarranted government interference in one's personal affairs, and the guarantee of due process under the law. Therefore, I call on Council to reject Intro. 650. Thank you for the opportunity to testify before you today.



THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

DEBORAH J. GLICK  
Assemblymember 66<sup>TH</sup> District  
New York County

CHAIR  
Higher Education Committee

COMMITTEES  
Environmental Conservation  
Rules  
Ways & Means

**Testimony of Assemblymember Deborah J. Glick  
Before the New York City Council Committee on Public Safety  
Regarding Intro. 650- Requiring Permits for Biological,  
Chemical, Radiological and Atmospheric Detectors  
April 29, 2008**

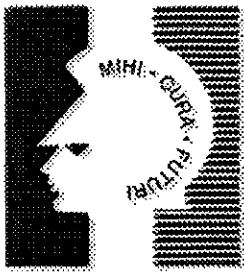
Thank you for this opportunity to testify before you today regarding Intro. 650, which would require New York Police Department (NYPD)-issued permits for biological, chemical, radiological and atmospheric testing devices. The first draft of this bill that the City Council considered was exceedingly broad and would have severely curbed individuals' rights in a number of situations. Most concerning was that the original bill would have hindered individuals' ability to independently monitor air quality in 9/11-like situations. I am glad that the City Council has listened to these concerns and has carved out a number of exceptions from the requirement. However, the bill remains highly problematic.

It does not seem appropriate for the NYPD to be the gatekeeper that decides the means and range of environmental testing that private individuals, businesses and organizations may undertake. First, NYPD lacks the appropriate expertise to regulate environmental monitoring devices. Intro. 650 would, in effect, make the NYPD the entity responsible for not just shaping police response to a terrorist attack, but also for shaping the standard for public health response.

Second, the NYPD has repeatedly shown a willingness to overstep its authority and infringe on individuals' civil rights. From arresting participants in organized and peaceful bike rides purportedly for lack of a permit, to arresting and holding for an extended period of time in unhealthy conditions a substantial number of peaceful demonstrators at the Republican National Convention, the NYPD's past use of its discretion and power does not instill confidence. Certainly, the City Council must not simply accept the premise that the NYPD needs the very broad powers provided in Intro. 650 in order to fight terrorism.

I would like to acknowledge that improvements have been made to this bill. In fact, the bill has been through a number of revisions and has no doubt been the focus of substantial staff time. However, it remains inappropriately and unnecessarily broad despite these improvements, indicating a fundamental flaw with the bill. That is, the bill was introduced as sweepingly broad legislation, then attempts were made to address the serious concerns it engendered by carving out exemptions. If the Council is indeed convinced that some permitting is necessary, it is a far wiser course to start anew by crafting a narrow bill that can be slightly broadened. We should err on the side of caution when granting government agencies new powers that have the great potential to interfere with civil rights.

While the people of New York City depend primarily on the NYPD to protect our safety, we depend primarily on the City Council to protect our civil rights. For this reason, I strongly urge you to reject this bill. If you feel that legislation is necessary in this area, then I hope you will work with the City to craft a narrow and sensible piece of legislation that addresses this issue and safeguards our rights.



# HUNTER COLLEGE

City University of New York  
School of Health Sciences  
425 East 25th Street, New York, NY 10010

Environmental and Occupational Health Sciences  
(212) 481-7569

April 29<sup>th</sup>, 2008

Public Safety Committee  
The City Council of New York, New York, NY 10170

Dear Council Members:

I am writing again today to express my opinion on the proposed regulation referred to as "Intro 650 Atmospheric Detectors". This is my second public testimony. Let me begin by thanking the council for accommodating the academic and research issues I first presented in my January 8<sup>th</sup> testimony. However, I still believe this measure to be unnecessarily restrictive and having no public safety value. My testimony today will focus on the intent of the proposed regulations. For more specific details affecting the profession, I direct the council to my January 8<sup>th</sup> testimony.

As background, I am a tenured Associate Professor and director of the Environmental and Occupational Health (EOHS) program at Hunter College and have over 30 years academic experience. Our program has been teaching and training professionals in the identification, evaluation and control of environment and industrial health hazards since 1978 and has graduated over 600 students. Both our degrees (MS and MPH) are accredited by the respective councils and the program has been funded by the National Institute for Occupational Safety and Health for over 30 years. Our alumni, conduct environmental health assessments and industrial hygiene surveys throughout the US and abroad. In short, my students are the experts that use the airborne chemical, biological and radiological detectors that are addressed in this proposed bill. On a personal note, I am a born and raised New Yorker having lived in Washington Heights, Astoria, Flushing and now at Tudor City in the Borough of Manhattan.

The importance and obligation of the council in protecting the citizens of New York City is historic and indisputable. Numerous initiatives generated by this body have made NYC one of the safest and healthiest places to live; be it crime, disease eradication or cleaner streets. When problems affecting the citizens of New York are discovered, the Council and its members act and act quickly. In this context, I ask the simple question, what triggered this regulation? What event or serious of events have brought the council to a point where we need such a far reaching law with many adverse implications. What problem are we trying to fix and at what cost?

Essentially and with all due respect, the "Legislative Purpose" of this proposed law is flawed. Neither the Council, the Mayor's Office nor any City Agency (DEP, FDNY not NYPD) have provided evidence that un-permitted "atmospheric detectors" are putting the citizens of New York City in jeopardy. We have not had "toxic gas" false alarms causing massive disturbance in New York City and it is my belief that this is unlikely in our current operating environment. Be aware that thousands of these detectors have been "deployed" and in operation for many years. Gas and radiological alarms go off daily and get investigated; yet no panic ensues because the profession installing and operating these detectors is cognizant of the data interpretation and operating limitations, meaning they know how to interpret the results and not jump to conclusions

Finally permitting these instruments will cause serious logistical problems in our profession; and I fear will actually limit air sampling. This adverse side effect would be a great hindrance to New York City and its citizens. Therefore I respectfully ask that this proposed regulation be rejected in its present form.

Sincerely:

Associate Professor of Environmental Health and  
Track Coordinator, EOHS MS and MPH degree programs

## FOR THE RECORD

### New York City Council Statement of Dr. Jonothan L. Logan regarding Intro 650

April 29<sup>th</sup> 2008

My name is Jonothan Logan. I am a cancer research scientist at a nonprofit medical research foundation on Long Island, where I head a lab pursuing basic research on the causes of leukemia. Following a PhD from Rockefeller University and postdoctoral training at Harvard, I have been a professional scientist for over 30 years.

I urge the Council to unequivocally reject Intro 650. By design, this bill would transform environmental monitoring into an activity regulated by the police department, with criminal penalties – including prison time -- for the possession and use of monitoring instruments not licensed by the police. Environmental monitoring devices are instruments of scientific inquiry and they are also the essential means for citizens to protect themselves from hazards that cannot be seen or smelled. No reasonable grounds have been presented for restricting or regulating such monitoring, and to my knowledge there is no precedent in the history of the United States for such intrusion into the Constitutional rights of citizens. The rationale that false alarms could induce panic, so that monitoring equipment must be allowed into the hands only of accredited users, fails the test of basic common sense.

Amendments and exemptions have been added to the original language of the bill to limit its impact on institutions with a direct interest in environmental monitoring such as universities. None of the amendments, however, alter the fact that an unprecedented legal structure would be imposed to limit environmental testing and research, empowering the police to seize instruments and arrest suspected violators. Some uses would not require prior approval, but for others an intentionality criterion would be applied. For example monitoring installations would not require prior approval if no part of their purpose was to warn of terrorist threats. But the purpose of a monitoring instrument cannot be read from the dials on its face, it is a matter of the user's intentions. In practice, police officers will be in no position to determine whether a given instrument is exempt or whether a given individual qualifies for exemption from the regulations. Confiscation and arrest would be the only practical means for enforcing such a law, since only detailed investigation could determine whether a given monitoring activity might include the intention of detecting possible terrorist activity.

No evidence has been put forward to warrant the need for such an extraordinary intrusion into the rights of citizens, for the creation of a new and profoundly troubling realm of regulation, or for the further burdening of the police department and the public budget. Intro 650 is destructive of vital public freedoms and would create a dangerous precedent for further intrusions. No amendment of its provisions or reworking of its language can remedy this because what is harmful in the bill is its fundamental intention. For all these reasons I urge the Council in the strongest terms to reject Intro 650.

Jonothan L. Logan

EPG Medical Research Foundation 111 East Shore Road Manhasset, NY 11030.  
epglabs@igc.org



New York State  
**PUBLIC EMPLOYEES  
FEDERATION** AFL-CIO

1168-70 Troy-Schenectady Road  
P.O. Box 12414  
Albany, NY 12212-2414

**FOR THE RECORD**

(518) 785-1900  
(800) 342-4306  
Fax (518) 785-1814

---

**Testimony before the Public Safety Committee of the NYC Council on 4-29-08**

My name is Paul Stein. I am the Health & Safety Committee Chair of Division 199 of the New York State Public Employees Federation, AFL-CIO, popularly known as PEF. I speak today on behalf of all 58,000 professional, scientific and technical employees of the State of New York in our union, thousands of whom work in New York City.

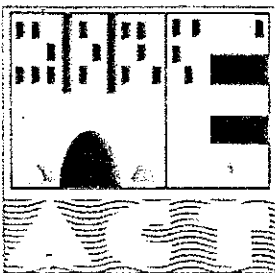
Like so many other unions and environmental, public health, civil liberties, and community organizations, we are strongly opposed to Intro 650 or any other piece of legislation that would restrict our right or the right of other New Yorkers to freely gather environmental data. By imposing a restrictive regulatory scheme on detection devices, Intro 650 will restrict the ability of individuals and organizations to collect information about their environment that is vital to protecting their health and their lives. The net result of such a bill will be less environmental testing, less independently-gathered environmental data, and more dependence on official government sources for environmental safety data. And we know that after 9/11, our government released incomplete and misleading environmental information and false assurances about the safety of the air around Ground Zero, leading to widespread injury and illness, and even death. This post 9/11 experience proved the value of independent environmental testing as a counterbalance to inaccurate and misleading official reports.

Any criminalization of environmental testing, regardless of how limited it may appear on paper, will have a chilling effect on all types of environmental testing, even if theoretically it is not subject to the restrictions of Intro 650. If police officers (who have no environmental expertise) have the power to stop anyone to determine their intent and whether or not their detector falls into one of the exceptions to the law for use without a permit, you can be sure that mistakes will be made, innocent people will be subject to the criminal law process, and detectors will be confiscated on the spot (as would be permitted under Intro 650).

PEF has one of the largest and most active health & safety departments of any union in New York State. Detecting chemical, biological, and, sometimes, radiological hazards on the job, and insuring that they are abated is an essential component of PEF's role in protecting our members. In order to do this we must transport detection devices throughout the City. We often deploy these detectors indoors and sometimes outdoors. Although Intro 650 as currently written would seem to allow us to carry on our work without a permit, we are fearful that our employees and consultants will be wrongfully stopped and wrongfully charged with a crime, and their detection devices (some of which cost thousands of dollars) will be wrongfully confiscated. Giving the Police Department regulatory power over environmental testing, a subject far from their area of expertise, is an invitation to confusion and error. This confusion and error will be compounded by the broad scope, vagueness, and subjective criteria that characterize Intro 650.

In conclusion, we urge the members of this committee to vote against Intro 650, because it will have a chilling effect on all environmental testing, even that which on paper appears not to be restricted. The net result of the passage of Intro 650 would be less environmental testing, less accurate environmental data, and, therefore, a less safe and less healthy New York City.

Thank you.



## WEST HARLEM ENVIRONMENTAL ACTION

### Founders

Vernice D. Miller-Travis  
Peggy M. Shepard  
Chuck Sutton

### Board of Directors

Chair  
Dennis Derryck

### Executive Director

Peggy M. Shepard

### Secretary

Roberto G. Lebron, Esq.

### Treasurer

Patricia A. Terry

### Members

Gregory J. Anderson  
Don Chen  
Eric A. Goldstein, Esq.  
The Rev. Earl Kooperkamp  
Stanley E. Michels  
Vernice D. Miller-Travis  
Phillip Morrow  
Norma Ramos, Esq.

### Testimony to the Public Safety Committee

**Re: Intro. 650 – A, A Local Law to amend the administrative code of the city of  
New York, in relation to biological, chemical and radiological detectors**

By Stephanie Tyree, Sustainable Policy Coordinator,

WE ACT for Environmental Justice (WE ACT).

New York, New York

April 29, 2008

Good morning, my name is Stephanie Tyree and I am the Sustainable Policy Coordinator for WE ACT for Environmental Justice (WE ACT). WE ACT is a non-profit, community-based environmental justice organization that has spent the past twenty years working to promote environmental health and secure environmental justice for the predominately African-American and Latino communities of Northern Manhattan. Through the use of community organizing, advocacy, and community-based research, WE ACT has worked to reduce the environmental burdens that have traditionally impacted Northern Manhattan communities disproportionately and sought to increase the environmental benefits available to these residents.

I am here today to express WE ACT's opposition to Intro. 650 and the police permitting of independent environmental monitoring. By requiring individuals and organizations to receive permits from the NYPD to possess and operate chemical and biological "detectors", Intro. 650 regulates and criminalizes independent environmental monitoring and potentially squelches the right of communities to know about the health and safety of their environments. Though it is laudable that the city is making efforts to increase public safety by responding to concerns about the use of chemical and biological agents as weapons, the language and scope of Intro. 650 is too broad to be effective in achieving this goal.

Intro. 650 is problematic legally both in the construction of the law and the imprecise definitions provided to guide the city police department in determining who and what falls under its regulation. Yet, for organizations such as WE ACT, and the communities that we represent, the most glaring problem with Intro. 650 is the restriction it places on the public's access to private, independent information on environmental quality and the potential it creates for harassment of individuals and organizations committed to protecting and enhancing the environment. By requiring monitors to apply for a city-issued permit, Intro. 650 creates an administrative hurdle that will hinder the flow of information about environmental conditions. It could also impede quick response to unexpected events that raise concerns about environmental health and quality and necessitate immediate evaluations of potential public health impacts.

Just in the past few years, the repeated failure of government environmental monitoring has shown the need for independent monitoring to ensure accurate and timely information is delivered to potentially vulnerable communities about toxic air, water and soil conditions. The failure of the Environmental Protection Agency (EPA) to adequately monitor the air quality of lower Manhattan after 9/11 is still fresh in the minds of many New Yorkers – particularly the thousands of rescue workers, residents and schoolchildren who were subjected to caustic dust and airborne toxic pollutants following agency assurances that the air was safe to breathe. Many of these people now suffer from new or worsened respiratory problems as a result of this exposure.<sup>1</sup> The agency's more recent actions in New Orleans following Hurricane Katrina clearly demonstrate that this was not a singular or even usual failure of the EPA to adequately protect the public. Just as in New York City, it was only independent monitoring of soil, air and water quality in New Orleans that demonstrated that the EPA tests were inadequate in measuring the environmental safety of the area. More disturbingly, the release of information on independent monitoring in both New York and New Orleans indicates that even where federal environmental monitoring finds unsafe environmental conditions, this information is withheld from or inadequately conveyed to the public.<sup>2</sup>

---

<sup>1</sup> See Herbert, Moline, et al. *The World Trade Center Disaster and the Health of Workers: Five-Year Assessment of a Unique Medical Screening Program*, 114 *Environmental Health Perspectives* 12, 1853-1858 (December 2006). Available at: [http://www.wtcexams.org/pdfs/ehp/200612\\_ehp\\_vol114\\_mmp.pdf](http://www.wtcexams.org/pdfs/ehp/200612_ehp_vol114_mmp.pdf).

<sup>2</sup> Sierra Club, *Harmful Legacy of Pollution and Deception at Ground Zero: How Post 9/11 Disaster Policy Endangers America*, 2-9 (September 2006). Available at <http://www.sierraclub.org/groundzero/report2006.pdf>.



The need to check governmental monitoring is present in all communities. Yet, for environmental justice communities (communities of color and low-income communities), independent environmental monitoring has historically served as the only review of local environmental quality and safety. In these communities, governmental testing has often only occurred *after* individuals have independently monitored the environment and demanded action from the government to respond to toxic threats. Though this type of monitoring is still possible under Intro. 650, it is considerably more difficult and may be restricted while applicants wait for their permits to be approved.

Additionally, by expanding police powers into the public health arena, Intro. 650 expands the potential for harassment or overbroad enforcement actions by the NYPD against individuals and communities. In our work monitoring the air quality of Northern Manhattan, WE ACT volunteers have been subject to harassment and unnecessary confiscation by the police of environmental monitoring equipment. Requiring monitors to be permitted will increase incidents of unnecessary search and seizure, hindering the work of public health and environmental justice organizations throughout the city.

The city police department states that Intro. 650 is necessary to respond to the problem of excessive false alarms and unwarranted public anxiety created by the deployment of chemical and biological detectors. This is a problem that has never occurred. Instead, independent detectors have repeatedly raised public anxiety about environmental conditions exactly when it was most necessary – in those times when government monitoring failed. Restricting the public’s right to know about the quality of their homes, communities and the broader environment in an effort to respond to a nonexistent problem is a waste of city resources.

For these reasons, WE ACT for Environmental Justice opposes Intro. 650 and calls on the Public Safety Commission to quash the bill.

Thank you,

\*\*\*\*\*

Stephanie Tyree  
Sustainable Policy Coordinator  
WE ACT for Environmental Justice. (WE ACT)  
271 West 125th Street, Suite 308  
New York NY 10027  
T: 212-961-1000 x.317  
F: 212-961-1015  
E: [stephanie@weact.org](mailto:stephanie@weact.org)  
W: [www.weact.org](http://www.weact.org)



Sierra Club  
New York City Group  
40 Exchange Place, suite 2010  
New York, NY 10005  
(646)405-9838  
www.nyc.sierraclub.org

**STATEMENT IN OPPOSITION OF INTRO 650-A – POLICE REGULATION OF  
BIOLOGICAL, CHEMICAL AND RADIOLOGICAL DETECTORS**

By the NYC Group of the Sierra Club  
Before the NYC City Council Committee on Public Safety  
Tuesday, April 29, 2008

Good morning. My name is Bob Muldoon, an Associate Regional Representative for the Sierra Club. I am reading a brief statement today on behalf of our New York City Group in opposition to Intro 650-A.

The Sierra Club is one of the oldest and largest grass roots environmental organizations in the country, with over 750,000 members nationwide and over 14,000 members in New York City. We are active on various national, regional and local environmental issues and we appreciate the opportunity to comment on the legislation before you today.

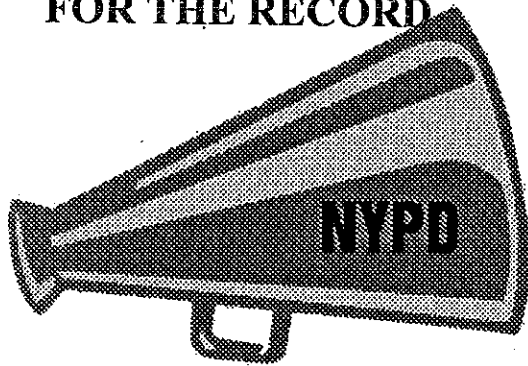
The public service slogan we hear again and again today is “See Something; Say Something.” This legislation seems to be saying the exact opposite: Don’t look and don’t say anything, unless we approve. It could bring about a real chilling effect by subjecting the public to the threat of enforcement actions, including seizure of monitoring equipment and criminal penalties, by police officers operating under poorly defined rules and procedures and a law that is overly broad. Although the original bill has been amended to exclude some groups and equipment, it still fails to appropriately restrict its scope by clearly defining the equipment and groups that would be subject to these police powers. Furthermore, it puts police officers in the business of regulating environmental detectors, something they just do not have the expertise to do. The bill also gives the police commissioner the right to confiscate equipment – including licensed equipment -- during periods of emergency. Moreover, Int. 650-A charges NYPD with setting the health-based action levels for police response. This is an impractical and unwarranted intrusion into the field of public health, since standards of safe human exposure can sometimes be subject to debate and uncertainty in the scientific community.

Independent environmental monitoring has been critical to the environmental movement and to public health. Without it, the official position on fall out from the 9/11/2001 disaster may never have been challenged and the dangerously high level of contaminants in our air following that disaster may not have been documented. Indeed, this has been the case in many important environmental campaigns across the country.

We urge you to abandon the approach layed out in this bill and work to more clearly define the problem you seek to address and appropriate remedies that do not infringe on our civil liberties and access to critical public health information.

Thank you again for this opportunity to comment.

FOR THE RECORD



# "Step Away From That Air Monitor and Put Your Hands Up!"

SOUNDS RIDICULOUS, DOESN'T IT? Not if Intro. 650 – a new bill under consideration by the New York City Council – becomes law.

With Intro. 650, the NYPD proposes a grand permitting scheme, granting them sweeping new powers over environmental monitoring in New York City.

THEY GET TO DECIDE what kind of monitoring does and does not need a permit, and therefore, whether or not you will need to get one in advance if you want to test for toxic substances in the environment.

THEY DECIDE whether or not to grant you a permit, based on a list of restrictive criteria, including whether they find you "to be of good character."

If you fit into one of the bills exemptions and don't need to apply for a permit and you head out onto the street with your environmental monitor, THEY DECIDE whether or not to stop you.

If you're stopped for using a monitor without a permit and you are unable to convince a police officer that you

were exempt from the requirement to get one, THEY DECIDE whether to issue you a Desk Appearance Ticket – which will require that you be arraigned in court – and THEY CAN DECIDE to seize your monitor.

If you are convicted of violating the law you can be sent to jail for 20 days or face a \$1,000 fine, or both.

If you jumped through all of THEIR hoops and got your monitoring permit, THEY CAN STILL DECIDE whether to revoke your permit at any time.

After 9/11, federal and city agencies disseminated misleading information about the safety of New York City's air. Independent environmental testing revealed the truth.

Next time the government decides to tell us the air is safe to breath, will anyone be allowed to do any independent monitoring to confirm whether that is the truth??

## **DOES INTRO. 650 SOUND LIKE A LAW THAT WILL PROTECT THE PUBLIC? YOU DECIDE!**

CALL CITY COUNCIL SPEAKER **CHRISTINE QUINN** @ (212) 788-7210.  
TELL HER TO JUST SAY NO TO INTRO: 650.

CALL YOUR OWN COUNCIL MEMBER. Get their contact info at:  
<http://council.nyc.gov/html/members/members.shtml>

COME TO THE PUBLIC SAFETY COMMITTEE HEARING • Tues., April 29 • 10am • City Hall Committee Room

TELL THE CITY COUNCIL INTRO. 650 MUST BE DEFEATED IN THE NAME OF  
PUBLIC SAFETY, PUBLIC HEALTH & YOUR CIVIL LIBERTIES!

READ THE BILL AT

<http://webdocs.nycouncil.info/textfiles/Int%200650-2007.htm>

## **A Measure Of Our Freedom Is The Freedom to Measure**

**FOR THE RECORD**

Joseph Mugivan  
Advocate for School  
Indoor Air quality  
231 Manorhaven Blvd  
Port Washington, N.Y. 11050  
[j.mugivan@att.net](mailto:j.mugivan@att.net)  
516 883 2981  
516 423 6600

Testimony to the Health and Safety Committee  
Of the New York City Council  
Re: Intro 650  
April 29, 2008

The stated purpose of legislation Intro 650 is to prevent potential public panic due to any inaccurate alarm relating to a toxic environmental event. This will not occur

In October of 2003, five years ago, I walked out of my classroom in Elmhurst, Queens because there were toxic fumes or vapors which were making me sick. The teacher in the classroom before me reported a similar event. We both had medical records requesting an inspection.

There was no public alarm.

Initially, I thought of informing the parents, then, realized that without a reliable report the school would indicate that the classroom was safe. Despite being protected under Federal Occupational Safety and Health Laws (OSHA), my salary was discontinued.

There was no public alarm.

I discovered that a toxic spill had been reported at the print factory next to my school three months before entering the school. The spill consisted of ~~the~~ carcinogenic chemicals, but more disturbing was the report that the local water table had extreme levels of dangerous chlorinated solvents known as TLC.

There was no public alarm.

I obtained all of the engineering reports that indicated that ground water was entering the basement throughout and that all of the compressors of the ventilation system were supposed to have been replaced in 2003. There was no public alarm

Since vapor intrusion above a water table can be up to 100 times more dangerous than simple toxic exposure, I wrote a letter to the lead state agencies on vapor intrusion asking for an inspection suspecting a possible health crisis in the school. There was no environmental impact statement on record for the school's construction.

I have yet to receive a response from my letter of December 6, 2007

There was no public alarm.

The new capital budget for PS 7 in Elmhurst, Queens calls for repairing the foundation and groundwater intrusion into the basement. A recent posting of the job number by a real estate web site places the cost at 8 million dollars. After five years no one has been able to provide an air quality report for my suspicion of vapor intrusion.

In the Queens court, my attorney requested, through discovery, all environmental information more than a year ago and the city has refused to provide it. I filed an OSHA request, under Federal law to the Department of Education for all Environmental reports on the school, and the Federal law was ignored. The city council called for a review of my concerns with the Department of Education and it was ignored.

There was no public alarm.

In closing, without a reliable air quality report, I am concerned that generations of elementary children in their formative years may be spending their waking hours sitting in a cloud of TCE, among other substances, and that the school's foundation is crumbling into a lagoon of chlorinated solvents.

Homeland Security need to realize that their search for dirty bombs may be found in those schools built on toxic sites and that they need to root out the architects and designers who are responsible for their construction. My congressman and senator have called for an investigation of PS 7.

This is now, a public alarm and it is legal,  
until the passage of Intro 650.  
OPPOSE INTRO 650.

**A Request for an Environmental Investigation  
Of Public School 7 (PS7) in Elmhurst, Queens**

Richard Daines, Commissioner  
New York State Department of Health (NYSDOH)  
Alexander Grannis, Commissioner  
New York State Department  
of Environmental Conservation (NYSDEC)  
Randi Weingarten, President  
United Federation of Teachers

- DEC # 200706283

- No history of environmental  
impact statement.

Joseph Mugivan  
Advocate/Teacher

Date: December 6, 2007

NYSDEC and NYSDOH are the lead agencies for vapor intrusion monitoring.

As a New York City teacher I have discovered information that supports my concern that there is an "undiagnosed" health crisis in my school at PS7.

Without going onto the particulars of my own pathology and that of others, I wish to develop a "site conceptual model that considers both, the [environmental and building condition]" (NYSDOH) of my school. I left the building in October, 2003. A spill adjacent to my school was reported to NYSDEC on July, 2003. Recently, Mt. Sinai attempted to gain access to children's health records without success. The lead agency would have to be the New York City Department of Health.

This report will be the foundation for a comprehensive investigation by the designated authorities on vapor intrusion in New York State, the NYSDOH and the NYSDEC.

**The Environmental Condition (Part 1)**

*According to the environmental chairman of the local planning board, PS7 was built on the former site of the New York City Water Department truck yard dating to 1939. The same site has had a petroleum bulk storage site for four different city agencies. It was also a hazardous waste generator/transporter site for the New York City School Construction Authority, according to a recent report from Toxic Targeting*

Having a history of automotive repair, I would encourage the testing for chlorinated solvents beneath the school along with non-chlorinated compounds which would contribute to vapor intrusion. The DEC report of January 15, 2004 states that

“there are additional environmental conditions known to exist on property [Rothchild Printing] including elevated metal concentrations, in both soil and groundwater and chlorinated solvents present in groundwater.... Site does not meet standards.”

I recently learned of a spill at the adjacent site of PS 7, Rothchild Printing, in a report by the firm of CA Rich Consultants. This company was retained by Rothchild Printing to investigate the site for a potential real estate sale. From these investigations we can conclude the following at this testing site which is 140 feet from PS7:

The report indicates that “In all instances the soil beneath the shallow groundwater table (approximately 10 feet below grade) revealed higher organic vapor readings than the soil above the water table.”

Present in the soil beneath the shallow groundwater are excessive levels of the semi volatile organic compounds (SVOCs):

Benzo (a) pyrene at three sites 1002 ppb, 123 ppb and 70 ppb

The safe clean up levels for New York State, TAGM, is 61 ppb.

Benzo (a) anthracene was measured at 997 ppb, TAGM is 224 ppb

Chrysene was measured at 975 ppb, TAGM is 400 ppb.

The three chemicals fall into a class known as Polycyclic Aromatic Hydrocarbons (PAHS) which has the tendency to emit vapors more than other kinds of SVOCs

NYSDOH guidelines indicate that vapor intrusion impact can be up to 100 ft from the plume, should the water table under Rothchild Printing be different than the one under the school, 140 feet away, and that “the potential of vapor intrusion increases with increasing concentration of volatile chemicals underground” (NYSDOH). New York State includes some SVOC’s as volatile organic compounds (VOC’s), depending on their ability to emit vapors and that “some SVOC’s can migrate into indoor air from soil and groundwater”.

Studies of people show that individuals exposed by breathing or skin contact for long periods to mixtures that contain PAHs and other compounds can also develop cancer. The above mentioned chemicals are known carcinogens.



## **The Environmental Condition (Part 2)**

Twenty three (23) feet below Rothchild Printing is a deep water table that contains Trichloroethane (TCE), a very serious chlorinated solvent at 140 ppb and Dichloroethene (8.9 ppb.) The TAGM groundwater standard is 5 ppb for each. CA Rich determined that no TCE levels exist at Rothchild Printing, possibly due to a level of clay that exists above this lower water table. This sounds reasonable for Rothchild Printing, but it may not apply to the area beneath PS7.

New York State indicates that “fractures in bedrock and/or tight soils may increase the potential for vapor intrusion over what would be expected for the bulk unfractured matrix.” The recent vapor intrusion guidelines of the United States Air Force reports that ‘homogeneous and un-fractured clay deposits occur only rarely’. The foundation of PS7 would have to have penetrated this clay layer.

Foil requests relating to the original environmental impact statement (Freedom of Information Law) to the New York City Department of Environmental Protection (DEP) and the New York State Department of Environmental Conservation (DEC) were unsuccessful. There is the possibility that no Environmental Impact Statement (EIS) was performed at PS7.

### **Guideline of the NYSDEC:**

The soil vapor intrusion pathway must be investigated at any site with the following:

- a) an existing subsurface source (e.g. on the basis of preliminary environmental sampling) or likely subsurface source (e.g. on the basis of known previous land uses) of volatile chemicals in excess of their appropriate standard, criteria or guidance concentration; and
- b) existing buildings or the possibility that buildings may be constructed near a subsurface source of volatile chemicals.

### **The Building Condition**

According to the New York City Department of Education Inspection report dated February 19, 2003 there is water infiltration “through” the sub-slab area. It would seem that the ground water has penetrated the school. The most recent capital plan for 2005-2009 indicates that a “building upgrade” is scheduled for “flood elimination” and “interior structural foundation walls”

The above mentioned 2003 report indicates that air conditioning compressors needed to be replaced and all compressors were replaced in the summer of 2005, according to a local civic leader and a city report.

The ventilation system had been dysfunctional since the school was opened in 1994 and the above mentioned new capital plan calls for "system replacements" and "heating plant upgrade" of "air conditioning" and "ventilation".

My classroom had received complaints by me and the former teacher who occupied it. In one study of CO<sub>2</sub>, this classroom had the weakest ventilation. It was also unique in that it had a window that opened to the outside. I also perceived problems, through physical reaction, with the auditorium.

I look forward to a rigorous investigation of this sensitive site.

Sincerely yours,

Joseph Mugivan  
Advocate for School  
Indoor Air Quality  
Member  
New York Vapor Intrusion Alliance  
231 Manorhaven Blvd.  
Port Washington, N.Y 11050  
516 883 2981

cc: James Gennaro, Environmental Committee  
New York City Council  
Eric Gioia, Investigation Committee  
New York City Council  
Richard Italia, President  
Planning Board 4, Corona, New York  
Tom McKenzie, Environmental Committee  
Planning Board 4, Corona, New York  
Catherine Nolan, Chair, Education Committee  
New York State Assembly  
Michelle Schimel, Environmental Committee,  
Representative New York State Assembly  
Craig Johnson, Representative, New York State Senate  
Gary Ackerman, House of Representatives

Joseph Mugivan  
231 Manorhaven Blvd  
Port Washington, N.Y. 11050  
Phone & fax 516 883 2981  
Cell: 516 423 6600  
[j.mugivan@att.net](mailto:j.mugivan@att.net)

Ms. Sara Tucci  
Principal  
PS 7  
80-55 Cornish Avenue  
Elmhurst, N.Y. 11375  
March 6, 2007

OVERNIGHT

Dear Ms. Tucci,

This is a request per the OSHA/PESH Access to Employee Exposure and Medical Records Standard, 29 CFR 1910.1020. This request is for exposure records including environmental (workplace) physical agents, including personal, area, grab, wipe or other form of sampling as well as related collection and analytical methodologies, calculations and other background data relevant to the interpretation of the results obtained, and reports or other documents addressing or interpreting these results.

This request applies to all environmental reports, both indoor and outdoor, at PS7, located at 80-55 Cornish Avenue, Elmhurst, N.Y., for the period from January 1, 1990 to the present date.

I am requesting all environmental assessment documents at the specified location within the specified time frame, including but not limited to:

Vapor intrusion  
Volatile and semi volatile organic compounds  
Indoor air quality  
Mold  
Pesticides  
Employee health complaints  
Dosh 900 reports of employee work-related illness and injury  
Environmental impact statements and site characterizations and assessments, including those pertaining to and preceding the construction process in 1990-1994.

I want to see the information prior to having it copied. Please let me know when it will be available for my inspection.

I request a response in writing to this written request within 15 business days. I look forward to hearing from you shortly.

If this request or any part of it is denied, please inform me in writing of the reasons for the denial and provide the contact information for the person or body to whom an appeal should be addressed.

Sincerely,

Joseph Mugivan

Cc:

Harry Finnan, Custodian, PS7

James Lonergan, Director of School Facilities  
New York City Department of Education

Randi Weingarten, President,

Howard Solomon, Grievance Department,  
United Federation of Teachers

Wendy Hord, Health and Safety Director,  
New York State United Teachers

Jodi Feld, Hydrologist/Environmental Scientist,  
NYS Office of the Attorney General  
Environmental Protection Bureau

David Newman, New York Committee  
For Occupational Safety and Health

Claire Barnett, Executive Director,  
Healthy Schools Network

HILLARY RODHAM CLINTON

NEW YORK  
SENATOR

RUSSELL SENATE OFFICE BUILDING  
SUITE 476  
WASHINGTON, DC 20510-3204  
202-224-4451

COMMITTEES:  
ARMED SERVICES  
ENVIRONMENT AND PUBLIC WORKS  
HEALTH, EDUCATION, LABOR, AND PENSIONS  
SPECIAL COMMITTEE ON AGING

# United States Senate

WASHINGTON, DC 20510-3204

December 21, 2007

Mr. Joseph Mugivan  
231 Manorhaven Boulevard  
Port Washington, New York 11050

Dear Mr. Mugivan:

Thank you for sharing your concerns with me. I appreciate your taking the time to bring this matter to my attention.

In an effort to be of assistance, I have brought the information you presented to the attention of the appropriate officials. I have requested a review of this matter and a written response from their office.

As soon as I have something further to report, I will contact you again.

Sincerely yours,



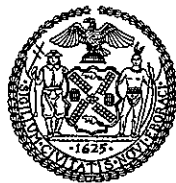
Hillary Rodham Clinton

HRC/mkf/kj

**EVA MOSKOWITZ**  
COUNCIL MEMBER, 4<sup>TH</sup> DISTRICT

□ **DISTRICT OFFICE**  
420 LEXINGTON AVENUE, SUITE 356  
NEW YORK, NY 10017  
212.818.0580 (PHONE)  
212.818.0706 (FAX)

□ **CITY HALL OFFICE**  
250 BROADWAY, SUITE 1545  
NEW YORK, NY 10007  
212.788.7393 (PHONE)  
212.442.1457 (FAX)



**THE COUNCIL  
OF THE  
CITY OF NEW YORK**

**CHAIR**  
EDUCATION

---

**COMMITTEES:**  
FINANCE  
GOVERNMENTAL OPERATIONS  
TRANSPORTATION

May 2, 2005

Richard J. Condon  
Special Commissioner of Investigation  
New York City School District  
80 Maiden Lane, 20<sup>th</sup> Floor  
New York, NY 10038

Dear Commissioner Condon,

Please see the enclosed materials from Joseph Mugivan, an elementary school teacher in New York City. I ask that you please investigate the matter and copy me on your response.

If you have any questions or concerns, please contact Sheila Lopez on my staff at 212-341-9511 or by email at [SheilaLopez@earthlink.net](mailto:SheilaLopez@earthlink.net). Thanks again and I look forward to your expeditious reply.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eva Moskowitz".

Eva Moskowitz  
Chair, Education Committee

Cc: Erin Stevens

**BAILEY & SHERMAN, P.C.**  
COUNSELORS AT LAW

42-21 DOUGLASTON PARKWAY  
DOUGLASTON, NEW YORK 11363

EDWARD G. BAILEY  
JEFFREY M. SHERMAN

TELEPHONE: 718-631-2500  
FACSIMILE: 718-631-2400

August 20, 2007

Michael Cardozo, Esq.  
Corporation Counsel, City of New York  
100 Church Street  
New York, New York 10007

Re: Mugivan v. City of New York, et al.,  
Index No. 24019/04  
Supreme Court, Queens County  
N.Y.S. File No.: 04TT002701

Dear Counsel:

We represent plaintiff Joseph Mugivan in the above-referenced action.

Please be advised that the City's response to plaintiff's "Omnibus Demands and Notice for Discovery and Inspection," dated May 14, 2007, are long overdue.

Please consider this correspondence our good-faith effort to resolve discovery dispute pursuant to the Uniform Rules.

Very truly yours,

  
Edward G. Bailey

cc: McDonough Marcus, et al.



# NYCLU

NEW YORK CIVIL LIBERTIES UNION

125 Broad Street, 19<sup>th</sup> floor  
New York, NY 10004  
212.607.3300  
212.607.3318  
www.nyclu.org

## Testimony of the New York Civil Liberties Union

before

**The New York City Council  
Committee on Public Safety**

regarding

**Proposed permit requirement for possession or deployment  
of environmental testing devices (Int. 650-B)**

**April 29, 2008**

---

My name is Beth Haroules. I am a staff attorney with the New York Civil Liberties Union.

In my testimony today I intend to alert City Council members that, notwithstanding the considerable deliberations undertaken regarding Int. 650-B – and the amendments to the bill adopted pursuant to these deliberations – the proposed legislation, if enacted in law, will have a direct, immediate and harmful affect on the exercise of basic rights and liberties.

Int. 650-B would make it unlawful for a person to possess or deploy instruments used to test for the presence of chemical and biological agents and radiation without first obtaining a permit issued by the police commissioner. Under the proposed law the possession of such devices without a permit would be a misdemeanor crime punishable by fine or imprisonment.

The proposed permitting scheme seems intended to establish standards and oversight regarding biological, chemical and radiological testing instruments that may provide early warning of a terrorist attack. And for this reason the bill states, “such instruments should be deployed only with the knowledge of the police department and other appropriate city agencies.”<sup>1</sup> These instruments may be used, however, for a broad range of purposes – including research,

---

<sup>1</sup> See Int. 650-B, Section I, Legislative Purposes.



experimentation, monitoring of conditions in the natural environment and in the workplace – that are entirely unrelated to providing an early warning of a terrorist attack.

These activities implicate fundamental liberty interests related to the collection and dissemination of information in service of the public good. The NYCLU takes the position that the proposed permitting scheme will unduly frustrate the legitimate and lawful use of chemical, biological and radiological testing devices. We believe the legislation fails to strike the appropriate balance between the city's interest in securing public safety and the interest of individuals in exercising their rights of speech and association without undue government interference.

We address below, in brief, the NYCLU's specific objections to Int. 650-B.

- **The proposed permitting scheme is overly broad and lacks even minimal protections of the right to due process.**

To be fair, representatives of the police department and the City Council have amended the bill in response to the criticism that the permitting scheme is overly broad.

These amendments identify certain uses of testing devices that may trigger an exemption from the permit requirement. One such amendment seems intended to exclude from the permitting requirement the use of detectors by an individual (e.g., testing devices intended for home use), as opposed to use by institutions or organizations.<sup>2</sup> Another provision seems intended to limit the permitting requirement to the use of devices intended to provide an early warning of a biological, chemical or radiological weapons attack.<sup>3</sup>

However these exceptions are unclear as drafted; and as applied, will all but certainly lead to unwarranted intrusion upon law-abiding conduct. For example, the provision that purports to exempt an individual from the permit requirement employs a double negative in defining the ostensible purpose, or intent, of the individual in possession of a testing device.

[The permitting requirement] shall not apply to . . . detectors which are not possessed or deployed as an early warning device with a purpose of detecting a possible biological, chemical or radiological weapons attack. . .<sup>4</sup>

How is a police officer supposed to discern from this provision what conduct manifests culpable intent? In short, the proposed permitting scheme grants police officers extremely broad and poorly defined authority to prohibit or curtail what may be the lawful and legitimate uses of environmental testing devices.

---

<sup>2</sup> Section 10-809a(4).

<sup>3</sup> Section 10-809a(5).

<sup>4</sup> Sections 10-809a & a(5).

Pursuant to this authority, as articulated in the police commissioner's rules, police officers may be authorized to issue a summons and seize equipment prior to judicial review. This leaves the individual to establish his right to possess such equipment only after – and, quite likely, long after – that right has been violated.<sup>5</sup>

- **The legislation vests in the police commissioner unilateral authority to issue or withhold or issue a permit.**

The bill authorizes the police commissioner, pursuant to rule-making authority, to establish criteria regarding eligibility to receive a permit based upon the “character and fitness” of applicants; grounds for refusing to issue a permit; and the circumstances under which law enforcement officials may seize environmental testing instruments.

Under this scheme the police commissioner becomes the sole arbiter as to who is permitted to use environmental testing devices in New York City. Even the process for appealing the denial of a permit is subject to the authority of the police commissioner.

- **The bill grants the NYPD oversight authority for which it lacks the requisite expertise.**

The legislation authorizes the police commissioner to regulate matters of significant scientific and technological complexity. In implementing and enforcing the proposed permitting scheme, police officials will be required to assess the design, capabilities and uses of environmental testing instruments – including the threshold levels at which biological, chemical or radiological measurements must be reported to the NYPD.

In making assessments of this nature it would be expected that experienced experts may have a sound scientific grounds for reaching different conclusions. What's more, the methodologies and standards employed are constantly evolving. The NYPD does not have the technological expertise required to implement the proposed permitting scheme with a reasonable degree of competence.

It has become clear in the deliberations over this legislation that its objectives are not clear. The bill's sponsors have advanced various rationales: the proposed law is necessary to prevent false alarms, to avoid undue anxiety among the public regarding the publication of results obtained from environmental testing, to establish baseline standards regarding such testing equipment, or to regulate testing equipment that may provide early warning of an attack.

This lack of clarity regarding the bill's intent seems to be reflected in the drafting of the bill. It has become increasingly apparent that the police department (the primary sponsor of this legislation) seems most concerned with the early detection of a possible biological, chemical or radiological attack. In seeking to address this objective, it appears that drafters began with the assumption that all environmental testing devices may be used as early warning devices; and

---

<sup>5</sup> In discussions regarding this provision with NYPD representatives, they declined to amend the bill to require either prohibition of seizure of testing devices or a hearing prior to any such seizure.

then, in response to the advocates' criticism that the proposed permitting scheme was overly broad, the drafters attempted to carve out exceptions for the use

In our view this approach is untenable; it has led to a misguided and poorly crafted bill. We recommend that the City Council explore a different approach: Establish a Task Force, comprised of appropriately representational stakeholders including, for example, CBRN detection experts and industrial hygienists. The Task Force should be charged with identifying those testing instruments that are designed and intended for the purpose of detecting weaponized CBRN attack[s]. If this proves feasible, the Task Force should then develop, if appropriate, a registration scheme for such fixed-installation testing devices. (It is equipment of this sort, maintained by large institutions, that may trigger readings that are disseminated to employees or the general public and that therefore warrant regulation.) Such a scheme may dictate technical standards for such testing equipment and protocols for reporting test results to public officials.

I close with a general observation regarding lawmakers' approach to counter-terrorism initiatives. When the threat of terrorism is invoked as a justification for enacting laws to secure public safety, policy makers seem quick to ignore the principle that legislation implicating fundamental rights and liberties must be narrowly tailored to accomplish its objective (even one as important as public safety) – and that, as a general rule, government must employ the least restrictive means to accomplish that objective.

The NYCLU urges the mayor, the City Council and police officials to reconsider Int. 650-B in light of this legal standard.