

Statement of Caswell Holloway  
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**Before the New York City Council Committee on Environmental Protection  
Re: Construction, Demolition and Abatement Legislation  
(May 21, 2009)**

- Good afternoon and thank you for the opportunity to testify today. My name is Cas Holloway, and I am Chief of Staff to Deputy Mayor for Operations Edward Skyler, and a Special Advisor to Mayor Bloomberg.
- I want to thank Chairman Gennaro for convening this hearing, Speaker Quinn and her staff for working with the Administration to develop and advance the legislation before the Committee today, and finally, the sponsors of the bills under consideration.
- I would also like to recognize the presence Chief Richard Tobin from the Fire Department, Deputy Commissioner Robert Avaltroni from the Department of Environmental Protection, and Assistant Commissioner James Colgate from the Department of Buildings, and Geraldine Sweeney, a senior project manager on the Mayor's Office of Operations run by Jeffrey Kay. Together these agencies, along with the Law Department have worked together for many months to develop and take the steps necessary to implement the legislation before you.
- The four bills under consideration today are part of a larger package of bills that together, will enable the City to implement an important series of reforms to the way that construction, demolition, and abatement jobs (what we refer to as "CDA operations") are regulated by the City and conducted in the field.
- As everyone here knows, on August 18, 2007, a fire at the former Deutsche Bank building at 130 Liberty Street tragically took the lives of two of New York City's bravest, Firefighters Joseph Graffagnino Jr., and Robert Beddia.
- The fire could have been avoided, and at that time, the Mayor committed that the City would do everything in its power to prevent a similar tragedy from happening again. He ordered a comprehensive review of CDA Operations that was led by Deputy Mayor for Operations Edward Skyler, and the agencies sitting here with me today have collectively spent hundreds of hours developing and now, implementing the 33 recommendations that we made to the Mayor last July.
- I am overseeing the implementation of those recommendations, and the legislation announced today—while it cannot undo the terrible consequences of August 18—is an important step toward fulfilling the City's commitment to preventing a tragedy like the 130 Liberty Street fire in the future.

- Before discussing the specific bills before the committee today, I want to say a few words about steps the City has already taken—particularly to strengthen its internal processes with respect to the oversight of construction, demolition, and abatement work.
- The 33 recommendations made to Mayor Bloomberg last fall focus on 4 areas: Data Sharing, Inspection Practices; General Oversight; and Conduct of Operations in the Field. And the City has already implemented important changes in each of these areas:
  - DEP and DOB are regularly sharing information with FDNY about high-risk abatement jobs, and the issuance of construction and demolition permits;
  - We have completely overhauled DEP’s inspection protocols and established a baseline of common safety requirements that any inspector—whether from DEP, FDNY, or DOB—is required to enforce. And we’ve already conducted cross-training by all three agencies so that our inspectors are qualified to enforce these requirements—like maintaining clear exits and checking standpipe connections.
  - DEP, FDNY and DOB inspectors are all using checklists in the field to ensure consistency across inspections, and inter-agency collaboration on these issues—including simultaneous abatement and demolition projects, like the Yankee Stadium demolition—are becoming institutionalized.
  - DOB now has a rule that requires site safety managers to conduct weekly tracings of standpipes.
  - And FDNY is already at work using \$23 million in capital funding provided by Mayor Bloomberg to completely overhaul its data-keeping practices so that inspection and other resources can be more-effectively allocated on the basis of risk.
- These are important steps, and the bills under consideration today establish the procedures and grant the City the authority it needs to effect more fundamental changes—particularly in the way asbestos abatement operations are overseen and conducted.

**A-TRU Bill**

- That leads me to one of the most important pieces of legislation before the committee today, and to come out of the 33 recommendations to the Mayor about CDA operations—Intro No. 1003, which, among other things, establishes a permitting requirement for asbestos abatement jobs that pose the greatest risk to the safety of workers, first responders, and the general public.
- Asbestos abatement is a complex and heavily regulated activity. A safely conducted abatement generally requires extensive pre-cleaning, the establishment of containment areas, the installation in large asbestos jobs of machines to maintain negative air

pressure—which prevents asbestos containing material (ACM) from escaping containment through the air. Additionally, DEP rules require the presence of an independent Air Monitoring Technician to check that levels of airborne fibers are within the prescribed limits, and a project logbook must be kept to record inspections and personnel on site.

- In protecting people from ACM during an abatement operation, however, there is a risk that unless carefully designed and implemented, the structures and materials needed to establish containment and run a safe job could obstruct building exits or interfere with fire suppression systems.
- And as the abatement work at 130 Liberty Street shows, these jobs can be very large and complex. The CDA working group undertook a comprehensive review of the aspects of abatement that could impact fire and life safety, and recommended the establishment of a permit requirement for jobs that meet certain thresholds.
- Intro No. 1003 grants DEP the authority to issue those permits and establishes the broad criteria under which they would be required, including:
  - The effect of the project on the maintenance of the means of egress;
  - The effect of the project on the fire protection systems in the building; and
  - whether the project includes work performed only for the purpose of the asbestos project that would otherwise require a work permit from the department of buildings
- The City will take steps to ensure that this new requirement can be implemented quickly and efficiently, and DEP and the Mayor’s Office of Operations have been working for months to establish a brand new office that will review and permit significant abatement projects. Based at DEP’s Asbestos Control Program office in LeFrak City, Queens, this new Asbestos Technical Review Unit (known as “A-TRU”) will issue a DEP Permit based on a joint DEP-DOB review.
- The development of this new unit includes the buildout of new space at LeFrak City, technology enhancements, the development of guidance documents for contractors coming before DEP, and we are making the filing of asbestos jobs entirely electronic, to streamline the application process.
- Most importantly, the A-TRU office’s joint permitting operation will house the expertise of DEP and DOB at one location in order to coordinate the review of both abatement means and methods, and compliance with requirements of the Construction Codes— so that for abatement jobs, contractors won’t have to shuttle from one agency to another to gain necessary approvals.

- More specifically, an A-TRU permit will authorize not only asbestos activities but other work performed for the purpose of the abatement project that would currently require a DOB work permit, such as alteration work necessary to expose asbestos material for removal. To allow the new unit to get up and running and provide time for a smooth transition for environmental contractors, the bill has a 90-day phase-in period. Large jobs will be permitted over the first 90 days, after which all jobs that trigger the permitting thresholds will be required to get an A-TRU permit.
- FDNY will receive automatic notification of all jobs that require an A-TRU permit (in addition to others), which triggers an inspection by the local fire company. Following those inspections, local companies are required to indicate whether any changes or additions to the Critical Information Dispatch System are required.
- The bill also includes two other key provisions:
  - Authorizing FDNY to delegate to DEP authority to enforce the FDNY codes at abatement sites, and issue violations at asbestos abatement sites for issues like blocked egress and improperly removed fire-suppression systems; and
  - Requiring materials used in temporary enclosures (e.g., partitions, decontamination areas, and plastic enclosures) comply with certain standards established by the National Fire Prevention Association (NFPA).

### **Simultaneous Abatement and Demolition/Decoupling**

- Intro. 998 before you addresses another key issue of both the CDA Working Group and the Council: restricting the simultaneous performance of abatement and full demolition. The bill prohibits asbestos abatement activities and demolition work from being performed simultaneously in a building undergoing full demolition or the removal of one or more stories without a DEP variance, which must be approved by FDNY and DOB.
- Some concerns have been expressed about this bill, so I would like to explain the genesis of these provisions. DOB has had a long-standing written policy to only issue full demolition permits upon the issuance of an ACP-5, which certifies the presence of little or no asbestos. In the past, DOB had occasionally issued demolition permits on the basis of an ACP-7 form, which indicates that an abatement job will take place at the site. The CDA Working Group called for strict adherence to this policy, and the Council recognized the value of enshrining this requirement in law—but with a variance process.
- The City believes that simultaneous abatement and demolition should remain a rare occurrence. But for those instances in which it must take place, the variance procedure addresses the heightened fire, site-safety and asbestos-related risks raised in these situations, by requiring approval from FDNY, DEP and DOB. We are committed to work with industry in the development of the rules needed to implement this bill so that the variance process is efficient and the thresholds reasonable.

## **No-Smoking**

- Intro. 1001 carries out a fairly simple recommendation of the CDA Working Group: strengthening the Citywide smoking ban at construction, demolition and abatement sites, and enforcing it with a zero-tolerance approach. Expanding on existing smoking restrictions in the DEP rules, the bill bans smoking on any floor of a building where abatement activities are taking place. It also prohibits lighters, matches and tobacco in the abatement work place.
- The first three bills I have discussed thus far establish new requirements on the abatement and construction industry. I'd like now to turn to legislation requiring new efforts by City agencies. As Deputy Mayor Skyler noted in announcing this package of bills with the Speaker, DEP, DOB and FDNY took a very hard look at their own practices during the CDA Working Group's review.
- It thus should come as no surprise that the resulting legislation calls on these agencies to improve how they regulate CDA work and coordinate amongst themselves.

## **Egress**

- Intro. 1005 requires DEP to promulgate rules giving further guidance to contractors on how to maintain egress at asbestos abatement projects. DEP, DOB, and FDNY, in collaboration with the Office of Operations, have been developing rules enhancing guidance on egress in the ACP rules. These will be promulgated in the near future, in compliance with the bill. Additionally, in conjunction with the development of the new A-TRU Unit, we have been developing a guidance document to further explain these egress requirements.

## **Information-Sharing**

- Finally, I would like to take a moment to discuss the CDA Information-Sharing bill, Intro 1007. While not before this committee today, this bill is integral to the CDA undertaking. Developed in close collaboration with the Council, the bill requires DEP, FDNY, and DOB to establish a procedure to share information regarding violations issued as a result of inspections of buildings meeting agreed-upon criteria.
- This requirement will build on the considerable progress in sharing information made recently by FDNY, DEP, and DOB. For instance, DEP and DOB are regularly sharing information about construction and demolition permits. Additionally, DEP is regularly sharing information about high-risk abatement jobs with FDNY, information that FDNY is using to conduct more frequent and effective field inspections. Lastly, FDNY is developing a long-term data analysis strategy, and has contracted with IBM to create a Citywide, risk-based inspection program based on multi-agency data to fully replace the current inspection cycle.
- One year after the effective date of this bill, the City is required to provide the Council a copy of the required CDA information-sharing procedure, and the Administration looks forward to returning next year to update the Council on its efforts.

**Non-jurisdictional buildings**

- I would like to close with another issue that loomed large for the CDA Working Group: the applicability of City Fire and Construction codes to state, federal and other so-called “non-jurisdictional” property owners.
- As the Working Group found, the informal and voluntary nature of compliance with Fire and Construction Codes creates a risk that there is construction, demolition, or other hazardous activity taking place at these properties that the City does not know about, cannot require building owners to correct, and may not be prepared to address in the event of an emergency.
- The City has called for state and federal legislation to require fire and building code compliance among such non-jurisdictional entities, and called upon City agencies to develop agreements with such entities to heighten compliance.
- The Administration’s effort to address this issue enact through state and federal laws complements the Council’s commitment to improving construction and abatement safety through local legislation. We look forward to discussing with you any ways to collaborate on this important issue.
- Thank you for the opportunity to testify before you today and I will be happy to take any questions you may have.

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