

**TESTIMONY OF
THOMAS MILORA, EXECUTIVE ASSISTANT TO THE COMMISSIONER,
NEW YORK CITY DEPARTMENT OF SANITATION**

**NEW YORK CITY COUNCIL COMMITTEE ON WATERFRONTS
MONDAY, FEBRUARY 22, 2010 -1:00 P.M.
250 BROADWAY, 16TH FLOOR**

Good afternoon Chairman Nelson and members of the Waterfronts Committee, I am Thomas Milora, Executive Assistant to the Commissioner for the New York City Department of Sanitation. I am here today with Chief Todd Kuznitz, Director of Enforcement. Also with me are my colleagues Andrew Schwartz, First Deputy Commissioner for the Department of Small Business Services, and Richard Muller, Director of Legislative Affairs for the Department of Environmental Protection. Thank you for the opportunity to testify today regarding Intro. No. 53 and Intro. No. 54.

As you know, the Department of Sanitation (DSNY) takes an active role with respect to those who illegally dump throughout the City. In order to be issued a violation under §16-119 of the New York City Administrative Code the illegal dumping must occur on a public place or other area whether publicly or privately owned which includes property located along the waterfront, and such dumping must occur from a dump truck or other vehicle. DSNY also has the authority to issue violations under §16-130 of the Administrative Code to those entities that illegally fill lands underwater to established grades without the proper permits. DSNY continually monitors for the illegal dumping of materials by conducting surveillance of known dump locations, including along waterfront properties, and by following suspicious vehicles.

DSNY also has both a Tip program and a citizen affidavit program. If DSNY observes someone dumping into the waterway, DSNY impounds the vehicle and notifies the New York State Department of Environmental Conservation (NYSDEC) for further enforcement action. Last year, DSNY notified the NYSDEC after observing a business pushing material into a waterway in Brooklyn.

Small Business Services (SBS) also plays an active role in respect to the waterfront. The mission of SBS is to make it easier for companies in New York City to form, do business and grow by providing direct assistance to business owners, fostering neighborhood development in commercial districts, promoting financial and economic opportunity among minority- and women-owned businesses, preparing New Yorkers for jobs and linking employers with a skilled and qualified workforce. In addition, as a successor agency to some of the functions of the former Department of Ports & Trade, SBS has jurisdiction for waterfront permitting and inspection of waterfront property.

In this context, SBS inspects waterfront properties for hazardous conditions, monitors properties for compliance with construction permits, issues notices of violation and criminal court summonses for violations, assists in the abatement of hazardous conditions through fencing and interagency coordination, and maintains waterfront permit and property records. Violations

have been issued for unpermitted work and hazardous conditions and the agency has consolidated and organized several decades of the City's waterfront permit records.

SBS works closely with other property management agencies, notably the Economic Development Corporation (EDC) and the Department of City-Wide Administrative Services. SBS also works with the Department of Buildings on permitting issues and potential structural hazards. EDC's property management arm manages and maintains waterfront property under SBS jurisdiction.

The other City agency with a critical role in safeguarding the waterways is the Department of Environmental Protection (DEP). Pursuant to Section 24-523 of the NYC Administrative Code, DEP enforces against illegal "discharging of a toxic substance directly or indirectly into the sewer system or into any private sewer or drain emptying into the sewer system..." While DEP does not have specific enforcement power to regulate against illegal dumping into the harbor, it does have enforcement power against illegal discharging into a sewer system.

DEP conducts programs focused on preventing and reducing the entry of pollutants and litter into the Harbor via the sewer system: the Industrial Pretreatment Program; the Shoreline Survey; the grease prevention program; and the Emergency Response Unit. With regard to the last of these, DEP inspectors in the Emergency Response Unit respond to reports and complaints of spills, and illegal discharges of toxic substances, obstructive substances, and any other substances other than storm water runoff, that have the potential to enter the sewer system. The inspectors take enforcement action when necessary which may include ordering cleanups, issuing summonses, and submission of reports.

Poor housekeeping practices at industrial sites can result in floatables (debris or material that floats on the water's surface) escaping into the sewer system. The Industrial Pretreatment Program (IPP) is a federally required and authorized program charged with controlling industrial discharges by requiring industries governed by federal and local pretreatment regulations to remove specific pollutants from their wastewater before they are released into the City's sewer system. The IPP helps to protect the sewers, the wastewater treatment plants and the City's receiving waters. The Environmental Protection Agency requires approximately 1,500 municipalities around the country to implement industrial pretreatment programs.

Regarding the current bills, Intro. No. 54 adds a civil penalty section to Title 22 of the New York City Administrative Code with substantial civil penalties to be recovered in proceedings before the Environmental Control Board. Historically, SBS violations have been pursued in criminal court proceedings. Jurisdiction to seek penalties through the ECB could provide for a more expedited process in the notice and enforcement of violations. Additionally, Intro. No. 54 expands the scope of public places that illegal dumping may occur to include wharf, pier, dock, bulkhead, slip and navigable waterway, and would give SBS and DEP, in addition to DSNY, the authority to enforce with respect to at least some of these areas under §16-119 of the Administrative Code. Subject to any legal concerns, we support the bill in principle and would like to work with the Council on finalizing the bill.

Intro. No. 53 would create a task force that would create a plan to combat illegal dumping into the waterways of New York City. We think that this bill on a whole is unnecessary since DSNY, SBS, and DEP already work closely with other city and state agencies to ensure that the areas along the waterfront and the waterways are closely monitored. Sanitation has authority to issue violations where trucks or other vehicles dump debris in the water; DEP monitors for improper outflows into the City's waterways and SBS has authority to inspect properties and issue violations for hazardous conditions at work sites along the waterfront. The New York State Department of Environmental Conservation and the Army Corps of Engineers have authority to issue violations for polluting navigable waterways. All three City agencies can respond to specific complaints of dumping at specific locations. We can work to tailor 311 calls to address specifics of illegal dumping. DSNY has an Illegal Dumping bounty program, DEP has a floatables reduction program and the State DEC has a hotline for reporting incidents of pollution. However, the City agencies do not have the resources to monitor property either from the waterside or extensively from the landside for this type of dumping. It should also be noted that a substantial portion of the City's waterfront is publicly owned by the City, State and federal government and each has property management programs to monitor and secure their properties and facilities.

At this time, we will be happy to answer any questions.



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**Testimony of Deborah A. Mans, Executive Director and Baykeeper
NYC Council, Committee on Waterfronts
February 22, 2010**

NY/NJ Baykeeper's mission is to protect, preserve, and restore the ecological integrity and productivity of the Hudson-Raritan Estuary – one of the most urban estuaries on the planet. Since 1989, we have served as citizen advocate for the Estuary's bays, streams, and shores, including the NY/NJ Harbor. Baykeeper stops polluters, champions public access, influences land use decisions, and restores habitat - benefiting the natural and human communities of our watershed.

I am here today to testify in support of both proposed local laws to amend the administrative code in relation to creating a plan to combat illegal dumping into the waterways of New York City and to increasing fines for violations of the law for illegal dumping along waterfront property in New York City waterways.

For the past several years we have worked directly with the New York City Small Business Services Dockmaster Unit (the "Dockmaster") to patrol New York City's waterfront. Specifically, we partnered with the Dockmaster to provide boat support to investigate the Donjon marine salvage yard on the west side of Staten Island. This company had long been abandoning vessels along the shoreline of the Arthur Kill, creating potential navigational hazards and the release of hazardous materials from the ships themselves. Work has now begun on cleaning up this site, removing these hazards from our waterways.

We also worked with them to stop potential illegal dumping by identifying a site under the Outerbridge Crossing on the Staten Island side that was accumulating numerous vehicles and boats along the waterfront.

We have found the Dockmaster Unit to be responsive, effective and nimble, but in order to implement the bills, increased funding and resources needed to be provided to them. The Unit provides a critical role in enforcing pollution laws along New York City's 500+ miles of waterfront, without even owning their own boat. Moving forward with a plan to combat illegal dumping in New York City waterways is critical, but it will not happen without increased support to the Dockmaster Unit – the lead entity for implementation of the bills.

Thank you for your leadership in proposing these amendments. We look forward in providing any support we can to promote the passage and implementation of the bills.



Member of the
Waterkeeper Alliance

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**Testimony of Joshua Verleun, Esq., Chief Investigator & Staff Attorney,
Riverkeeper, Inc.**

New York City Council, Committee on Waterfronts
February 22, 2010 hearing on Intro No. 53 & Intro No. 54

Riverkeeper is an independent, member-supported environmental organization whose mission is to protect the ecological integrity of the Hudson River and its tributaries, and to safeguard the drinking water supply of New York City and the lower Hudson Valley.

For more than 40 years Riverkeeper has been New York's #1 clean water advocate. We have helped to establish globally recognized standards for waterway and watershed protection and serve as the model and mentor for the growing Waterkeeper movement that includes more than more than 180 Keeper programs across the country and around the globe.

For close to a decade Riverkeeper has had a strong citizen enforcement presence in the waterways surrounding New York City. From Newtown Creek, to the Gowanus Canal, to the East and Harlem Rivers, Riverkeeper continues to fight environmental law breakers. Riverkeeper's role is that of a citizen watchdog, investigating pollution reports from concerned citizens and patrolling New York City's waterways from our patrol boat. To enforce the law Riverkeeper uses a combination of citizen enforcement actions and coordinated efforts with Federal, State, and New York City Agencies.

Current Riverkeeper Efforts to Combat Pollution in New York Harbor

Riverkeeper maintains an active slate of pollution enforcement cases and investigations. During 2009 Riverkeeper investigated and filed enforcement actions stemming from 1) illegal discharges of liquid cement and aggregate from a cement plant, 2) illegal dumping from a tour bus operator's parking lot, 3) turbid discharges from an asphalt plant, and 4) illegal dumping of scrap metal, all on the Gowanus Canal. On Newtown Creek Riverkeeper has been investigating illegal discharges from several cement plants, oil discharges from a pipe, a barge spilling aggregate material, and dumping of garbage from a waterfront property. In addition Riverkeeper has been looking into the illegal dumping of tires on the Harlem River, possible illegal filling of the shoreline at a concrete plant on the Harlem River, and a shanty town full of dumped garbage.

While many of these investigations are done in coordination with state and local agencies more must be done to coordinate enforcement efforts within New York City. It is for this reason that the implementation of Intro No. 53 and Intro 54 are so important. Riverkeeper's investigations and enforcement actions fill the gap where staffing, budget, and coordination between Federal, State, and City Agencies come up short. The passage of these amendments will go a long way towards increasing the protection of New York City's waterways.

Intro No. 53, Intro No. 54

These bills come at a critical time for New York City's waters. Water quality has dramatically improved since the passage of the federal Clean Water Act in 1972. With the improvement in

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water quality the public's attention has turned back to the waterfront as a place to live and recreate. Over the past decade New York Harbor has begun to undergo an undeniable renaissance. Extensive waterfront parks have been built or are planned and beach facilities have been upgraded for the City's 12 million annual beachgoers. Harbor-side land has been rezoned and new residential housing has been built. The Harbor is used in wider numbers by commuters, recreational boaters, swimmers, and anglers.

Despite efforts to revitalize the waterfront illegal dumping and other violations of local, state, and federal environmental laws persist. The tributaries and backwaters of New York Harbor such as Newtown Creek, the Gowanus Canal, Flushing Creek, and Mill Basin take the brunt of this illegal activity.

Riverkeeper strongly supports Intro No. 53, and Intro No. 54. Despite overlapping enforcement jurisdiction between federal, state, and city agencies law breakers on New York Harbor's waterways still slip through the cracks, eluding enforcement efforts. In this era of shrinking budgets, staff, and resources it is more important than ever to implement a comprehensive plan to coordinate enforcement amongst the agencies responsible for waterfront dumping, improve environmental guidelines for waterfront businesses, initiate a waterfront task force, create a centralized contact for reporting illegal dumping, create a monitoring program for problem locations, and a public education program to increase awareness of the problems of dumping.

In addition it is critical to increase the penalties for breaking the law. The current fines for waterfront pollution are outdated at only \$250 per violation. These penalties – levied only if a waterfront polluter is caught – do little to deter polluters. It is widely felt that fines can only act as a deterrent if they eliminate the economic advantage of polluting in the first place. Many polluters likely consider the current fines simply a minor cost of doing business. The new, higher fines would be far more likely to prevent waterfront pollution.

Riverkeeper believes that these bills are not about creating a climate hostile to business. Instead these bills will be used to create a level playing field for the full range of harbor uses, including waterfront businesses, boaters, anglers, swimmers, and nearby residents. By strengthening these laws and coordinating enforcement the vast majority of businesses that are complying with the law are rewarded. Environmental lawbreakers gain an unfair competitive advantage over their responsible counterparts if they are allowed to flaunt the law. They externalize their costs on society at the expense of dirty water.

Staffing and Funding Concerns

Although Riverkeeper strongly supports Intro 53 and Intro 54 we have serious concerns about the funding and implementation of the law. As written the NYC Department of Small Business Services is the lead agency for coordinating enforcement efforts with the Department of Environmental Protection and Department of Sanitation. Within SBS the Dockmaster Unit is responsible for enforcement of these provisions dealing with illegal dumping.

Riverkeeper has a long history of working with the SBS Dockmaster Unit. Riverkeeper has worked with the unit to combat illegal dumping, derelict piers and bulkheads, and

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abandoned/derelict vessels on Newtown Creek, Gowanus Canal, and Jamaica Bay. Frank Carnesi and his team play a critical role in protecting New York City's waterfronts.

The SBS Dockmaster Unit currently has two staff members to cover all five City Boroughs. At one time the Unit had a Dockmaster for each Borough, the director of the unit, and administrative support. With 500+ miles of New York City Waterfront to cover the Dockmaster Unit's resources are already stretched thin. The passage of Intro 53 and Intro 54 are crucial to combating illegal dumping in New York City waterways, but are just the first step. Without a commitment to increase funding and staffing of the Dockmaster Unit the implementation of these bills will likely languish.

Conclusion

Thank you for your leadership in proposing Intro 53 and Intro 54. Riverkeeper believes that both are critically important for ongoing efforts to protect New York City's waterways. We look forward in providing any support we can to promote the passage and implementation of the bills.



Metropolitan Waterfront Alliance

Testimony of Roland Lewis, President and CEO
on **Illegal Dumping into the New York City Waterways**

Before the Committee on Waterfronts

February 22, 2010

Good afternoon and thank you for the opportunity to submit this written testimony. I am Roland Lewis, president of the Metropolitan Waterfront Alliance. The Metropolitan Waterfront Alliance is a coalition of over 390 organizations working together to transform the New York Harbor and its waterways into a world-class resource for work, play, transit and education.

The Metropolitan Waterfront Alliance commends the City Council, and specifically the Committee on Waterfronts, for its leadership on the issue of illegal dumping into the New York City waterways. Proper oversight of illegal dumping is a vital component of fostering and maintaining a clean, healthy and safe waterfront; therefore we are in favor of Int. No. 53 and Int. No.54. MWA believes the bills could be improved by addressing abandon boats, allocating more money for enforcement, removing the new task force and embellishing the outreach program. Enforcement of the penalties suggested in Int. No. 54 will create a level playing field, rewarding companies that follow the law while taking away the competitive advantage of those who break the law, and thereby investing in businesses who have the community and waterfront in mind. Our waterways are invaluable natural, commercial, and recreational resources which are often overlooked due to the tragedy of the commons.

The Metropolitan Waterfront Alliance's platform, as outlined in the Waterfront Action Agenda, is organized around six major points of emphasis: 1) the working waterfront, 2) a green harbor, 3) waterfront recreation, 4) harbor education, 5) aqueducture and 6) water based mass transit. Each of these spheres is negatively impacted by illegal dumping. Debris can damage equipment and raise operating costs for water-based businesses struggling to survive as well as discourage public access to the waterfront. Debris such as abandoned boats can discourage recreational use of the Harbor by limiting public access points. The maintenance of and enforcement at public access points is crucial to encouraging recreational use and safety.

Although MWA generally supports these two bills before us, we think there are a few things that should be amended in order for the city to adequately address illegal dumping. Abandoned boats are one type of debris which is not fully addresses in the proposed legislation. Boats are a unique type of debris due to their size, composition, and fuels which create many challenges associated with disposal. The removal of abandoned boats at the expense of the registered owner, not unlike how we deal with parking offenders on land, would be an efficient means of doing this. The Parking Violations Bureau polices our streets, keeping them free of abandoned vehicles. Their work is critical to the smooth flow of traffic and commerce in the City. The same diligence by the City of New York must be applied to our waterways if we hope to increase traffic for waterfront recreation and waterborne commerce. Only after we begin to think of our waterways as an extension of the public transit and recreational areas we use on land, will we become a

true waterfront city. The list of debris outlined in rule No. 54 should be modified to incorporate specific language regarding boats. Rule No. 54 should also be amended to require abandoned boats to be removed at the expense of the registered owner.

The two introductory bills, Int. No. 53 and Int. No. 54 fail to communicate the City's urgent need for additional resources for enforcement. The New York City Department of Small Business Services Dockmaster Unit is significantly understaffed and operating without a patrol boat resulting in an inadequate response rate. It is important for the City Council to recognize the need to adequately staff and secure sufficient resources for this agency to acquire a patrol boat. One way to begin addressing this resource problem is to amend bill Int. No 54 to require the bill's penalties to go back into the program. MWA encourages this amendment as well as other changes to ensure enforcement is adequately funded.

MWA believes the language in Int. No. 53 suggesting the creation of a waterfront task force would be redundant given the newly created Waterfront Advisory Board. The Waterfront Advisory Board was created by the Mayor to develop and advise the Comprehensive Waterfront Plan. The responsibilities suggested in Int. No. 53 should be communicated to New York City's newly created Waterfront Advisory Board as well as the Mayor or his or her designee and the speaker of the city council or his or her designee to avoid duplication. Illegal dumping should be an agenda item of the Waterfront Advisory Board meeting every six months. The Commissioner should submit his report every calendar year as opposed to every two calendar years to ensure progress is being

made. Finally, section 22-1121.1 d should read “The report shall also include any recommendations made by the *Waterfront Advisory Board* to increase the penalties imposed for illegal dumping” instead of the suggested waterfront task force.

MWA would also like to see the language in Int. No. 53 specifically address efforts to increase awareness about the TIPS pollution prevention program and the central source of contact otherwise known as the TIPS hotline. Once a centralized source of contact for reporting of illegal dumping is established, it should be consistently communicated through all outreach programs including signs and various agency websites. Section 22-112.3 b which says “creation of a public education program to increase awareness about illegal dumping and encourage local residents to report observed illegal dumping activities” should specifically mention the centralized source of contact to clarify the mechanism for receiving and responding to complaints.

In conclusion, we do support the two proposed bills but would like to see additions regarding abandoned boats in the water, enforcement resources, the waterfront task force redundancy and inadequate marketing of the TIPS program. Additionally we are concerned that it is not clear who has jurisdictional responsibility over debris in the water which causes inconsistent enforcement. This change may be beyond the scope of this bill and City Council needs to establish whether the city has authority over and/or the responsibility to police debris in the water. Thank you for the opportunity to testify. I’d be happy to answer any questions you might have.

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in favor in opposition

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Name: EDWARD J. KELLY

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I represent: Maritime Association of the Port of NY/NJ

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Name: Emily Egginton

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Name: Todd Kuznitz

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Name: THOMAS MILORA

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I represent: NYC DEPARTMENT OF SANITATION

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