

**TESTIMONY OF THE
NATIONAL WASTE & RECYCLING ASSOCIATION
CITY COUNCIL COMMITTEE ON ENVIRONMENTAL PROTECTION**

November 21, 2013

Chairman Gennaro, members of the Committee and distinguished guests, my name is David Biderman and I am the General Counsel for the National Waste & Recycling Association, formerly NSWMA. We are a non-profit trade organization that represents waste and recycling companies that operate in all fifty states. Our members include about 50 licensees who collect waste generated by commercial customers in New York City.

We support the concept in Intro. 1160 that trade waste collection vehicles operated by carters licensed by or registered with the City's Business Integrity Commission (BIC) should reduce their emissions. The waste and recycling industry is a progressive industry, generating more renewable energy than either the solar or wind industries, and is in fact leading the way in converting its collection vehicles to natural gas. Nearly half of all the new waste collection vehicles sold in the United States this year are fueled by natural gas, reducing our dependence on imported oil and reducing greenhouse gas (GHG) emissions.

However, the cost of adding these new vehicles to a carter's fleet is substantial. New collection trucks powered by natural gas cost more than \$300,000, and new diesel trucks of the type typically used by New York City carters cost about \$250,000. If this legislation is enacted, according to the M.J. Bradley & Associates study recently commissioned by the BIC, the cost of converting the carters' fleets between now and 2020 will be more than one billion dollars (\$1,000,000,000). Obviously, that would be a very significant capital expenditure for an industry that operates on exceedingly narrow profit margins, and is hamstrung by the BIC's rate cap. Also, the study assumes, curiously, that the average cost of a new truck is less than \$150,000. This is not at all consistent with the current cost of such vehicles, and we have provided the BIC with ample evidence of current vehicle costs over the past six months.

Many carters will be forced to raise their prices as they upgrade their fleets to comply with this new requirement. Commercial establishments in the City should be prepared for such increases. In addition, some carters will likely go out of business either as a result of this new requirement, or if Intro. 1170-A, the transfer station capacity reduction bill, is enacted, diminishing the robust competition that currently exists

between the hundreds of licensed carters in the City. By requiring carters to travel longer distances to dump their loads and putting upward pressure on disposal costs by limiting what some transfer stations can accept, Intro. 1170-A means higher cost and more truck traffic, noise and emissions in a number of neighborhoods throughout New York City.

While we embrace the notion that waste collection vehicles operating in New York City need to reduce their emissions, we point out these vehicles comprise a small portion of the overall truck traffic in New York City, and a small portion of the overall emissions associated with air pollution in the City. If the City is going to require all of the carters to upgrade their trucks, it is only fair to ask that similar requirements be imposed on other fleets that operate in New York City.

Finally, the proposal includes a provision that authorizes the BIC to issue a limited waiver for a carter who could demonstrate that converted its fleet would cause "undue financial hardship." The waste and recycling industry suggests that this authority not reside solely within the BIC, and ask it be shared by other City agencies, including the Department of Sanitation.

I appreciate the opportunity to testify today, and would be glad to answer any questions.



The General Contractors Association of New York
Denise M. Richardson, Managing Director
November 21, 2013
Committee on Environmental Protection
Testimony on Intro 1160

Thank you Council Member Gennaro and members of the Environmental Protection Committee for the opportunity to comment today. I am Denise Richardson, managing director of the General Contractors Association of New York. The GCA represents the unionized heavy construction industry in New York City. Our members build New York's building foundations, parks, bridges, roads, transit systems, and water and wastewater systems.

Let me state at the outset that the GCA supports the overall goal to update New York's air rules and improve New York's air quality. I would like to be equally clear that the proposed changes to the sections of the bill that impact the construction industry are not simple and clear cut and raise a number of serious concerns. We welcome the opportunity to meet with DEP, the Law Department, City Council Staff and other interested parties to work out provisions that will both accomplish the city's goal and be fair, reasonable and readily understood to the affected parties.

The changes to the equipment registration requirements are complex, confusing, and redundant with requirements imposed by other agencies and other regulations. These changes create the potential "gotcha" for many small and medium sized businesses that are unclear as to what equipment must be registered, how much information must be included in the registration and what the required environmental retrofit requirements are. The result is an environment ripe for rampant ticketing and fines of small and growing businesses.

Many of the registration requirements arose from the significant use of generators in lower Manhattan and throughout New York City in the aftermath of Hurricane Sandy as the construction industry loaned every piece of equipment it had to help New Yorkers return to normal. It is therefore somewhat disturbing to us that the industry's efforts to help property owners get back on their feet has resulted in yet another set of new regulations accompanied by penalties and fees.

We are equally concerned that section 24-146 of the legislation allows DEP to orally issue a stop work order and shut down a project for airborne dust conditions without giving the contractor an opportunity to cure the deficiency, and then not hold a hearing on the appeal for 14 days. The criteria for which a stop work order can be issued are vague and the provisions give DEP broad authority over items that are not a threat to human safety.

Here are other examples of the types of issues that exist in the legislation.

- This proposal authorizes DEP to *require the use of environmentally beneficial technologies by rule rather than by law*. Unfortunately, there is no involvement of the construction industry in an advisory role in the adoption of any technologies, nor is there a requirement that any new requirements be prospective only. This exposes a contractor to *significant*

increased costs post bid and award. The consequences to a small and medium sized contractor could be catastrophic.

- Construction equipment that is over 600 hp must be registered with DEP and obtain a DEP work permit. This would cover all large cranes that are currently heavily regulated by the Buildings Department and require Buildings Department permits in order to operate in New York City. Pursuant to Local Law 77, this equipment is already required to be retrofit with the best available technology for reducing air emissions. *Why is additional registration necessary, and does this registration come before or after or concurrent with the DOB permit? Furthermore there are no standards or criteria for obtaining a work permit, what a work permit allows, or how it relates to DOB approvals.*
- Intro 1160 would also add a requirement to obtain a work permit for generators. The criteria for obtaining a work permit, the cost of the permit and the use of the permit is vague and undefined. *Why is there a need to add DEP regulations and permit requirements to equipment already covered by building and fire department regulations?*
- *To provide an example of the confusing manner in which the bill is drafted, here are three related but different registration requirements.*
 - A **portable engine** between 50hp and 600 hp, except for self propelled equipment must be registered.
 - A **stationary engine** between 50hp and 600 hp must be registered. In this scenario any construction equipment on location for more than 12 months would be considered stationary and now must be registered. This requirement becomes an administrative and record keeping challenge for equipment rental companies that own hundreds of compressors, generators and pumps and would be required to determine if a rented item will remain at the same location for 12 months or more and change the registration of that equipment accordingly.
 - An **engine** greater than 50 hp **used exclusively at a construction site** unless the engine input is less than 600hp **and is used to power self propelled construction equipment** must be registered. It is unclear how this section relates to the portable engine and stationary engine categories? Moreover, it is unclear why there is a need to require large cranes and other large construction equipment to be registered when they are already governed by DOB requirements.

Finally, in section 24-180, DEP removes all of the specificity for what must be included in a Notice of Violation written by the Environmental Control Board and allows the Commissioner to determine the content of the NOV by rule. We strongly urge the council to retain the original language in the code and ensure the Notice of Violation contain all of the necessary information for those receiving them.

We appreciate the efforts to make sure that New York continues to improve its air quality. We believe that there are a number of critical issues that must be resolved before this bill moves forward. We look forward to working with the Council and others to resolve these critical concerns.

**Testimony of Carter H. Strickland, Jr.
Commissioner, New York City Department of Environmental Protection**

**before the
New York City Council Committee on Environmental Protection
concerning
Intro. 1160: Relating to the New York City Air Pollution Control Code**

**250 Broadway, 16th Floor
November 21, 2013, 1 pm**

Good afternoon Chairman Gennaro and Members. I am Carter Strickland, Commissioner of the New York City Department of Environmental Protection (DEP). I am joined today by DEP staff; Assistant Commissioner Dr. Tom Matte of the Department of Health and Mental Hygiene; Jay Kairam, Chief Operating Officer of the Business Integrity Commission; Assistant Commissioner of Environmental Affairs Steven Brautigam and Spiro Kattan, Supervisor, Clean Fuels and Technologies Division of the Department of Sanitation. Thank you for the opportunity to testify on the revision of the New York City Air Pollution Control Code.

I would like to thank you, Mr. Chairman, on behalf of all New Yorkers, for your leadership. You, your committee, and the Council have been integral to ensuring that the City's sustainability programs have succeeded and are embedded in the Charter and Administrative Code for the benefit of the environment and the health of all New Yorkers for decades to come.

Today, New York City's air quality has reached the cleanest levels in more than 50 years, with dramatic reductions in pollutants in the air since the launch of the Administration's comprehensive, long-term sustainability blueprint, PlaNYC. Since 2008, the level of sulfur dioxide in the air has dropped by 69 percent and since 2007 the level of soot pollution (PM_{2.5}) has dropped by 23 percent.

Under Mayor Bloomberg's leadership, in concert with the active role of the Council in passing important legislation, and with significant input from a variety of stakeholders, we have developed sensible regulations that have resulted in this profound improvement in air quality. We have come a long way since the early '70s, when soot blackened the windowsills of the City's homes and before the Clean Air Act came into effect. Year-round air quality has benefited from reduced emissions from upwind power plants, industrial sources, on- and off-road diesel vehicle engines, and stationary engines as a result of federal and state regulations. To address remaining sources of emissions in our densely populated city we have taken a number of local actions to clean up heating fuel, to include more hybrid and electric vehicles in the municipal fleet, to reduce emissions from school buses and construction vehicles, and to install clean diesel retrofits on City fleets. Together, these actions have led to the dramatic progress towards meeting the City's clean air targets.

Based on a Health Department study using EPA methods, we estimate that in 2005 to 2007, PM_{2.5} levels in New York City contributed to more than 3,100 deaths, more than 2,000 hospitalizations for cardiovascular and respiratory disease, and 6,000 emergency department

visits for asthma annually. Today, because of the significant improvements in air quality, the Health Department estimates that every year we are preventing approximately 800 deaths and approximately 1,600 emergency department visits for asthma, and 460 hospitalizations for respiratory and cardiovascular issues. But with PM_{2.5} still causing more than 2,000 deaths annually, we need to do more to reduce local emissions.

This progress has encouraged us to revisit the New York City Air Pollution Control Code, which has not been substantially revised in 42 years. In the 1970s the City led the way and served as a model for the federal Clean Air Act, but now many elements of the Code are outdated. To fulfill one of PlaNYC's critical goals of having the cleanest air of any major U.S. city, the Code must be revised.

Outreach and Engagement

This revised Code is the product of numerous meetings with business, environmental and civic stakeholders and hundreds of hours over the last four years. Groundwork for the revision of the Code began in 2009 with a series of meetings with critical stakeholders to develop overarching themes that would be used as a template for the work going forward. Based on these early stakeholder meetings, in January 2011 DEP began to draft a proposal with the objectives of (1) updating emission standards, (2) focusing on previously unregulated sources of particulate matter, (3) simplifying compliance requirements for stakeholders, and (4) increasing flexibility to address new and developing technologies.

Since January 2011 the DEP code revision team engaged major stakeholders in the private and public sectors. This included all relevant City agencies along with the Law Department. In April 2012, Mayor Bloomberg announced the revision of the Air Code in his State of the City Address.

A working draft was completed in April 2012, and this same team met with and answered questions from stakeholders, discussed new issues, and reviewed and revised language as necessitated by the review process until its introduction in September. Some of the participants in the process, for example, have been the Council, the Department of Health and Mental Hygiene, The Department of Sanitation, the Business Integrity Commission, the Department of Education, the Department of Citywide Administrative Services, the boiler industry, the industrial processing sector, the real estate industry, the food service industry, and environmental advocates. These meetings, which continued until a few weeks ago, enabled DEP to prioritize the sections that need to be revised first, and ensure that industry and other sectors are not unduly burdened.

1. Emission Standards

During the past 40 years, emissions have been reduced significantly but more improvements are necessary. New York City has the greatest density of PM emissions and people of any large U.S. city. With many vulnerable groups, exposures to emissions from sources like char broiling and wood burning are of greater concern in New York City than in less-populated jurisdictions. Health standards have also become more stringent. We seek in this revision to further reduce

emissions from already regulated sources and to achieve emission reductions from smaller, localized sources of pollution throughout the City.

An important component of improved air quality in New York City has been a cleaner, more efficient City fleet. As you all know, the Administration and this Council worked together to pass a series of laws that require increased fuel economy for on-road City vehicles, the use of biodiesel in all of the City's fleet, the phase-out of older, dirtier vehicles, and the use of clean vehicles by City construction contractors. This combination of regulations has dramatically reduced emissions from the City's fleet. The estimated average particulate matter emission percentage reduction per vehicle in fiscal year 2011 through fiscal year 2012 is approximately 49 percent.

We also want to make sure the commercial waste fleet meets the same standards set for the municipal fleet. All commercial waste generated in the City, including construction and demolition waste, is hauled by private operators licensed by the Business Integrity Commission. Citizens see these trucks every day as they provide services in commercial corridors and construction sites across the City.

As part of the revision, all heavy-duty waste trucks that operate in the City will be required to achieve EPA standards for 2007 model year engines by 2020. There are over 8,000 trucks in the commercial fleet, 85% of which would be potentially affected. Based on current truck turnover rates, 37% of the fleet is projected to be at the EPA standard by the compliance date. This requirement would fully expedite that turnover, potentially eliminating 560 cumulative tons of particulate matter and 8,000 cumulative tons of nitrogen oxides (NO_x) by 2030. This reflects gains of 40% and 35% off PM and NO_x emissions totals from this sector if we did nothing. The PM reduction is the equivalent of taking 27,000 delivery trucks or 1,300 intercity coach buses off the road every year between 2020 and 2030. To address cost concerns expressed by industry stakeholders, who were extensively consulted throughout, the provision provides a six-year lead-in time, a financial hardship waiver, and multiple pathways to compliance.

In addition to vehicle regulations, this revised Code will incorporate updated and revised federal and state regulations for emission standards. For example, the complicated table of environmental ratings for stationary sources currently included in the Code will instead refer to the state standards, ensuring that any changes in those ratings are captured in the city regulations without having to pass another bill. Similarly, the Code incorporates other state standards by reference, including the prohibition of certain architectural coatings that do not meet volatile organic compound levels, the emission of nitrogen oxides from boilers, and the method for determining opacity, which we use as a proxy for incomplete combustion when smoke is emitted from various sources including city buildings.

Incorporating standards by reference also allows for the deletion of obsolete and outdated provisions. One of the most notable deletions will be the elimination of standards governing refuse-burning equipment. There will now be a general ban on refuse burning with a few narrow exceptions, such as state-approved medical waste incinerators. It will also narrow the exemption that permitted the Department of Sanitation (DSNY) to install new refuse-burning equipment. Equipment operated by or on behalf of DSNY used in connection with solid waste disposal or

processing for energy generation or other resource recovery will be exempt. Examples of resource recovery may include non-incineration gasification or anaerobic digestion, which do not themselves produce emissions from a stack.

2. Previously Unregulated Sources of Particulate Matter

The revisions of the Code over the last 42 years have been limited in scope and focused primarily on the reduction of particulate matter from large sources, including residential and commercial fuel combustion, as well as non-road and on-road diesel emissions. The regulation of these large sources now allows the City to focus on smaller, localized sources throughout the City, which, viewed as a whole, contribute a significant amount of particulate matter. These sources include commercial char broilers, coal- and wood-fired ovens, and fireplaces. Focusing on these sources will reduce particulate matter emissions, which will ultimately save lives. For example, commercial char broilers throughout the five boroughs emit an estimated 1,400 tons of particulate matter per year. The Department of Health and Mental Hygiene estimates that those emissions contributed to more than 12% of PM_{2.5}-attributable premature deaths annually in 2005 to 2007 or 400 deaths per year in that period; if all commercial char broilers had had control technology installed, the reduction in ambient PM_{2.5} concentrations could have prevented nearly 350 of these premature deaths each year.

The revisions will require that all new char broilers that cook large amounts of meat, i.e., more than 875 pounds of meat a week, have control devices. Some control technology is already available for a certain type of char broiler and can be installed quickly and at a reasonable cost; that type of technology will be required immediately. For the larger, more complex char broilers, the control technology is still being developed and is currently quite costly. Therefore, the Code will allow affected entities additional time to install such devices. Similarly, all new commercial coal- and wood-fired ovens will have to install control technologies, while existing establishments will be given additional time to comply. This will ultimately reduce localized residential exposure to particulate matter generated by wood- and coal-burning ovens while still allowing industry to cook all the foods that New Yorkers love.

We also proposed regulating fireplaces, as wood as a fuel source is more polluting than coal unless controlled. Smoke resulting from improperly burned wood contains many chemical substances that are considered harmful, such as hazardous air pollutants, fine particle pollution (ash), and volatile organic compounds. Particle pollution in smoke can damage lung tissue and lead to serious respiratory problems when breathed in high concentrations. In low concentrations, particle pollution in wood smoke can harm the health of children, the elderly, and those with existing respiratory diseases. The Code revision will prohibit the installation of any new wood-burning fireplaces and require all new fireplaces in the City to operate only on natural gas or renewable fuels. Existing fireplaces will still be permitted to burn wood but the moisture content of wood burned must be twenty percent or less as drier wood burns more cleanly than wood with high moisture content. The new Code also provides that fireplaces cannot be used as a primary source of heat.

The odors and smoke generated by these previously under-regulated emission sources are often the cause of complaints throughout the City. The revised Code will strengthen the City's

regulation of these localized nuisances to more effectively address sources of emissions that cause discomfort to New Yorkers. Requiring control technology will help reduce complaints and City resources devoted to responding to them while continuing to protect the health of New Yorkers.

3. Simplified Compliance Requirements

The revised Code will simplify compliance requirements for stakeholders and streamline the DEP permitting process. In both the existing and the revised Code, all boilers are required to obtain either a registration or a certificate of operation based on the size of the boiler. Getting a certificate of operation is a more involved process than getting a registration, so we are raising the threshold for equipment that will require a certificate. In the existing Code, the size range of boilers that require a certificate of operation was based on the fuel choice and emission ratings of boilers from more than 40 years ago.

The new Code will increase the threshold for boiler certificates of operation from 2.8 million Btu per hour to 4.2 million Btu per hour, which will reduce the work permit turnaround time by approximately twenty-five percent and ease the burden on building owners. The higher registration threshold, along with a new online permitting program, will make it easier for applicants to file and receive registrations. Even though this change increases the size range for equipment that will now need a registration, it will not negatively affect the environment, as the boilers are now required to burn cleaner fuel under DEP's clean heating fuel rules. Moreover, we believe that the engineering audit program, combustion efficiency, and enforcement efforts will be adequately protective.

Additionally, owners of boilers requiring a registration will now also have to certify that the boiler passed a combustion efficiency test. This test will ensure the boiler is optimized for efficient performance: malfunctions will be detected sooner, and the boiler will be tuned and repaired faster. More efficient combustion in the City will result in decreased fuel use, which will reduce costs for building owners while also reducing overall pollution.

4. Increased Flexibility

The new Code will create greater flexibility by enhancing rulemaking authority. It has been difficult to accommodate certain advances in technology under the existing Code, which does not allow for the use of certain cost-effective controls as they were not contemplated in 1970. Many areas in the revised Code establish broadly defined emission controls, but also add language to allow the City to adopt the related implementation methods and standards by rule. This will help us to more quickly adapt to changing technologies by going through the rulemaking process rather than having to revise the Administrative Code. For example, as I previously mentioned, existing coal- and wood-fired ovens will have to have control technology in the future. The Code will now allow environmentally beneficial, cost-effective controls to be approved by rule as they develop. And stakeholders will have more flexibility to choose appropriate control technologies.

Closing

In closing, I appreciate your consideration of this important and overdue update of the New York City Air Pollution Code. With the help of our stakeholders we have crafted a comprehensive revision of the Code that will simplify and improve compliance with existing regulations without compromising quality of life and the environment—a true step toward a more sustainable city. The Bloomberg Administration and the City Council have taken many steps to ensure that we are providing future generations with a vibrant and healthy city that is prepared for a million new residents. I look forward to your support in updating the Air Code and to cleaner air for all New Yorkers.



Comments of the Environmental Defense Fund
On Proposed Air Code Amendment 24-163.12 "Trade Waste Vehicles"
James T. B. Tripp, Senior Counsel
jtripp@edf.org/[212-616-1247](tel:212-616-1247)

EDF, a national not-for-profit environmental organization founded by scientists and headquartered in NYC, has a long history of interest in the City's solid waste policies and infrastructure. A major component of both solid waste and construction and demolition ("C & D") debris management has to do with policies concerning particulate emissions from private waste and C & D trucks. Because there are profound air quality and environmental reasons to reduce particulate emissions from these trucks that BIC licenses, we strongly urge the City Council to adopt the "Trade Waste Vehicles" amendment at 24-163.12, one of several amendments included in the Mayor's proposed amendments to the City Air Code. This amendment would require all of these trucks to comply with federal heavy duty emission standards by January 1, 2020 with a limited waiver provision.

This amendment addresses the cumulative impacts of diesel particulate emissions from both the private carter waste and C & D heavy-duty diesel trucks. Each fleet has about 4000 trucks for a total of 8000. These fleets together emit approximately 20% of the particulate matter emitted by all heavy duty diesel vehicles in NYC. Reducing these emissions would have major air quality benefits throughout the City and particularly in those communities with clusters of commercial waste and C & D transfer stations.

More than a decade ago, US EPA adopted a heavy-duty diesel truck rule that set emission standards for particulates and nitrogen oxide emissions and a maximum level of 15 ppm for all truck diesel fuel. The emission standards went into effect starting with model year 2007 trucks. As a consequence of this rule, the particulate emissions from MY 2007 and subsequent trucks are 85-95% below those from pre-2007 trucks. This is simply huge. The City Department of Sanitation has more than 2200 heavy-duty diesel collection trucks plus other heavy-duty vehicles in operation. Virtually all of its collection trucks will be in compliance with the 2007 EPA standards within three years. This action will have material implications for City-wide particulate emissions. Logically, it raises the question: what if the 8000 waste trucks could come into compliance with the 2007 EPA standards on a faster schedule than current replacement rates would suggest?

With support from BIC, we asked MJ Bradley (i) to analyze the age distribution and emission characteristics of the trucks in both fleets, (ii) to prepare a baseline of anticipated replacement of the trucks in these two fleets and therefore expected compliance by most or all of trucks with the 2007 EPA standards with no action and (iii) to assess the emissions benefits and

incremental costs of alternative policy scenarios that would accelerate removal of the oldest and dirtiest trucks off the road and/or alternatively require all trucks to comply with the 2007 heavy-duty truck particulate standard by a date certain. The resulting 27-page report is entitled "New York City Commercial Refuse Truck Age-out Analysis" dated September 2013 by M.J. Bradley & Associates. The full report is available on EDF's website provided in the footnote¹ and on M.J. Bradley's website at <http://www.mjbradley.com/node/239>. We would be happy to furnish a copy electronically to any member of this Committee or the entire Council who requests it.

MJ Bradley analyzed five policy cases: 1) Phase-out all of the pre-1994 trucks by 2016; 2) Phase-out all pre-2007 trucks by 2020; 3) Phase-out all pre-2007 by 2025; 3A) Phase-out pre-1994 trucks by 2016 and all other pre-2007 trucks by 2025; and 4) Phase-out all pre-2007 trucks by 2030. From a particulate emissions and therefore air quality and environment point of view, policy case 2 – phasing out all pre-2007 trucks by 2020 – stands out as having the largest benefits, and at the same time the costs of compliance appear to be reasonable. In terms of air quality benefits, the report estimates that this scenario will eliminate 560 tons of particulates between 2020-30 (796 tons cumulatively 2013-30) (MJ Bradley report pp. 3 and 24), an amount that is 40% below the baseline, the equivalent of removing some 25,000 commercial trucks from the City's streets each year in this decade (MJ Bradley report p. 3 and Table 8 p. 26, a table that provides seven other vehicle equivalents). It is for this reason that we strongly support the proposed amendment at 24-163.12 that provides for compliance with all of the trucks in these two fleets with the 2007 EPA particulate standard subject to a time limited waiver exception.

The air quality benefits of City taxpayers paying to bring all of DSNY's 2200 plus collection trucks into compliance with the 2007 standard in the near future are diminished if the trade waste vehicle fleets do not do the same albeit on a more modest schedule. Conversely, the benefits of the City's wise commitment will be magnified if all of the trucks in these private fleets come into compliance with the federal standard by 2020. Yes, the private fleets will directly pay and the commercial establishments and developers using these waste hauling services will indirectly pay a modest amount more to for these services to comply with this Air Code amendment. However, it seems fair and reasonable to have the beneficiaries of these services pay rather than City residents, particularly those in communities with concentrations of transfer stations through which large numbers of these trucks pass and queue, now that heavy-duty diesel truck particulate control technology is available, something that was not the case prior to 2007.

For these reasons, we urge this Committee and the full Council to approve the trade waste vehicles amendment as it moves forward with action on all of the proposed amendments.

¹ <http://www.edf.org/sites/default/files/EDF-BIC%20Refuse%20Truck%20Analysis%20092713.pdf>



Testimony before the Environmental Protection Committee of the New York City Council on Int. 1160
By Angela Sung Senior Vice President, Management Services and Government Affairs
Real Estate Board of New York
November 20, 2013

Good afternoon Chairman Gennaro and members of the Environmental Protection Committee. The Real Estate Board of New York, representing over 14,000 owners, developers, managers and brokers of real property in New York City, thanks you for the opportunity to testify about Intro 1160. While we support the Administration's goal of streamlining and clarifying the Air Code, we have a few serious concerns about some of the changes proposed in the legislation that we feel must be addressed before the Council passes this bill.

Our first concern is that—in many different places throughout the bill—language has been added or amended to allow the Commissioner of the Department of Environmental Protection (DEP) to make policy changes by rule instead of by legislation. As we have testified previously regarding other pieces of legislation, we believe that transparency and predictability is critical for our members, as is public input into policy changes made by agencies. As a result, we ask that the Council amend this bill to ensure that it retains oversight on future policy changes sought by DEP.

The most serious example of this change is in Section 24-180 of the bill, which removes all of the specificity for what must be included in a Notice of Violation written by the Environmental Control Board (ECB), and allows DEP's commissioner to determine the content of a Notice of Violation by rule. REBNY has long advocated for this specificity—which includes the section of the code that has been violated, the amount of the penalty that might be assessed, a description of the violation, and the time and place of any hearing that might be required—and we strongly urge the Council to retain the original language in the code and ensure that Notices of Violation continue to contain all of the necessary information for those receiving them.

Second, Section 24-136 of the bill (renumbered from 24-140.1) removes the requirement for DEP's commissioner to approve or deny an asbestos removal plan within 60 days. As mentioned earlier, it is important for property owners and managers to have a measure of predictability, especially when it comes to timeframes for agencies to review and approve construction and abatement work. Removing the limit on the review period places an undue time burden on projects, which can affect workers, owners and building tenants; the regulatory approval process is already the longest phase of any asbestos related work and the cost of additional construction delays can be substantial. Sixty days is a reasonable time frame for this process, and this section of the code should not be removed.

Third, Section 24-146 would allow DEP to issue a stop-work order, either orally or in writing, for any violations related to airborne dust. The criteria under which a stop-work order for this type of violation can be issued are vague—and again, are written to be established by departmental rule instead of by code. This provision would give very broad powers to DEP over something that may not be a life-safety



threat, but it could easily cause substantial costs, loss of work for construction, and delays. Given that the Department of Buildings (DOB) already has the power to issue a stop-work order for hazardous or unsafe conditions, we strongly believe that the authority to issue this type of stop-work order should remain within DOB's purview, especially when very few specifics are laid out for what constitutes a violation. We urge the Council to remove this provision in the bill.

Fourth, Section 24-109 regarding the registration of generators, engines and other devices is confusing. It is unclear why generators and engines being used for some purposes must be registered, while others are not required to be. There is also an exemption for performing a smoke test on Title IV-certified generators when they are first registered, but as these generators will not be available until 2015, we believe that the legislation should also exempt Tier4i (i for interim) or Tier 4 capable engines from testing.

Finally, the legislation contains two proposed changes that would create additional burdens on property owners and managers. Section 16-120.2 would allow the Department of Sanitation to assess civil penalties if refuse compacting systems aren't maintained and operated according to departmental rules, as well as if trash isn't compacted. Section 24-168.1 would require building owners who receive shipments of heating oil to maintain records of the shipments and keep them available for audit or inspection for three years, when these records are already maintained by persons who supply heating oil. If this requirement cannot be removed, we request that the bill be revised to explicitly permit the records to be kept electronically.

Thank you very much for allowing me the opportunity to speak about these issues. I'm happy to answer any questions you have.



Testimony for the New York City Council on Bill to Phase Out Pre-2007 Commercial Refuse Trucks by 2020

November 21, 2013

To the New York City Council, Business Integrity Commission, Commercial Refuse Industry and Community Stakeholders, I would like to thank you for this opportunity to share our testimony on the bill number 1160 in relation to the New York City air pollution control code to phase out pre-2007 commercial refuse trucks by 2020 in New York City.

My name is Alycia Gilde and I work for a national non-profit organization called CALSTART with office locations in California, Colorado, Michigan and New York. Since 1992, CALSTART has worked closely with industry, government, community groups and the private sector to advance the integration of clean transportation technologies around the world. CALSTART collaborates with more than 150 companies and agencies dedicated to expanding and supporting a high-tech transportation industry that cleans the air we breathe, promotes energy independence, spurs economic growth and leads us toward a sustainable future.

Today, our testimony will reflect our support for advancing cleaner vehicle technologies for the commercial refuse sector and why this bill is an important step to driving innovation while creating cleaner communities in New York City. There are three critical points that I would like to address as the City Council considers this important policy; 1) the technology is available, 2) recent success stories demonstrate the effectiveness of diesel truck phase out programs, and 3) there are incentives now available to help the industry make this critical transition.

Clean Vehicle Technologies

New York City businesses rely on the hard work of the private refuse industry to dispose of thousands of tons of the city's commercial garbage, recyclables, construction and demolition debris on a daily basis. It is the durability and dependability of a diesel truck that helps the industry successfully accomplish this task. However, diesel trucks manufactured prior to 2007, contribute to significant levels of diesel particulate matter (PM₁₀ and PM_{2.5}) and oxides of nitrogen (NO_x). With ongoing operations day and night in a very congested and populated city, the emissions of older diesel refuse trucks pose serious affects on air quality and public health.

In 2001, the United States Environmental Protection Agency (U.S. EPA) finalized the "2007 Highway Rule" that required diesel engines built in 2007 to reduce emissions by 90 percent. As a result of this rule, the integration of cleaner 2007 and most recent 2010 diesel engines has resulted in substantial environmental benefits including, the reduction of 110,000 tons of particulate matter, and the prevention of approximately 8,300 premature deaths and 360,000 asthma attacks each year.

Yes, clean vehicle technologies are available and we continue to see the advancement of vehicle technologies that are better for the environment and better for business. In addition to clean diesel technologies, there are a variety of alternative fuel vehicles that have proven successful for refuse collection. These technologies include compressed natural gas (CNG), hybrids and in some cases electric vehicles and should be encouraged under this bill. To a private refuse fleet owner, there are excellent benefits to alternative fuel vehicles such as improved efficiencies, vehicle operation, maintenance, cost savings and long-term fleet sustainability. Also available, are affordable diesel emission control

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Clean Transportation
Technologies and Solutions

www.calstart.org

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devices that can be applied to a refuse truck that are effective in reducing diesel emissions and can help a fleet meet the requirements proposed under the bill being discussed today.

Success Stories – It has been done!

Old diesel truck phase out programs are effective and with a reasonable timeline for implementation can be achieved successfully. To improve regional air quality and reduce local impact on communities, ports around the U.S. have developed truck phase out programs that require port trucks calling to marine terminals to meet specific engine model years. The San Pedro Bay Ports of Los Angeles and Long Beach, The Port Authority of New York and New Jersey, and the Port of Seattle have all implemented truck phase out programs that require a pre-2007 ban. Last year, the Ports of Long Beach and Los Angeles phased out trucks with engines Model Year 2006 and older and have already seen a reduction in harbor truck pollution by 90 percent. An important observation to make is that a number of these trucks now run on natural gas.

The City of New York is taking proactive steps to transition its own fleet of 26,000 vehicles to meet tougher emission control standards. By 2017, 90 percent of the City's diesel fleet must meet 2007 emission standards. Already, the City is well on its way of meeting this requirement. The Mayoral fleet is working with various technology providers to implement clean air solutions to reduce diesel and greenhouse gas (GHGs) emissions. By leveraging grant opportunities, technology demonstrations, and public/private partnerships, the City has successfully created the world's largest and most diverse fleet in alternative fuels and diesel emission control devices (DECDs).

Incentives for Clean Trucks

Right now, there are two excellent incentive programs available in New York City that can help the commercial refuse industry meet the 2020 timeline. The New York State Energy Research and Development Authority's (NYSERDA) New York Truck – Voucher Incentive Program and the New York City Department of Transportation Hunts Point Clean Trucks Program are offering more than \$33 million combined in incentives for alternative fuel vehicles and diesel emission control devices for Class 3 to Class 8 trucks. By leveraging these important incentives, private refuse haulers can begin to transition their fleets with cleaner vehicle technologies, meet the 2020 timeline and experience great business benefits.

From CALSTART's experience of working with fleets of various vocations, we understand that there is no "one size fits all" solution to clean vehicle technologies. It is important that we work together to help the commercial refuse industry meet this important timeline and goal. This can be achieved by crafting regulations that encourage innovation to achieve goals, promoting clean vehicle incentives, providing tools and resources, and holding informational workshops to ensure the commercial refuse industry is equipped with the knowledge to make the right business decision on clean vehicle technologies and be ready to meet the 2020 timeline.

Again, on behalf of CALSTART, I want to thank you for this important opportunity to provide testimony in support of bill number 1160 in relation to the New York City air pollution control code to phase out pre-2007 commercial refuse trucks by 2020 in New York City. I would be happy to provide copies of our testimony.

The New York City Council

Committee on Environmental Protection

Thursday, November 21, 2013

Presented by Mav Moorhead 917.923.2118 NYH2O/DamascusCitizens

Understanding the primary focus of today's agenda is Bill #1160-2013, the Local Law to amend the New York city charter, the administrative code and the New York mechanical code in relation to the New York city air pollution control code and to repeal certain sections of the administrative code relating to refuse burning equipment, refuse compacting systems, sulfur compounds, relating to smoking in passenger elevators and their environmental ratings, there appears at this time an omission of great magnitude that a Bill regarding New York city air pollution has not been introduced and addressed, a Local Law concerning the introduction of Radon 222 at high numbers as a result of the now November 1st final hookup of Spectra Pipeline, bringing with

it gas from the Marcellus Shale. *This bill does not go far enough. Preventable, death from exposure to Radon 222 should be included in amending the New York City Charter as well as administrative code.*

Gas from the Marcellus Shale is extremely high in Radium. Radon 222, a component of the radioactive Radium, travels with gas. The travel time from the Marcellus Shale is a scant 12-15 hours. New York City previously has received gas from the Gulf with lower levels of Radon 222 with a travel time of over a week. Radon 222 has a 3.8 day half life which when breathed in or ingested before that time the full strength of its destructive element is cumulatively harmful resultant in lung cancer and, when ingested, other forms of cancer. The EPA states that zero pCi/L is the safe level for Radon 222 exposure. Radon 222 is the leading cause of lung cancer in the US among non-smokers. Allowing

the import of gas from the Marcellus Shale into the city gates without a Local Law to amend the New York city charter regarding oversight, Radon daily testing and compliance with EPA safety standards of gas import in relation to Radon 222 is egregious and alarming to anyone who is aware of this Spectra Pipeline undertaking.

New York City apartment dwellers using gas to cook, workers servicing gas burning appliances in restaurants, hospitals, hotels, laundries and boiler superintendents have at this time no protection from the import of radon infused gas from the Marcellus Shale. No protection whatsoever, no rules, guidelines or regulations, no current Local Law amending the city charter to oversee this development have been introduced even though the issue has been raised for almost 2 years.

Included here are the Radon 222 Points to Consider for your review.

Radon 222 Bill: Points to Consider

- 1) It is imperative to initiate an Environmental Impact Statement that would mandate gas distribution monitoring and operational reports to be filed with the DEC and Public Service Commission to include Radon 222 and Radium 226 and 228. This would be prepared on all gas emitted from casings, compressor stations, gathering lines as well as distribution lines to determine the level of radiation transported thru those lines.**
- 2) The NYS EIS Appendix 13 findings report radiation from flowback (produced brine water). There is no Radon 222 reported because this testing was focused on water, not on gas transport which is how Radon 222 is transported. Radon 222 exists in the gas flow and the radiated particles can be inhaled. Since Radon 222 is the daughter of Radium 226 and 228, a mathematical calculated computation is necessary to convert to the already existing component Radon 222 to determine the resultant level of Radon 222 that flows thru all the pipelines to the end user from the Marcellus Shale, an extremely organic shale high in radiation.**

- 3) Since Radon 222's half life is 3.8 days and transport thru the pipeline system from casing to the final distribution lines is a scant 12 to 15 hours from the Marcellus Shale, well within the most potent 1st decay timeframe, breathing Radon 222 becomes a stark reality to the level of radiated toxicity presented to the end user. The Marcellus Shale is much closer to the end users in New York, unlike our present gas supplies now coming from the Gulf. Although radium 226 and 228 were revealed in the EIS Appendix 13 no attempt was ever made to disclose the levels of Radon 222 when appraising the wells tested by the DEC itself in the EIS. For example, the Maxwell Caton in Steuben County exhibited a Gross Alpha of 17,940 piC/L and Radium 226 of 2,472piC/L; the Webster T-1 well in Skyler County has a Gross Alpha of 123,000 piC/L and Radium 226 16,030 piC/L; the Calabro Well has a Gross Alpha of 18,330 and Radium 226 of 13, 510 piC/L. Using the mathematical conversion to calculate Radium 226 to Radon222 would have been the tool to determine this incomplete disclosure in the EIS by the DEC. Without making this determination the report is inconclusive and misleading, denying the EIS essential valuable requisites to make full determinations on the safety of the Marcellus Shale gas as would be represented in the unacceptable high levels of Radon 222 transported through the pipelines if the conversion were revealed. Harmful levels of Radon 222 assure proven irrevocable health toxicity that could result in over 30,000 needless lung cancer cases in NYC alone.**
- 4) All wellheads in the Marcellus Shale: non-producing, producing and high producing wells as well as the injection wells used to deposit the chemical fracking waste produced water will be independently tested, at the industry's expense, for radiation to include Radium 226 and 228 with the resultant mathematical converted calculation for Radon 222. These wells will not be chosen by industry for "controlled allowed access" as were exhibited in USGS study, of less than 10 wells all cherry picked by industry, but every single well must be tested of the thousands that are in existence presently. Misleading results from cherry picked wells by industry do not depict true representations of the wells that are being fracked and, therefore, the industry has summarily dismissed the most potent issue of radioactivity by allowing extremely limited access to wells. The industry's self rule determining policies cannot set the structure for such a critical issue as radiation. Radon 222 is the second leading cause of death in the US after smoking.**
- 5) All independent testing results for Radon 222 will be readily available to the public in a transparent format at no cost.**
- 6) In regard to New York City, all Con Ed gateway pipelines coming into New York City will have stringent mandatory daily independent monitoring, paid by industry, for levels of Radon 222 and report daily to the DEC and DEP. Levels that exceed safe existing levels determined by the EPA would demand immediate decisive attention. Hazardous gas would cease to be**

permitted to continue thru the line. The recommended EPA exposure of Radon 222 is 0 pCi/L. A reading of up to 4 pCi/L approaches hazardous levels and would be prohibited.

- 7) Con Edison's installation of auto shut off valves will proceed to shut down the distribution line(s) if levels approaching hazardous levels of Radon 222 were determined to enter NYC distribution lines.
- 8) There will be a regularly scheduled daily oversight regarding vigilant inspection of pipe leakage for methane and Radon 222. At the present time there is no mandatory oversight that tracks methane and radiation of any kind and this oversight dismisses the certain reality of a very real level of radiation that the highly organic Marcellus Shale is defined by. The very well head location determinates are based in part on a high level of radiation found as that will determine the probability of the level of production for that well.

Mav Moorhead



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our sister organization in Pa.

Damascus Citizens

www.DamascusCitizens.org



**GLADSTEIN,
NEANDROSS
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Building an Environmentally & Socially Responsible Future

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**Testimony of Richard Kassel
Senior Vice President
Gladstein, Neandross & Associates
In Support of
Intro. No. 1160
November 21, 2013**

My name is Richard Kassel, and I am pleased to testify in support of today's proposed revisions to the City's Air Code, especially those provisions that will require the clean-up of the thousands of trucks that cart the City's commercial waste.

Thank you, Mr. Chairman and the members of the Committee on Environmental Protection, for holding this hearing on Int. 1160-2013, and for providing GNA with the opportunity to testify today.

I am a Senior Vice President with the environmental consulting firm of Gladstein, Neandross & Associates (GNA). Founded in 1993 in southern California, GNA's team of more than 40 engineers, economists, technology experts, and policy analysts work with private and public fleets, environmental organizations, and government agencies and authorities around the nation on projects and programs to reduce transportation emissions, fuel costs, and other environmental impacts of transportation. Last year, GNA opened a new office in New York to expand our ability to contribute our expertise to the transportation and environmental issues of the City and the region.

Our specialty is developing and implementing approaches that reduce emissions, while reducing overall costs for the companies involved. Here in New York, we have managed the implementation of the Truck Replacement Program at the Port Authority of New York and New Jersey, have worked on a wide range of port and goods movement projects with the Natural Resources Defense Council, and are working with the NYC Department of Transportation to implement programs to reduce truck emissions at Hunts Point.

GNA strongly endorses the goals of this legislation, i.e., to update the Air Code to strengthen existing air quality initiatives and to regulate new sources of air pollution to further improve the



City's overall air quality. We believe that updating the City's Air Code is timely, will improve the health and quality of life for all New Yorkers, and will be cost-effective in the long run.

In particular, we strongly applaud the proposal to reduce emissions from the thousands of trucks that cart the City's commercial waste. Cleaning up these trucks would reduce particulate matter (PM) emissions in every neighborhood that generates commercial waste throughout the city. In addition, this will reduce air pollution in the low-income neighborhoods and communities of color that bear a disproportionate burden of housing most of the City's waste transfer stations.

Recently, GNA conducted an analysis of the emissions from these trucks, and of the potential emissions reductions that would result from a program that requires them to install diesel particulate filters or other comparable technologies. Although this analysis has not been released yet, we are able to share preliminary results with you today. In short, we estimate private trucks that cart commercial waste are responsible for more than 90 percent of the PM_{2.5} and NO_x emissions from non-C & D solid waste removal in NYC. To put it another way, less than 10 percent of the solid waste-related emissions come from the DSNY trucks that carry the City's residential and institutional solid waste and the long-haul trucks that carry the City's waste from the network of transfer stations to eventual disposal outside of the City. Given the emphasis of the City's 2006 Solid Waste Management Plan on (a) the City's residential and institutional waste and (b) the City's long-haul trucking of waste, this is especially noteworthy.

Given the ubiquity of DSNY collection trucks on every City street, how could this be so? The answer lies in the use of diesel particulate filters and alternative fuels like natural gas in the DSNY fleet. 97 percent of the DSNY trucks have diesel particulate filters that eliminate more than 90 percent of the PM_{2.5}, PM₁₀, and black carbon that would otherwise be emitted from the DSNY trucks. In other words, these are very clean trucks.

Simply put, the thousands of private trucks that haul commercial waste have not gone through the same clean-up as the DSNY trucks. It is time for them to do so, and we at GNA stand ready to work with the City, the companies that cart commercial waste, and all stakeholders to ensure that this clean-up happens as quickly and as cost-effectively as possible.

Thank you for the opportunity to testify today.



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City's overall air quality. We believe that updating the City's Air Code is timely, will improve the health and quality of life for all New Yorkers, and will be cost-effective in the long run.

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Thank you for the opportunity to testify today.



NEW YORK
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RESTAURANT
ASSOCIATION

Comments

of

The New York State Restaurant Association

to the

**Committee on Environmental Conservation
Intro. 1160-2013**

November 21, 2013

1:00 p.m.

250 Broadway – Hearing Room 16th Floor

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NEW YORK
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ASSOCIATION

Good morning members of the Committee. My name is Melissa Autilio Fleischut and I am the President and CEO of the New York State Restaurant Association (the "Association"), a trade group that represents approximately 5,000 food service establishments in New York City and over 10,000 statewide. The New York State Restaurant Association is the largest hospitality trade association in the State of New York and it has advocated on behalf of its members for over 75 years. Our members, known as Food Service Establishments ("FSEs"), represent one of the largest constituencies regulated by the City.

New York City is one of the pillars of the culinary arts world. Our restaurants employ hundreds of thousands of New Yorkers and are a backbone of the tourism trade. As one of the most important industries in New York City, its growth and survival should be supported by all levels of New York City and New York State government.

The New York State Restaurant Association would like to thank this Committee and the Department of Environmental Protection ("DEP") for including impacted stakeholders in discussions prior to the introduction of Intro. 1160. Engaging stakeholders allows the legislative process to be more transparent and generally leads to better, more meaningful, and logical legislation.

The New York State Restaurant Association submits these comments specifically in regard to Subchapter six of the proposed legislation. Subchapter six is also being amended to add new sections regulating certain sources of emissions not previously regulated by the Air Code, including "emissions from . . . commercial char boilers, cook stoves, and stationary generators."

Intro. 1160 seeks to regulate the installation of new char-broilers for FSE's that charbroil 875 pounds of meat per week. The New York State Restaurant Association notes that, if passed, this legislation would require new charbroils to have the latest technology starting in July 1, 2014, less than six months from the proposed enactment date of the legislation. This is simply not enough time for restaurants that are in the process of being developed and built to substitute already purchased or selected equipment. Because of the time and planning



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necessary to design a new or redesign an existing restaurant, this section of the legislation should not take effect until at least January 1, 2015.

In addition, § 24-149.4(e) seeks to have FSE's maintain records on the amount of meat they purchase monthly as well as the amount cooked each week on a char broiler. The maintenance of such records will be highly problematic and difficult for operators as kitchen staff have no means to track exactly what meat is cooked on a char broiler versus other cooking methods. Hence, the New York State Restaurant Association would request that more specific guidance, including model forms acceptable to the DEP, be provided before the effective date of the legislation.

Sections of Intro. 1066 that provide clarity to the DEP and the regulated community are important and are supported. Such sections include revisions to § 24-142 that provides a clear method for the testing of air contaminant emissions. The old method of testing emissions was subjective and resulted in unnecessary fines and citations to restaurants.

The New York State Restaurant Association looks forward to continuing its ongoing work with the Council to protect the restaurant and hospitality industry in the City of New York.

Respectfully Submitted,

Melissa Fleischut
President and CEO
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737810

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Testimony of Rosaria Sinisi Before the NYC Council Committee on Environmental Protection

My name is Rosaria Sinisi. I have asthma, which was diagnosed in 1993 at the Mount Sinai pulmonary health clinic. And I'm a member of a group of neighbors in Brooklyn who are dealing with a commercial building in close proximity to our residences that for years has been emitting airborne toxins through open windows directly onto the street in violation of DEP regulations -and absent permits from DEP, which are required for the equipment in question. These emissions occur most frequently on weekends or after regular business hours, sometimes in concentrations high enough to penetrate closed doors and windows. Toxins drift downward from the open windows of this building, which is open 24/7, and accumulate in clouds against the facades of the houses across the street.

Our experience with this situation has given us familiarity with both the 311 system and the Citizens' Complaint provision that this committee is proposing to abolish. I am here to urge this Committee to preserve the Citizens' Complaint procedure, as the 311 system is inadequate to the task.

Let me relate some of our recent experiences with 311, as follows:

- 1) On July 31 of this year, I filed a 311 complaint regarding a highly concentrated emission that penetrated my house through closed doors and windows, starting at about 8:45PM. 311 took the complaint, and advised that DEP would check it out within I believe ten business days. On August 6, at about 11:30 AM, I received a phone call from a DEP inspector stating that he was outside my house, and asked if I could come outside to discuss the matter. I did so. However, there was no emission ongoing at this time, so the complaint was closed.
- 2) In the second week of September, one of my neighbors filed another DEP complaint with 311, regarding an emission that began at around 6:15 PM. When she checked the 311 database a couple of days later, it turned out that the complaint had been erroneously logged as being in Manhattan, and closed. Nobody from DEP ever called her to inquire about the emission. This is not an infrequent occurrence with 311; they probably have a drop down box to select the borough where the complaint is located, which defaults to Manhattan if the operator doesn't select a different borough. So my neighbor refiled the complaint, insisting three times that the operator designate the location as Brooklyn. She never received any contact regarding this complaint, and it was closed – presumably because a DEP inspector came over at some point during regular business hours, smelled nothing, left, and closed the complaint.
- 3) About a week later, on September 16 of this year, there was a very large emission. Three minutes of inhaling this emission, when I put out the garbage, caused choking, coughing, and a two hour headache. The cough persisted for a couple of days. I filed a 311 complaint regarding this emission. Several days later I checked the 311 database and saw that this complaint, also, had been erroneously logged as being in Manhattan. So I called it in again, insisting that the 311 operator log the complaint correctly as being in Brooklyn. On September 23, I called 311 to inquire about the disposition of this complaint, as the 311 update on its website stated that the complaint had been referred to something called "Air Resources." A DEP supervisor at 311

stated that "Air Resources" had referred the complaint to DEP's "Right to Know" office, with a phone number of (718) 595-4436. I called this number twice. On both occasions, I got voicemail identifying this office as DEP's "Economic Development Unit." I left a message requesting a call back to let me know what the Economic Development Unit would do about my complaint, or whether the referral from Air Resources to this office had been erroneous. I received no return call from the Economic Development Unit, so later that day I called the DEP Inspector General's office to complain. Eventually, I received a call back from a Tiffany Dumas in the Inspector General's office. She stated that the Economic Development Unit WAS, in fact, the correct office to which my complaint should be delegated – because the emission "wasn't a chemical on the ground, it was in the air." As I was growing impatient, I asked Ms. Dumas for a number where I could speak to her supervisor. The number she provided turned out to be the office of DEP's Michael Gilsean. I called that number and spoke to a Ms. Virginia Smythe, who stated that this wasn't really her area, but promised that someone would call me back.

At 6:21 PM on September 23, I received a phone call from a DEP inspector in the Manhattan office, who stated that he was calling to discuss my complaint regarding the emission of September 16. He stated that someone (probably not himself) would be around the following evening to walk around the building. Presumably a DEP inspector came over, smelled nothing, and left, for the complaint was closed.

At about 11:30 AM on September 27, after receiving an unintelligible voicemail from an unidentified DEP inspector in which the only comprehensible words were "about the complaint," I called the number at which I'd reached Ms. Virginia Smythe on September 23. Mr. Gilsean picked up the phone. I told him I wanted to cooperate with DEP's inspections in any way possible, but that the previous caller hadn't left a name, and had called from a blocked number, so what was I to do? Apparently Mr. Gilsean made another phone call, for at 3PM, I received a call from the Chief of Enforcement of DEP. He stated that if there were a pattern of emissions and I could tell him what night there was likely to be one, he would send over an inspector at that time. Unfortunately, that's not how our situation works. We never know what date or time we're going to get hit with the next emission. The Chief also stated that he'd sent an inspection team to the building and found no problems. Perhaps there are none inside; but we're outside, and still choking and filing 311 complaints when the emissions occur, so unless we (and our doctors' puff tests) are lying, then obviously emissions are still coming out of the building – just not when the inspectors happen to be there.

- 4) On Sunday morning, October 20, 2013, about 11:30 AM, one of my neighbors opened his front door to the smell of what he at first thought was a house on fire. In fact, it was an emission from the building, through a window at sidewalk level. He filed a 311 complaint regarding this emission. The updated complaint on the 311 website reads: "Status: The Department of Environmental Protection investigated this complaint and sent it to the Bureau of Environmental Compliance for further action. Notes to Customer: Next Update Due: Closed - No Further Updates."

- 5) On November 5, 2013, at about 9PM, there was another emission from the building. Another of my neighbors filed a 311 complaint regarding this emission. On Sunday, November 17, the update regarding this complaint on the 311 website read: "Your Service Request has been submitted to the Department of Environmental Protection. Please check back later for status."

In other words, our experience has been that the 311 system, as a mechanism for filing complaints about emissions of toxins that should legitimately be under the jurisdiction of DEP, is pretty much useless. If these emissions were occurring 24/7, and an inspector could show up during business hours a week later and smell the same emission, perhaps there might be some response through this system. But under the circumstances (other than to create a record of having filed complaints), the 311 system is a complete waste of time.

However, both during and prior to filing the 311 complaints, we filed multiple FOIL requests with DEP regarding its interaction with the polluter. And now that we have considerably more information regarding what we have been breathing (information that the polluter refused to provide when we asked), we are in the process of filing Citizens' Complaints: We will have our day in court in ECB hearings, based on evidence separate and apart from the perceptions of inspectors who show up a week after the fact, sniff, and close complaints.

But if the Council sees fit to abolish the Citizens' Complaint procedure, it will effectively remove the last avenue of recourse from the taxpayers of New York City. It will eliminate the last -and for us, only procedure available to protect our health and compel DEP to investigate in further depth than mere sniff tests, and hold a polluter responsible for compliance with the law. I sincerely hope that abolishing that last recourse is not what the ladies and gentlemen of this committee think constitutes "Environmental Protection."

Thank you for your time.

NEW YORK ENVIRONMENTAL LAW AND JUSTICE PROJECT

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Public Hearing

250 Broadway, 16th Floor Hearing Room
New York, NY
Thursday, November 21, 2013

Testimony before New York City Council Committee on Environmental Protection

RE: Int. No. 1160 - In relation to the New York city air pollution control code, and to repeal section 24-117 of the administrative code of the city of New York, relating to refuse burning equipment, section 24-119 of such code, relating to refuse compacting systems, subchapter 5 of chapter 1 of title 24 of such code, relating to fee schedules, section 24-144 of such code, relating to sulfur compounds, section 24-150 of such code, relating to smoking in passenger elevators, section 24-154 of such code, relating to environmental ratings, sections 24-179, 24-181, 24-182, 24-184, 24-185, 24-186, 24-187 and 24-188 of such code, relating to the powers and procedures of the environmental control board, including procedures for filing answers, citizens complaints, default proceedings, hearing officer decisions, board decisions, and compliance with board decisions, and subdivision (f) of section 24-190 of such code, relating to failure to pay civil penalties.

I. Background on NYC Air Pollution Control Code

A. Legislative purpose of originally enacted NYC Air Pollution Control Code; Environmental Justice implications of proposed legislation

Section 24-102 of the existing Air Code clearly states its legislative purpose: “It is the public policy of the city that every person is entitled to air that is not detrimental to life, health and enjoyment of his or her property.”

However, since the Air Code was first enacted in the 1970s, studies have clearly shown that every person in New York City is not equally protected from air detrimental to life, health and enjoyment of his or her property. Rather, there are significant disparities between low- and high-poverty NYC neighborhoods in the health burden attributable to criteria air pollutants such as ozone and PM_{2.5}.¹

¹ Iyad Kheirbeck et al., “PM2.5 and ozone health impacts and disparities in New York City: sensitivity to spatial and temporal resolution”, 6 *Air Qual., Atmosphere & Health* 473, 484 (Sept. 2012), available at <http://link.springer.com/content/pdf/10.1007%2Fs11869-012-0185-4.pdf>.

action is needed to protect all New Yorkers, and particularly the city's children, seniors, and vulnerable populations.”⁵

II. Comments on Air Code Amendments proposed in Int. 1160

Instead of following the Health Department's directive, and taking “further action” to protect New Yorkers from local sources of air pollution, many of the proposed amendments to the City's Air Code would, to the contrary, undermine existing protections, and very likely increase the health risks from air pollution borne by vulnerable populations. Below are some of the most problematic changes to the Air Code currently being proposed.

A. Proposed § 24-121(19)

The proposed § 24-121(19) would exempt from DEP's Air Code permitting program “[a]ny . . . equipment or apparatus exempted by the commissioner by rule.” Clearly a certain measure of flexibility is desirable in any regulatory scheme as comprehensive and complex as the City's Air Code. However, the proposed § 24-121(19) provides no clear standards defining when and how the commissioner should grant exemptions to the Air Code's permit requirements by rule. It is therefore an “over-delegation” of legislative authority, rather than a thoughtfully designed mechanism for regulatory flexibility. This type of a loophole in the Air Code's permitting program should not exist, absent additional legislative direction to the commissioner, that would provide clear and consistent guidelines for granting exemptions by rule. Such guidelines would ensure that any exemptions granted by rule strike the same, delicate balance between promoting regulatory flexibility and protecting public health apparent in other, more carefully drafted provisions of the Air Code.

B. Amendment of § 24-141

Section 24-141 is a bedrock provision in the City's Air Code, which establishes a fundamental prohibition against the emission of any air contaminant which

causes or may cause detriment to the health, safety, welfare or comfort of any person, or injury to plant and animal life, or causes or may cause damage to property or business, or if it reacts or is likely to react with any other air contaminant or natural air, or is induced to react by solar energy to produce a solid, liquid or gas or any combination thereof which causes or may cause detriment to the health, safety, welfare or comfort of any person, or injury to plant and animal life, or which causes or may cause damage to property or business.

Inexplicably, the proposed legislation would effect a significant retraction of protections that existed for decades with the odious insertion of just one word: “odorous.” There is absolutely no health-based justification for amending § 24-141 to limit its applicability to only “odorous air contaminants,” when many of the most hazardous air contaminants are odorless—ozone, carbon monoxide, radon, just to name a few. Air contaminants do not have to be odorous to induce coughing, exacerbate asthma symptoms, and cause clear detriment to the health, safety, welfare, and comfort of New Yorkers.

⁵ NYC DOHMH, 2013 Air Quality Report, *supra* note 3, at 10 (emphasis added).

III. Conclusion

The proposed amendments to §§ 24-121(19) and 24-141, and proposed removal of the Citizen's Complaint procedure provided in the existing Air Code, at § 24-182, will lead to an increase in pollution

as well as the removal of the Citizen's Complaint procedure provided in § 24-182, we urge City Council to vote against the proposed legislation, Int. 1160-2013.

We do not believe the City Council should adopt the proposed legislation

Rajiv Jaswa, J.D.
Law Clerk

Joel R. Kupferman, Esq.
Executive Director

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. Air Code Amendment Res. No. _____

in favor in opposition

Date: 11/21/13

(PLEASE PRINT)

Name: JAMES TRIPP

Address: 257 Park Ave So NYC 10010

I represent: Environmental Defense Fund

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1160 Res. No. _____

in favor in opposition

Date: 11/21/13

(PLEASE PRINT)

Name: RICH KASSEL

Address: 10 GNA, 1270 Broadway, NY, NY 10001

I represent: Gladstein, Neandross + Assoc.

Address: 1270 Broadway, NY, NY 10001
#1009

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63

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Date: 11/21/13

(PLEASE PRINT)

Name: Alycia Gilde

Address: 68 Jay Street, Brooklyn, NY

I represent: CALSTART 11201

Address: SAME!

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I intend to appear and speak on Int. No. 1160 Res. No. _____

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Date: 11/21/13

(PLEASE PRINT)

Name: CECIL CORBIN - MARK

Address: 1854 AMSTERDAM AVE NYC 10031

I represent: WEACT FOR ENVIRONMENTAL JUSTICE

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

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in favor in opposition

Date: 11/21/13

(PLEASE PRINT)

Name: Mary Ann Rothman

Address: 110 Riverside Drive NYC 10024

I represent: Council of New York Cooperatives & Condominiums

Address: 250 West 57 Street #730 NYC 10107

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THE CITY OF NEW YORK**

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in favor in opposition

Date: 11/21/13

(PLEASE PRINT)

Name: John Cilella

Address: 22-4347ST

I represent: LIC, NY 11705

Address: self

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THE CITY OF NEW YORK**

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Joel Kuperman

Address: 357 BROOKLYN RD

I represent: NEW YORK ENV LAW & JUSTICE

Address: same

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Angela Pinsky

Address: REBNY - 570 Lexington

I represent: Rebny

Address: _____

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Appearance Card

1160

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2/13

(PLEASE PRINT)

Name: Andree Higinio

Address: 1900 HAZEMARKE RD.

I represent: AMIA American Motorcycle Assoc.

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1160 Res. No. _____

in favor in opposition

Date: 11/21/2013

(PLEASE PRINT)

Name: Denise Richardson

Address: _____

I represent: General Contractors Association

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 11/21/13

(PLEASE PRINT)

Name: ROSARIA SINISI

Address: 16 CLIFTON PLACE

I represent: A GROUP OF NEIGHBORS

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1160 Res. No. _____

in favor in opposition

Date: 11/21/13

(PLEASE PRINT)

Name: BILL FERRARO

Address: 2928 WEST-5TH ST

I represent: A MATE OF BKLYN WIDOWS

Address: ~~2928 WEST-5TH ST~~ PO BOX 245064 BKLYN NY 11224

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1160 Res. No. _____

in favor in opposition

Date: Thurs Nov 21, 2013

(PLEASE PRINT)

Name: Tanya Cruz

Address: 118-38 221st Street

I represent: MEF / ABATE

Address: Washington DC

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THE CITY OF NEW YORK**

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I intend to appear and speak on Int. No. 1160 Res. No. _____

in favor in opposition

Date: 11/21/13

(PLEASE PRINT)

Name: ION SINGH

Address: PO BOX 1762 NY 10159

I represent: CBMA

Address: QUEENS, N.Y.

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 11/21/13

(PLEASE PRINT)

Name: MAV MOORHEAD

Address: POB 195

I represent: NYH20

Address: 461 BWAY M20

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1160 Res. No. _____

in favor in opposition

Date: 11/2/13

(PLEASE PRINT)

Name: Denise Richardson

Address: 60 E 42 St

I represent: General Contractors Association

Address: 60 E 42 St NY NY 10165

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Andrew Moesel

Address: _____

I represent: New York State Restaurant Assn.

Address: 1001 Ave of Americas

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1160 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: JESSE ERLISAVM

Address: 87 BROADWAY, 4TH FL, NY NY 10003

I represent: NY MOTORCYCLE & SCOOTER TASK FORCE

Address: _____

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THE CITY OF NEW YORK**

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I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Adam Edwards, Proner & Proner

Address: 60 East 42nd Street Suite 1448 New York, NY

I represent: Proner & Proner

Address: 60 East 42nd Street Suite 1448

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1160 Res. No. _____

in favor in opposition

Date: 11/27/2013

(PLEASE PRINT)

Name: Felice Farber

Address: _____

I represent: General Contractors Association

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1160 Res. No. _____

in favor in opposition

Date: 12/21/13

(PLEASE PRINT)

Name: David Biberman

Address: _____

I represent: National Waste + Recycling Assoc.

Address: 4301 Connecticut Ave, NW Wash DC

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1160 Res. No. _____

in favor in opposition

Date: 11-21-2013

(PLEASE PRINT)

Name: Jeffrey Eichenwald

Address: 152 Forsyth St.

I represent: Mechanical Industry

Address: _____

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Carter Strickland

Address: _____

I represent: Commissioner - NRCDEP

Address: _____

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