

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON ENVIRONMENTAL PROTECTION

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HELD AT: 250 Broadway - Hearing Rm,  
16th Fl.

B E F O R E:  
DONOVAN J. RICHARDS  
Chairperson

COUNCIL MEMBERS:  
Stephen T. Levin  
Costa G. Constantinides  
Rory I. Lancman  
Eric A. Ulrich  
James Vacca  
Ruben Wills

A P P E A R A N C E S (CONTINUED)

Emily Lloyd  
Commissioner  
Department of Environmental Protection

Gerry Kelpin  
Director of Air and Noise Policy and  
Enforcement  
Department of Environmental Protection

Mike Gilsenan  
Assistant Commissioner  
Bureau of Environmental Compliance  
Department of Environmental Protection

Daniel Kass  
Deputy Commissioner  
Department of Health and Mental Hygiene

Angela Licata  
Deputy Commissioner for Sustainability  
Department of Environmental Protection

Robert Bookman  
Counsel  
New York City Hospitality Alliance

Andrew Moesel  
Representative  
New York State Restaurant Association

Felice Farber  
Director of External Affairs  
General Contractors Association of NY

Eric Goldstein  
Natural Resources Defense Council

Michael Seilback  
Vice President  
Public Policy and communications  
American Lung Association of the Northeast

A P P E A R A N C E S (CONTINUED)

Denise Katzman  
EnviroHancement

David Evans  
Representing Self

Cecil Corbin-Mark  
Deputy Director  
We Act for Environmental Justice

George Pakenham  
Environmentalist and Film Maker

[gavel]

MALE VOICE: Quiet please.

CHAIRPERSON RICHARDS: Alrighty. Good afternoon. First I wanna acknowledge my colleagues who have joined us; we have Council Member Costa Constantinides, Council Member Rory Lancman, Council Member Jimmy Vacca and Council Member Eric Ulrich.

Good afternoon; I am Chairman Donovan Richards, Chair of the Environmental Protection Committee and today the Committee is hearing two bills, Int. No. 271, the air code and Int. No. 230, an idling bill.

Air pollution in New York City is a major health problem, contributing to approximately 6 percent of all deaths. Pollutants of concern include fine particulate matter, nitrogen oxide, elemental carbon and sulfur dioxide. New York City's air quality consistently violates the EPA's National Ambient Air Quality Standards for criteria pollutants and the City is designated a nonattainment area for ozone and fine particulate matter pursuant to the Clean Air Act. Other pollutants such as nitrous oxide, sulfur dioxides and nickel remain at unsafe concentrations in our air. These pollutants are

1 conclusively linked with a variety of health  
2 problems. Fine particulate matter is small enough to  
3 become embedded deep within the lungs and short-term  
4 exposure can exasperate heart and respiratory  
5 problems such as asthma. Long-term exposure to fine  
6 particulate matter has been linked to reduced lung  
7 function, chronic bronchitis, cardiovascular disease  
8 and premature death. Sulfur dioxide, which converts  
9 in the atmosphere to sulfate particles, can cause  
10 difficulty breathing, increased respiratory symptoms  
11 and aggravation of existing heart disease. Sulfur  
12 dioxide also contributes to lower visibility in acid  
13 deposition, which has been of great concern in New  
14 York State because it aids in the formation of acid  
15 rain, which in turn damages plant and animal life,  
16 buildings and electrical equipment.

18 In 1970, New York City passed the Air  
19 Pollution Control Code to help alleviate the impacts  
20 of these and other pollutants from the sources from  
21 which they are emitted. Although parts of the Code  
22 have been amended over time and parts have been  
23 added, the entire code has not received a thorough  
24 revision since the original passage; Int. No. 271  
25 seeks to make such a revision.

Now we'll speak about the idling bill.

Engine idling is a motorist behavior -- which is Jimmy Vacca's bill -- Engine idling is a motorist behavior which produces no social benefit and for which there is little social tolerance. In New York City you can generally only idle your engine legally for one to three minutes; despite its illegality, the New York City Open Data site indicates that more than 23,000 idling complaints have been made to 311 since 2010 and remain open. New York City's restrictions on engine idling are intended to produce a variety of environmental and public health benefits at little or no cost to drivers. Air pollution from vehicles in New York City contributes to our ozone nonattainment status under the Clean Air Act. Pollution emitted from vehicles is an important component of the City's contribution to climate changing greenhouse gases because engine idling exacerbates these problems while producing little or no social benefit; idling restrictions will reduce air pollution problems without creating inconveniences for city drivers. Many people believe that they are not exposed to the effects of idling when they remain in their vehicle; to the contrary, the International Center for

1  
2 Technology Assessments found that exposure to  
3 volatile organic compounds in carbon monoxide is much  
4 higher inside vehicles than outside vehicles on the  
5 roadside because auto exhaust emits pollutants into  
6 the vehicle as well as into the atmosphere. The  
7 smallest pollutants can lodge in the lungs and cause  
8 lung damage to drivers exposed inside their vehicles.  
9 Another study found that depending on traffic density  
10 an individual's daily exposure during winter  
11 commuting can be as much as 40 percent of the  
12 individual's overall volatile organic compound  
13 exposure. The highest exposure is believe to occur  
14 when sitting in traffic congestion on highways or in  
15 a lineup of idling vehicles at a school or drive-  
16 through businesses, such as a restaurant. Health  
17 defects associated with vehicle pollution include  
18 strokes, cancer, childhood leukemia, low IQ levels,  
19 stunted fetal development, low birth weight and  
20 increased incidents of heart attacks and mortality  
21 rates. These impacts disproportionately affect  
22 children. Reducing environmental triggers is often  
23 the key to reducing asthma and respiratory disease in  
24 children; at least as they pertain to idling, these  
25 impacts are totally avoidable.

2 In addition to health impacts, idling in  
3 New York City produces an estimated 100,000 tons of  
4 carbon dioxide, which contributes to global warming.  
5 Finally, the fuel wasted by idling New York City  
6 vehicles is estimated to cost drivers a startling \$45  
7 million per year. New York City mandates to reduce  
8 greenhouse gas emission 30 percent by the year 2030  
9 requires that we find ways to reduce vehicle  
10 emissions and cutting back on idling as an easy and  
11 important way to do this; wasting fuel by idling is  
12 simply not sustainable. Now we will hear from the  
13 administration and I wanna thank Samara and Samara  
14 will swear you in.

15 SAMARA SWANSTON: Please raise your right  
16 hands. Do you swear or affirm to tell the truth, the  
17 whole truth and nothing but the truth today?

18 [collective yes] [background comment]

19 EMILY LLOYD: Thank you.

20 CHAIRPERSON RICHARDS: Sorry. So first  
21 we will hear from Commissioner Emily Lloyd of DEP,  
22 the DEP Commissioner, welcome, and Daniel Kass,  
23 again, welcome again, the Deputy Commissioner for the  
24 Environmental Health at Department of Health and  
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Mental Hygiene, thank you for being here.  
Commissioner.

EMILY LLOYD: Thank you. Good afternoon  
Chairman Richards and members. I am Emily Lloyd,  
Commissioner of the New York City Department of  
Environmental Protection and I'm joined today, as you  
said, by Deputy Commissioner... I'm sorry, not as you  
said; I am joined by Deputy Commissioner of Health  
and Mental Hygiene, Daniel Kass; I'm also joined by  
Deputy Commissioner for Sustainability, Angela  
Licata, Assistant Commissioner of the Bureau of  
Environmental Compliance, Mike Gilsenan, Gerry Kelpin  
on my left, Director of Air and Noise Policy and  
Enforcement, and other DEP staff.

As this is my first appearance before you  
and the Committee, Mr. Chair, I'd like to  
congratulate you on your appointment and say that I  
look forward to a productive working relationship  
between this Committee and DEP in this new  
administration. Thank you for the opportunity to  
testify today on the revision of the New York City  
Air Pollution Control Code.

As we take on revising this code, I think  
it's important to note what big improvements

2 regulation can make. Today, New York City's air  
3 quality has reached the cleanest levels in more than  
4 50 years, with dramatic reductions in air pollutants.  
5 Since 2008, the level of sulfur dioxide in the air  
6 has dropped by 69 percent, and since 2007 the level  
7 of soot pollution (PM2.5) has dropped 23 percent.

8 In concert with the Council, we have  
9 developed sensible regulations that have contributed  
10 to this profound improvement in air quality. We have  
11 come a long way since the early 70s, when soot  
12 regularly obscured the skyline and before the Clean  
13 Air Act came into effect. Year-round air quality has  
14 benefited from reduced emissions from upwind power  
15 plants, industrial sources, on- and off-road diesel  
16 vehicle engines, and stationary engines as a result  
17 of federal and state regulations. And to address  
18 remaining sources of emissions in our densely  
19 populated city, we have taken a number of local  
20 actions to clean up heating fuel.

21 An important component of improved air  
22 quality in New York City has been a cleaner, more  
23 efficient City fleet, achieved through increased fuel  
24 economy for on-road City vehicles, the use of  
25 biodiesel for all of the City's fleet, the phase-out

2 of older, dirtier vehicles and installation of clean  
3 diesel retrofits on City fleets, the use of clean  
4 vehicles by City construction contractors, adding  
5 more hybrid and electric vehicles in the municipal  
6 fleet, and reducing emissions from school buses.  
7 These improvements have dramatically reduced  
8 emissions from the City's fleet. The estimated  
9 average particulate matter emission percentage  
10 reduction per vehicle is approximately 49 percent  
11 over a two-year period.

12 Last year we were also able to make sure  
13 that the commercial waste fleet meets the same  
14 standards set for the municipal fleet. Commercial  
15 waste generated in the City, including construction  
16 and demolition waste, is hauled by private operators  
17 licensed by the Business Integrity Commission.  
18 Citizens see these trucks every day as they provide  
19 services in commercial corridors and construction  
20 sites across the City.

21 Pursuant to Local Law 145 of 2013, all  
22 heavy-duty waste trucks that operate in the City will  
23 now be required to achieve EPA standards for 2007  
24 model year engines by 2020. The PM reduction will be  
25 equivalent to taking 27,000 delivery trucks or 1,300

1  
2 intercity coach buses off the road every year between  
3 2020 and 2030. To address cost concerns expressed by  
4 industry stakeholders, who were extensively consulted  
5 throughout, this law provides a six-year lead-in  
6 time, a financial hardship waiver and multiple  
7 pathways to compliance. Together these actions are  
8 contributing to progress toward meeting the City's  
9 clean air targets.

10           Based on a Department of Health and  
11 Mental Hygiene study using EPA methods, we estimate  
12 that in 2005 to 2007 PM2.5 levels in New York City  
13 contributed to more than 3,100 deaths, more than  
14 2,000 hospitalizations for cardiovascular and  
15 respiratory disease, and 6,000 emergency department  
16 visits for asthma annually. Today, because of the  
17 significant improvements in air quality, Health  
18 estimates that every year we are preventing  
19 approximately 800 deaths and approximately 1,600  
20 emergency department visits for asthma and 460  
21 hospitalizations for expiratory and cardiovascular  
22 issues. But with PM2.5 still causing more than 2,000  
23 deaths annually, we need to do more to reduce local  
24 emissions.

2 So in short, we've accomplished a lot and  
3 we still have a lot to do. This has encouraged us to  
4 revisit the New York City Air Pollution Control Code,  
5 which has not been substantially revised in 43 years.  
6 In the 1970s the City led the way and served as a  
7 model for the federal Clean Air Act, but now many  
8 elements of the Code are outdated. To reach our  
9 shared goal of having the cleanest air of any major  
10 U.S. city, the Air Code must be revised.

11 This revised code is the product of  
12 numerous meetings with business, environmental and  
13 civic stakeholders and hundreds of hours over the  
14 past four years. Groundwork for the revision of the  
15 Code began with a series of meetings with critical  
16 stakeholders to develop overarching themes that would  
17 be used as a template for the work going forward.  
18 Based on these stakeholder meetings, DEP began to  
19 draft a proposal with the objectives of (1) updating  
20 emission standards, (2) focusing on previously  
21 unregulated sources of particulate matter, (3)  
22 simplifying compliance requirements for stakeholders,  
23 and (4) increasing flexibility to address new and  
24 developing technologies.

1                   The DEP code revision team engaged major  
2 stakeholders in the private and public sectors,  
3 including all relevant City agencies and the Law  
4 Department. This same team met with and answered  
5 questions from these stakeholders, discussed new  
6 issues and reviewed and revised language as  
7 necessitated by the review process. Some of the  
8 participants in the process, for example, have been  
9 the Council, the Department of Health and Mental  
10 Hygiene, the Department of Sanitation, the Business  
11 Integrity Commission, the Department of Education,  
12 the Department of Citywide Administrative Services,  
13 the HVAC industry, the industrial processing sector,  
14 the real estate industry, the food service industry,  
15 and environmental advocates. The information derived  
16 from these meetings enabled DEP to prioritize the  
17 sections of the Air Code that were most in need of  
18 revision, and ensure that industry and other sectors  
19 are not unduly burdened.

21                   First, addressing emission standards --  
22 During the past 43 years, emissions have been reduced  
23 significantly but more improvements are necessary.  
24 New York City has the greatest density of both PM  
25 emissions and people of any large U.S. city. With

1 many vulnerable groups, exposures to emissions from  
2 sources like char broiling and wood burning are of  
3 greater concern in New York City than in less-  
4 populated jurisdictions. Health standards have also  
5 become more stringent. We seek in this revision to  
6 further reduce emissions from already regulated  
7 sources and to achieve emission reductions from  
8 smaller, common sources of pollution distributed  
9 through the City.  
10

11 This revised Code will incorporate  
12 updated and revised federal and state regulations for  
13 emission standards. For example, the complicated  
14 table of environmental ratings for stationary sources  
15 currently included in the Code will instead refer to  
16 the state standards, ensuring that any changes in  
17 those ratings are captured in the city regulations  
18 without having to pass another bill. Similarly, the  
19 Code incorporates other state standards by reference,  
20 including the prohibition of certain architectural  
21 coatings that do not meet volatile organic compound  
22 levels, the emission of nitrogen oxides from boilers  
23 and the method for determining opacity, which we use  
24 as a proxy for incomplete combustion when smoke is  
25

1  
2 emitted from various sources including city  
3 buildings.

4           Incorporating standards by reference also  
5 allows for the deletion of obsolete and outdated  
6 provisions. One of the most notable deletions will  
7 be the elimination of standards governing refuse-  
8 burning equipment. There will now be a general ban  
9 on refuse burning with a few narrow exceptions, such  
10 as state-approved medical waste incinerators. It  
11 will also narrow the exemption that permitted the  
12 Department of Sanitation to install new refuse-  
13 burning equipment. Equipment operated by or on  
14 behalf of the Department of Sanitation used in  
15 connection with solid waste disposal or processing  
16 for energy generation or other resource recovery will  
17 be exempt. Examples of resource recovery may include  
18 non-incineration basification or anaerobic digestion,  
19 which do not themselves produce emissions from a  
20 stack.

21           Concerning previously unregulated sources  
22 of particulate matter -- The revisions of the Code  
23 over the last 43 years have been limited in scope and  
24 focused primarily on the reduction of particulate  
25 matter from large sources, including residential and



1 commercial fuel combustion, as well as non-road and  
2 on-road diesel emissions. The regulation of these  
3 large sources now allows the City to focus on  
4 smaller, localized sources throughout the City,  
5 which, viewed as a whole, contribute a significant  
6 amount of particulate matter. These sources include  
7 commercial char broilers, coal- and wood-fired ovens  
8 and fireplaces. Focusing on these sources will  
9 reduce particulate matter emissions, which will  
10 ultimately save lives. For example, commercial char  
11 broilers throughout the five boroughs emit an  
12 estimated 1,400 tons of particulate matter per year.  
13 Health estimates that these emissions contributed to  
14 more than 12 percent of the PM2.5-attributable  
15 premature deaths annually in 2005 to 2007 or 400  
16 deaths per year in that period; if all commercial  
17 char broilers had had control technology installed,  
18 the reduction in ambient PM2.5 concentrations could  
19 have prevented nearly 350 of these premature deaths  
20 each year.

22 The reviewed Air Code will require that  
23 all new char broilers that cook large amounts of  
24 meat, i.e., more than 875 pounds of meat a week, have  
25 control devices. Some control technology is already

2 available for a certain type of char broiler and can  
3 be installed quickly and at a reasonable cost; that  
4 type of technology will be required immediately. For  
5 the larger, more complex char broilers, the control  
6 technology is still being developed and is currently  
7 quite costly. Therefore, the Code will allow  
8 affected entities additional time to install such  
9 devices. Similarly, all new commercial coal- and  
10 wood-fired ovens will have to install control  
11 technologies, while existing establishments will be  
12 given additional time to comply. This will  
13 ultimately reduce localized residential exposure to  
14 particulate matter generated by wood- and coal-  
15 burning ovens while still allowing the food service  
16 industry to cook all the foods that New Yorkers love.

17 This bill will also regulate fireplaces.  
18 As a fuel source, wood is more polluting than coal  
19 unless controlled. Smoke resulting from improperly  
20 burned wood contains many chemical substances that  
21 are considered harmful, such as hazardous air  
22 pollutants, fine particles, polycyclic aromatic  
23 hydrocarbons, and volatile organic compounds.  
24 Particle pollution from burning wood, like particle  
25 pollution from other fuel combustion, can harm the

1 health of children, the elderly and those with  
2 existing cardiovascular and respiratory diseases.  
3 The Code revision will prohibit the installation of  
4 any new wood-burning fireplaces and require all new  
5 fireplaces in the City to operate only on natural gas  
6 or renewable fuels. Existing fireplaces will still  
7 be permitted to burn wood, but the moisture content of  
8 wood burned must be 20 percent or less as drier wood  
9 burns cleaner than wood with higher moisture content.  
10 The new Code also provides that fireplaces cannot be  
11 used as a primary source of heat.  
12

13 In addition to their contribution to fine  
14 particle pollution across the City, the odors and  
15 smoke generated by these previously under-regulated  
16 emission sources are often the cause of complaints  
17 throughout the City. The revised Code will  
18 strengthen the City's regulation of these localized  
19 nuisances to more effectively address sources of  
20 emissions that cause discomfort to New Yorkers.  
21 Requiring control technology will help reduce  
22 complaints and City resources devoted to responding  
23 to them while continuing to protect the health of New  
24 Yorkers.  
25

2 On simplified compliance requirements --

3 The revised Code will simplify compliance  
4 requirements for stakeholders and streamline the DEP  
5 permitting process. In both the existing and the  
6 revised Code, all boilers are required to obtain  
7 either a registration or a certification of operation  
8 based on the size of the boiler. Getting a  
9 certification of operation is a more involved process  
10 than getting a registration, so we are raising the  
11 threshold for equipment that will require a  
12 certificate. In the existing Code, the size range of  
13 boilers that require a certificate of operation was  
14 based on the fuel choices and emission ratings of  
15 boilers from more than 40 years ago.

16 The new Code will increase the threshold  
17 for boiler certificates of operation from 2.58  
18 million Btu per hour to 4.2 million Btu per hour.  
19 The higher registration threshold, along with the new  
20 online permitting program, will make it easier for  
21 applicants to file and receive registrations. These  
22 changes will reduce the work permit turnaround time  
23 by approximately 25 percent and ease the burden on  
24 building owners.

2 Due to a variety of advancements since  
3 the 1970s and further changes in this bill, we do not  
4 predict that increasing the size range for equipment  
5 that will now need a registration will negative  
6 affect the environment. Boilers are now required to  
7 burn cleaner fuel under DEP's clean heating fuel  
8 rules. Moreover, we believe that the engineering  
9 audit program, combustion efficiency and enforcement  
10 efforts will be adequately protective. Additionally,  
11 owners of boilers requiring a registration will now  
12 also have to certify that the boiler passed a  
13 combustion efficiency test. This test will ensure  
14 the boiler is optimized for efficient performance;  
15 malfunctions will be detected sooner, and the boiler  
16 will be tuned and repaired faster. More efficient  
17 combustion in the City will result in decreased fuel  
18 use, which will reduce costs for building owners  
19 while also reducing overall pollution.

20 On increased flexibility -- The new Code  
21 will create greater flexibility by enhancing  
22 rulemaking authority. It has been difficult to  
23 accommodate certain advances in technology under the  
24 existing Code, which does not allow for the use of  
25 certain cost-effective controls, as they were not

1 contemplated in 1970. Many areas in the revised Code  
2 establish broadly defined emission controls, but also  
3 add language to allow the City to adopt the related  
4 implementation methods and standards by rule. This  
5 will help us to more quickly adapt to changing  
6 technologies by going through the rulemaking process  
7 rather than having to revise the Administrative Code.  
8 For example, as I previously mentioned, existing  
9 coal- and wood-fired ovens will be required to have  
10 control technology in the future. The Code will now  
11 allow environmentally beneficial, cost-effective  
12 controls to be approved by rule as they develop, and  
13 stakeholders will have more flexibility to choose  
14 appropriate control technologies.

16 Recommended amendments -- We recognize  
17 that further amendments will need to be made and we  
18 look forward to working with the Council to make sure  
19 that concerns raised by industry stakeholders are  
20 addressed. For example, we will continue to consider  
21 a committee that will allow the continued dialogue  
22 with sister agencies and stakeholders when a rule  
23 authorized by the Code requires the inclusion of a  
24 mitigation strategy or method to reduce emissions.

1  
2 An important change that the  
3 Administration is proposing is to Section 24-163.9,  
4 relating to City school buses. The intent of Local  
5 Law 61 of 2009 was to ensure that all Type A and B  
6 buses, smaller buses, would be retrofitted with a  
7 closed crankcase ventilation system (CCVS); however,  
8 based on a spatial-constraint issue, such buses could  
9 not be retrofitted and only 2007 and later buses were  
10 equipped with such technology. The proposed code  
11 change would require pre-2007 Type A and B school  
12 buses to be gradually phased out from the Department  
13 of Education fleet, with all buses utilizing a CCVS  
14 by September 1, 2020.

15 In closing, I appreciate your  
16 consideration of this important and overdue update of  
17 the New York City Air Pollution Control Code. With  
18 the help of our stakeholders we have crafted a  
19 comprehensive revision of the Code that will simplify  
20 and improve compliance with existing regulations  
21 without compromising quality of life and the  
22 environment -- a true step toward a sustainable city.  
23 Together, the de Blasio Administration and the City  
24 Council can take this next important step to ensure  
25 that we are providing future generations with a

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vibrant and healthy city that is prepared for a million new residents by 2030. I look forward to your support in updating the Air Code and to cleaner for all New Yorkers. Thank you.

DANIEL KASS: No, I'm just here to answer questions.

CHAIRPERSON RICHARDS: Okay. I will start off. Well thank you for your testimony, Commissioner; I have a few questions. How do the proposed revisions differ in the way they address existing sources of emission?

GERRY KELPIN: Could you just specify a little bit more what you're looking for? [interpose]

CHAIRPERSON RICHARDS: So...

GERRY KELPIN: In terms of industrial or combustion?

CHAIRPERSON RICHARDS: Combustion.

GERRY KELPIN: Okay. So one of the changes that's also in the Code is the complete phase-out of No. 6 fuel oil; right now we have an equivalency standard, so that would move us completely off of 6. In addition, we're seeing many more buildings moving to natural gas, which is why we're sort of changing the size of our registrations



1  
2 to cover a larger population under a simpler format.  
3 The equipment that's now being installed is much more  
4 efficient and results in less emissions. Sort of in  
5 combination with this change in the Code, as part of  
6 our rulemaking, we have incorporated a combustion  
7 efficiency test program so that on a yearly basis the  
8 equipment would be maintained and essentially always  
9 meeting that efficiency it's designed to burn for, to  
10 burn at, sorry.

11 CHAIRPERSON RICHARDS: Okay. Just wanna  
12 raise... so on the phase-out from No. 6 oil -- because  
13 I know in East Harlem in particular a lot of  
14 buildings still have not phased out from No. 6 oil  
15 and I'm interested in knowing how do we plan on  
16 enforcing or pushing a lot of these buildings, owners  
17 of buildings to use No. 4 oil, and I'm talking  
18 hundreds if not thousands who still aren't in  
19 compliance now, so I'm [background comments]  
20 interested in know what enforcement measures are we  
21 gonna take or penalty... [crosstalk]

22 GERRY KELPIN: Sure. Yeah. Sure. I'm  
23 gonna turn it over to... [crosstalk]

24 CHAIRPERSON RICHARDS: Okay, no problem.  
25 Okay.

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COMMITTEE ON ENVIRONMENTAL PROTECTION

GERRY KELPIN: Mike... [crosstalk]

CHAIRPERSON RICHARDS: Well you will speak in and [background comment] say who you are. [crosstalk]

MIKE GILSENAN: I'm sorry.

CHAIRPERSON RICHARDS: Swap seats.

MIKE GILSENAN: I'll swap seats with Gerry. So there... the rule is is that when their certificate of operation becomes due, that's when they have to change over. So currently there are about 1,000... about 950 to 1,000 buildings whose registration is not due, so by law they're not required to switch out yet. So you have to understand, there's a whole year where we still have people that still have under the law of time to change out. How we are handling this is, we are sending out our enforcement staff after your registration expires and we don't have any paperwork that shows that you switched from 6 to 4 or to cleaner fuel, we're sending our enforcement staff out, they are issuing an NOV to every location; so far... [background comment] excuse me... [background comment] Oh, an NOV, a notice of violation. Okay, so we've issued a notice of violation; to date we've

2 issued about 850, approximately -- I'm thinking about  
3 what the last number was -- so... [interpose]

4 CHAIRPERSON RICHARDS: 850 in... across the  
5 City... [crosstalk]

6 MIKE GILSENAN: Noti... across the City,  
7 correct.

8 CHAIRPERSON RICHARDS: Okay. And how  
9 many you would... would you say are still outstanding?

10 MIKE GILSENAN: We have with this...  
11 [interpose]

12 CHAIRPERSON RICHARDS: So out of 850  
13 violations, how many of them were resolved?

14 MIKE GILSENAN: About 400. Okay? So  
15 then what the next step that we have taken is; we  
16 have gone to the Environmental Control Board, about a  
17 year ago, maybe a little over a year ago, and we  
18 asked the Board for the authority to ask for a cease  
19 and desist order from the Board against the building  
20 location if they haven't already switched their fuel.  
21 Normally, before we can get a cease and desist order  
22 you have to have three NOV's upheld at the Board  
23 [background comment] and you know that process takes  
24 [background comment] a long time. So we realized  
25 that if we went through that process we might spill

2 over from the July 2015 date, so what we did was, we  
3 asked the Board for the authority to ask for a cease  
4 and desist order after we issue one violation. So...  
5 and they granted us that authority. [crosstalk]

6 CHAIRPERSON RICHARDS: They did? Okay.

7 MIKE GILSENAN: Yes. So just last month  
8 alone we went to the Board with six locations and  
9 asked for, you know the authority to issue the cease  
10 and desist and the Board gave us that authority, and  
11 all six locations have come to the Board and are in  
12 the process of resolving that issue with the Board,  
13 so... [interpose]

14 CHAIRPERSON RICHARDS: Those six that  
15 still remain in the 450?

16 MIKE GILSENAN: Yes. Yes. Yes. Yes.  
17 [crosstalk]

18 CHAIRPERSON RICHARDS: Okay. So when do  
19 you foresee us getting around to all 450?

20 MIKE GILSENAN: Well you know; it's a  
21 moving target... [crosstalk]

22 CHAIRPERSON RICHARDS: Well less than 450  
23 now.

24 MIKE GILSENAN: so all... yeah. Even that  
25 moving target, that 450, even as we're talking there

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are people out there who have switched their fuel oil, but they have not notified us. So we're going through that process; every day the number goes up, it goes down as people come off their COs, as they expire, and as we reduce the number that we have of NOVs or people that we are pursuing.

CHAIRPERSON RICHARDS: Well so I will... you will get a pass on that today, but I'm certainly interested in seeing this number reduced, especially in environmental justice communities, where there are high, the highest amount of asthma rates; we should certainly be putting an emphasis on ensuring that those particular communities are having the fuel switched over to No. 4.

MIKE GILSENAN: We certainly are; we're putting a lot of effort into this; we go up to the environmental justice communities and we are there, we go to all the meetings, we're sending out letters; we're doing everything that we can do to encourage the building owners to switch and we're out there enforcing. We certainly hope and it's... our goal is to bring this number down as quickly as possible.

CHAIRPERSON RICHARDS: So are you guys gonna put any additional resources into enforcement

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for those particular... because I think one of the issues we've seen... [interpose]

MIKE GILSENAN: We...

CHAIRPERSON RICHARDS: is enforcement and I... you know, I don't wanna speak for the prior administration, speak about the prior administration, we're in a new day, but I'm hoping that this administration is gonna ensure that, obviously there's more enforcement in especially communities where there is the high... [crosstalk]

MIKE GILSENAN: We...

CHAIRPERSON RICHARDS: where we have the highest asthma rates.

MIKE GILSENAN: We will certainly be out there doing what we need to do.

CHAIRPERSON RICHARDS: Okay. Commissioner. [interpose]

EMILY LLOYD: Thank you; if I can... I could just add to that. I will certainly look at this with Mike and the rest of the staff and if we feel that we're not able to move this quickly, we will think about putting more resources; I hope that we'll be able to see our way through and tell you...

2 give you a sense of the timetable for getting people  
3 into compliance.

4 CHAIRPERSON RICHARDS: Okay, great.

5 Thank you; I appreciate that. [crosstalk]

6 MIKE GILSENAN: And one last... I was just  
7 reminded too that we have already put additional  
8 resources into it, so maybe, as the Commissioner  
9 said, we... [crosstalk]

10 CHAIRPERSON RICHARDS: Well we want more.

11 [laughter]

12 MIKE GILSENAN: Understood.

13 CHAIRPERSON RICHARDS: Keep pourin' it in  
14 until we get down to zero. So I know you in your  
15 testimony, Commissioner, you had mentioned the school  
16 buses; we would phase out to... we would phase out...  
17 give them a chance to phase out by 2020; can you  
18 explain why we're pushing that timetable back? I  
19 think 2009 was the [background comments] the year  
20 they were supposed to be phased out. On the school  
21 buses.

22 GERRY KELPIN: There are a couple of...  
23 see, you have your basic two sizes of the buses, the  
24 CNDs and the AMB type, right -- the large ones and  
25 the small ones, [background comment] right? The

1 large buses are in the process... and I think they're  
2 just about all completed being retrofitted according  
3 to the law, one of the things that, when the  
4 legislation for the small buses was promulgated, what  
5 wasn't known at that time, and DEP in its enforcement  
6 of this, found that those buses, the buses pre-2007  
7 model year engine are unable to be retrofitted with  
8 any type of control device, so as an alternative,  
9 what we are proposing here is a removal or a phase-  
10 out of the older buses in an aggressive format and  
11 buses that are 2007 already have that technology  
12 built into the system, so the percentage of those  
13 buses that are 2000 and newer are already in  
14 compliance and it's the older buses that we're moving  
15 out.  
16

17 CHAIRPERSON RICHARDS: So I am

18 [background comment] concerned about that; I think  
19 that we need to certainly reevaluate the timetable;  
20 that's a long... that's a long time, you're talkin'...  
21 what are we in, '14 now... six years [background  
22 comments] where children will have to inhale this  
23 particulate matter and these things, and not only  
24 that, just to add on, I know a lot of our children  
25 with IEPs and particular disabilities in particular



1  
2 take the smaller buses; I'm someone who lives with a  
3 family full of educators; I know that for a fact, so  
4 I'm very interested in knowing; is there a way we can  
5 shorten the time span from six years; do we have  
6 wiggle room and if not, I'm requesting that we should  
7 do that sooner, we should not wait six years for us  
8 to get our act together in one sense.

9           EMILY LLOYD: I think that one of the  
10 things has been that the Department of Education has  
11 to phase it into new contracts as they write those  
12 contracts as a requirement of the contract, so that  
13 has affected the timetable, but I think that  
14 Commissioner Kass also wanted to comment on that.

15           DANIEL KASS: Well I did wanna just point  
16 out that based on fuel... sulfur content changes, there  
17 have been significant benefits realized already, even  
18 with the existing engines from the improvement in  
19 fuel. So while it is true that as they, you know, as  
20 they remain on the road they're disproportionately  
21 polluting relative to newer engines, there have been  
22 actual benefits in emission reductions from state and  
23 local actions on sulfur content.

24           CHAIRPERSON RICHARDS: Okay. Still would  
25 love to see that timetable, you know, moved up. The

1  
2 proposed Code prohibits the use of a wood-burning  
3 heater as a primary source of heat, but the EPA  
4 permits specific wood-burning equipment to be used as  
5 a primary source of heat... [background comment] wood  
6 stove, I'm sorry. Will existing users of EPA-  
7 approved wood stoves be grandfathered in the way  
8 existing wood-burning fireplaces are grandfathered?

9 GERRY KELPIN: Sure. In the current  
10 code, wood stoves... the use of fuel other than a fuel  
11 oil for primary heating is currently illegal, we just  
12 clarified that. So I would have to say that wood  
13 stoves are not going to be an approved source of  
14 heat.

15 CHAIRPERSON RICHARDS: Okay.

16 EMILY LLOYD: And I think the reason for  
17 that, again, is that that might differ from what's  
18 done nationally is the density of the population here  
19 and how many people are affected by density and the  
20 proximity to the sources.

21 CHAIRPERSON RICHARDS: Okay. Indoor air  
22 quality remains an outstanding issue and this is an  
23 issue that DEP has done poorly in in the past and I'm  
24 wondering why hasn't the Department sought to address  
25 indoor air quality and incompatible mixed uses in

2 residential buildings? And indoor air quality is a  
3 huge issue in a very dense New York City [laughter]  
4 and wanna know; what are we gonna do differently to  
5 look at indoor air quality, [background comments]  
6 including smoking and other things, but that's a  
7 story for another day?

8 EMILY LLOYD: If I may... if I could, I'd  
9 like to respond to that; get back to you on that,  
10 because this is something I haven't discussed with  
11 the staff and they clearly have a lot to say to me  
12 about that... [background comments] [interpose]

13 CHAIRPERSON RICHARDS: Yes; I'm gonna  
14 have a lot to say about [laughter] that.

15 EMILY LLOYD: So they have a lot to say  
16 to me and so do you on that, [laughter] so could we...  
17 could I... could I respond to that... [interpose]

18 CHAIRPERSON RICHARDS: You know what; I  
19 will... [interpose]

20 EMILY LLOYD: Yeah.

21 CHAIRPERSON RICHARDS: grant you that.

22 EMILY LLOYD: Thank you; I appreciate it.

23 CHAIRPERSON RICHARDS: I woke up on the  
24 right side of the bed this morning. [laughter]

25 EMILY LLOYD: Alright... thank you.

2 CHAIRPERSON RICHARDS: So let's speak of  
3 mobile food trucks for a second. Where does the  
4 authority come from to regulate mobile food trucks?

5 [background comment]

6 GERRY KELPIN: The mobile food trucks,  
7 the provision on that has to be approved, or has to  
8 be looked at, is an incentive type approach

9 [background comment] to move those out. We are  
10 preempted by U.S. EPA [background comment] to force  
11 the change out of that engine. So we had long  
12 conversations with EPA on an alternative that might  
13 help to clean up those engines sooner and they  
14 suggested... we went back and forth on an incentive  
15 type approach, which would be that what we thought  
16 was, by requiring them to be permitted, those  
17 engines, as a source, that we would waive the  
18 registration fee for them if they changed out to a  
19 tier 4 engine... [interpose]

20 CHAIRPERSON RICHARDS: And how many... can  
21 you tell me how many people are in compliance...

22 [crosstalk]

23 GERRY KELPIN: I think we proposed, for  
24 two cycles, which is like six years.

2 CHAIRPERSON RICHARDS: Uhm-hm. And so  
3 the incentives would just be they wouldn't have to  
4 submit the fee... [crosstalk]

5 GERRY KELPIN: They wouldn't have to pay  
6 the registration.

7 CHAIRPERSON RICHARDS: registration fee.  
8 And how many people have enrolled in that particular  
9 project?

10 GERRY KELPIN: It's not been promulgated  
11 yet. [crosstalk]

12 CHAIRPERSON RICHARDS: It hasn't been  
13 rolled...

14 GERRY KELPIN: Right.

15 CHAIRPERSON RICHARDS: Okay, it hasn't  
16 been rolled out yet. So when do you anticipate that? So  
17 I know you said two cycles; when do you...

18 GERRY KELPIN: Oh if... if the legislation  
19 gets passed, then it would fall into place and as the  
20 trucks came in to register, that's when it would be  
21 worked out.

22 CHAIRPERSON RICHARDS: Okay. I had a  
23 question on fuels; are fuels regulated under the Air  
24 Code revisions and if so, can you explain how they  
25 are?

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GERRY KELPIN: Vehicular fuel?

CHAIRPERSON RICHARDS: Yes.

GERRY KELPIN: We can... we only have jurisdiction over vehicles that we own or lease... [interpose]

CHAIRPERSON RICHARDS: So city...

GERRY KELPIN: so City... the City fleet. [background comment] So we have required biodiesel being mixed into [background comment] the City's diesel fleet fuel, but we are not permitted... or we're prohibited by EPA to essentially, and excuse the legal terminology, mess with fuels. [laughter]

CHAIRPERSON RICHARDS: Okay. I just wanna... So I wanna touch on trucks and I know that's a huge issue and I know that's not something that was raised in your testimony, but what do we plan to do to ensure that truck traffic, which has certainly take a big hit on my community which overlaps JFK and I know many communities in the South Bronx and East Harlem; what are some things that we can do in this Air Code to ensure that we cut down on truck traffic and... I know you can't cut down on truck traffic, but certainly the emissions that come into our community?

[background comments]

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GERRY KELPIN: Again, the only place that we have jurisdiction is vehicles that we own or somehow regulate, which is how we've been able to get the emission controls for, most recently, the waste carting trucks...

CHAIRPERSON RICHARDS: Okay.

GERRY KELPIN: but the general population, we do not have authority to regulate.

CHAIRPERSON RICHARDS: Got you. And I'm just interested; I know the City... [crosstalk]

[background comments]

CHAIRPERSON RICHARDS: well the Ci... So what I'm getting at is, I know the City contracts... works with a lot of companies -- UPS and other companies -- I know you can't regulate their fuel, but what are we doing to certainly work on idling and enforcement in terms of certainly, you know, truck traffic in many communities?

[background comments]

CHAIRPERSON RICHARDS: And Councilman Vacca left, but I will... I will yield questions, 'cause I don't give all the questions, but I just [crosstalk] [background comments] wanted to raise this issue, because we've had... [interpose]

2 MIKE GILSENAN: Well... well... [crosstalk]

3 CHAIRPERSON RICHARDS: we just...

4 MIKE GILSENAN: for... for idling, what we  
5 do is, we respond to the 311 complaints and what we  
6 do is, we have our air inspectors drive by those  
7 locations on a regular basis to see if we can find  
8 the offending person. We also do is, every so often  
9 is on like maybe a regular three-month basis is we'll  
10 put together a little team and we'll send them out to  
11 areas that we know where we have high incidences of  
12 idling. We also do schools; we check with the  
13 schools or we go by the schools, we do enforcement at  
14 the schools, we drive there. For asthma month, which  
15 is coming up in May, for the last couple years, we've  
16 worked with the Department of Education and the  
17 schools to get out information to the parents and to  
18 the bus drivers about idling, we give them teaching  
19 materials and in conjunction with that we also send  
20 out a team of our agents to go and to look at those  
21 locations and we write tickets when we... [interpose]

22 CHAIRPERSON RICHARDS: How many tickets  
23 have you written; would you say in the last five  
24 years on this bill? [crosstalk]



2 MIKE GILSENAN: I don't... I don't have  
3 that information; I can get it back to you...  
4 [crosstalk]

5 CHAIRPERSON RICHARDS: Alright, if we can  
6 get that information.

7 MALE VOICE: I do.

8 MIKE GILSENAN: Sure. Absolutely.

9 CHAIRPERSON RICHARDS: Oh you do?

10 MALE VOICE: Yeah.

11 SAMARA SWANSTON: He's gonna testify.

12 CHAIRPERSON RICHARDS: Oh, but you're  
13 gonna testify, so no calling out. Let me see... and...  
14 let me just go back to idling for a second. So are  
15 tickets issued at ECB under the Administrative Code?

16 MIKE GILSENAN: Yes, tickets are written.

17 CHAIRPERSON RICHARDS: Alright. What are  
18 the penalty amounts on that?

19 MIKE GILSENAN: \$350.

20 CHAIRPERSON RICHARDS: And if they are  
21 second and third and fourth and fifth time offenders,  
22 do the... does it increase? [crosstalk]

23 MIKE GILSENAN: They... they essentially  
24 double, so... [crosstalk]

25 CHAIRPERSON RICHARDS: They double.

2 MIKE GILSENAN: it would be \$350, \$700,  
3 and \$1,400.

4 CHAIRPERSON RICHARDS: Uhm I...

5 MIKE GILSENAN: I would just... as a point  
6 of clarification, as a practical matter, nobody  
7 really gets a second offense, they'll come in and  
8 they'll pay usually the \$350.

9 CHAIRPERSON RICHARDS: I find that hard  
10 to believe. [laughter] I do find that hard to  
11 believe. How many DEP agents are responsible?

12 MIKE GILSENAN: We have 47 air-noise  
13 inspectors; they do both air and noise. So for the  
14 whole city there's 47.

15 CHAIRPERSON RICHARDS: That... is there... so  
16 eight million New Yorkers; 47 agents... [crosstalk]

17 MIKE GILSENAN: Right.

18 CHAIRPERSON RICHARDS: Do we plan to  
19 increase that number? And noise is the number one  
20 311 complaints; I'm certainly interested in know...  
21 [crosstalk]

22 MIKE GILSENAN: Yes, it is. Oh yes, we...  
23 we... we... the [background comment] the enforcement that  
24 we have now we've been keeping up with; it's very...  
25

2 it's very trying, it's hard, but we keep up with it.

3 [crosstalk]

4 CHAIRPERSON RICHARDS: With 47 people, it  
5 sure is.

6 MIKE GILSENAN: Yes, it is. Yes... yes, it  
7 is; so. [background comment] But over the years  
8 we've met all of our Mayor's Management Report  
9 targets, so we think right now that, you know, the  
10 number that we're at is sufficient, but... [interpose]

11 CHAIRPERSON RICHARDS: I would find that  
12 hard to believe, because how do you police five  
13 boroughs with 47 people?

14 MIKE GILSENAN: It's... yes, it's  
15 difficult... [interpose]

16 CHAIRPERSON RICHARDS: And how can you  
17 effectively issue... [crosstalk]

18 MIKE GILSENAN: It's difficult... It's  
19 difficult, but we do, we use a... we have shifts; we  
20 know when things are happening, we target our shifts  
21 for those particular things, like early morning  
22 construction, so we have people start early; we know  
23 that there is late night noise, so we have a late  
24 night shift that goes to two in the morning. So we...  
25 [interpose]

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CHAIRPERSON RICHARDS: DEP enforcement agents you're saying?

MIKE GILSENAN: DEP enforcement agents, right, our air and noise inspectors.

CHAIRPERSON RICHARDS: On another day I will come back to noise, but you know, I know my community in particular, we had to start a noise task force, a local group of civic leaders and certainly the Police Department certainly work very closely with us; we have not worked very closely with DEP on this issue, and it is very rare that we see enforcement cars in our communities. [background comment] I... [crosstalk]

MIKE GILSENAN: Well...

CHAIRPERSON RICHARDS: would love to hear how, as we move forward; we're goin' through a budget now, how DEP plans to certainly put more agents on the road, because... especially in communities where there's high asthma and we know... EJ communities; we all know it, we know it is a huge issue; everybody deserves [background comments] to be able to breathe clean air no matter what your status is; no matter what your pay is; whatever, we all... [background comment] that... that should be a natural right and to

2 have 47 individuals who oversee a city full of eight  
3 million people, it does not show a real commitment to  
4 ensuring that these issues are addressed.

5 EMILY LLOYD: Mr. Chairman, I think that  
6 as part of the budget process is this spring, we will  
7 be looking at the Mayor's Management Report, talking  
8 about whether those are the right targets for the  
9 various areas where we have a lot of complaints, the  
10 staffing increases that have happened over the past  
11 few years and whether they're adequate, and we'll be  
12 happy to discuss that with you and I know that we  
13 will be discussing it with you.

14 CHAIRPERSON RICHARDS: Okay, great. I  
15 don't wanna be too much more selfish, so I'm going to  
16 let Council Member Lancman, he had some questions he  
17 wanted to raise and we'll go from there, and I'll  
18 come back for a second round.

19 COUNCIL MEMBER LANCMAN: Good afternoon,  
20 [background comment] and as I said, Commissioner,  
21 when we saw each other earlier, it's nice to see you  
22 back for round two, I guess... [crosstalk]

23 EMILY LLOYD: Thank you.

24 COUNCIL MEMBER LANCMAN: of your career  
25 here. Two areas I wanna ask questions about; the

1  
2 first is the elimination of wood-burning fireplaces  
3 and the second, some technical questions, but very  
4 important questions regarding the char broilers and  
5 cook stoves which were brought to my attention by  
6 folks from the restaurant industry.

7           Regarding fireplaces, now as I understand  
8 it, the bill would completely ban wood-burning  
9 fireplaces going forward, so there would be no more  
10 wood-burning fireplaces allowed in the city of New  
11 York. Is that correct?

12           EMILY LLOYD: No new ones.

13           COUNCIL MEMBER LANCMAN: That strikes me  
14 as extreme. Could you just explain [background  
15 comments] to me the science justifying that and what  
16 alternatives the Department considered [background  
17 comments] that might be less draconian?

18           EMILY LLOYD: Who... who wants to speak to  
19 it? [background comments] Okay.

20           GERRY KELPIN: What we find... [background  
21 comments] 18 percent of the particulate matter is  
22 produced by wood combustion; we think that's a fairly  
23 significant amount in the city's... [interpose]

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COUNCIL MEMBER LANCMAN: Is that 18 percent of all the particulate matter in the city of New York? [interpose]

GERRY KELPIN: Of this entire... so of local sources. [background comments] Alright. One of the other problems that we have, and there is a lot more concern being raised by state and local air agencies, as well as EPA, about emissions from fireplaces; one of the problems that we have, although you would think that it should be a non-issue here in the city; what we're seeing more and more is that the fireplace chimney tends to be very, very close to a next door neighbor and those emissions are truly a local, very localized impact. The smoke... excuse me... and... and emissions are ending up in other people's homes; very often it comes to us as a complaint about smoke and odor and we feel that, going forward, having the fireplaces... we actually... you can use natural gas or renewable fuels...

[interpose]

COUNCIL MEMBER LANCMAN: What would an example of renewable fuel be, other than natural gas?

GERRY KELPIN: Like the Duraflame logs, since... again, I mean these are aesthetic fireplaces,

2 basically; they can only be used for aesthetic  
3 purposes; they can't be used for heating. So there  
4 are types of, you know, logs that are now being, you  
5 know made out of renewable materials, so that's an  
6 alternative... [interpose]

7 COUNCIL MEMBER LANCMAN: But... so it's not  
8 just limited to gas, it's...

9 GERRY KELPIN: Correct. Uhm-hm.

10 COUNCIL MEMBER LANCMAN: Alright. How  
11 many... [interpose]

12 GERRY KELPIN: But there are really nice  
13 ones out. Sorry. Well...

14 COUNCIL MEMBER LANCMAN: That's a matter  
15 of opinion.

16 GERRY KELPIN: True...

17 COUNCIL MEMBER LANCMAN: How many... what  
18 did you call it, odor...

19 GERRY KELPIN: Yes.

20 COUNCIL MEMBER LANCMAN: and... smoke and  
21 odor?

22 GERRY KELPIN: Uhm-hm.

23 COUNCIL MEMBER LANCMAN: complaints did  
24 the Department get in the last year, for example,  
25 related to fireplaces?



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GERRY KELPIN: I would have... we'd have to do a little bit of work to get back to you in order to parse out the complaints about fireplaces, smoke and odor, because it comes into the complaint system as, unfortunately, other odors; we could do some work to give you that number. But in... [interpose]

COUNCIL MEMBER LANCMAN: Well...

GERRY KELPIN: communities that have a preponderance of fireplaces -- Whitestone is one neighborhood that I get a lot of complaints about; actually the Village is another area that I see complaints about, you know fireplaces; that it's... that's what they're... you know, and it's... obviously it's seasonal as well -- Christmas and New Year's is a big time. [interpose]

COUNCIL MEMBER LANCMAN: Well but let's... let me interrupt you; it...

GERRY KELPIN: Absolutely.

COUNCIL MEMBER LANCMAN: in order for me to be comfortable that fireplaces, wood-burning fireplaces, at least going forward, should be banned, I would at least need to see the number and the distribution of the smoke and odor complaints that the Department is at least in part using as a basis

2 for deciding that these things should be banned...

3 [crosstalk]

4 GERRY KELPIN: Right.

5 COUNCIL MEMBER LANCMAN: going forward.

6 GERRY KELPIN: I will get that, but what  
7 I said was that I can't pull it out immediately  
8 because the source is not identified that way, so we  
9 need to go back and we can do that for you.

10 COUNCIL MEMBER LANCMAN: As long as you  
11 can pull it out before I have to vote on the thing;  
12 [laughter] then we're good. But if part of the  
13 answer to the question is that, well listen, we got a  
14 lot'a smoke and odor complaints and that in part  
15 justifies banning fireplaces going forward, I need to  
16 know how many that we've gotten and what the  
17 distribution is. Let me ask you another question...

18 [interpose]

19 DANIEL KASS: I'm sorry; do you mind...

20 [crosstalk]

21 COUNCIL MEMBER LANCMAN: Sure.

22 DANIEL KASS: if I just sort of augment  
23 on the answer to the question about wood fireplaces?  
24 I think one of the sort of classic problems of air  
25 pollution is this notion that the actions of one can

1 affect many, many others. I don't have the exact  
2 figures in front of me, but you know, the fact that  
3 18 percent of local emissions are from wood  
4 fireplaces is really quite a stunning number, if you  
5 think about it, considering how few fireplaces there  
6 really are across the city relative to the  
7 population. Any one fireplace is contributing  
8 disproportionately to any local area emission. And  
9 emissions are, you know agnostic with respect to who  
10 they affect. So anyone who breathes in downwind of  
11 that is being affected by it. So I think we should  
12 just be conscious of the idea that when we start  
13 talking about the few remaining unregulated sources  
14 of emissions in New York City, this is one of them,  
15 as is a modified char broiler. [crosstalk]

17 COUNCIL MEMBER LANCMAN: So... so... Right.

18 So let me ask you about the rules going forward for  
19 the fireplaces that would be grandfathered. As I  
20 understand it, that those fireplaces, the wood-  
21 burning fireplaces, the rule would be that the wood  
22 would have to be a certain percentage moisture-free;  
23 could you explain that and tell us what impact that  
24 rule will have on reducing the current 18 percent  
25 particulate rate?

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EMILY LLOYD: That is actually already a regulation that's in effect and a lot of the wood that's available is already, that's available to be bought, already meets that test.

COUNCIL MEMBER LANCMAN: Where's here testimony?

GERRY KELPIN: I don't think we have those figures available on the... the data is...  
[interpose]

COUNCIL MEMBER LANCMAN: Well how... how does this... how did this bill... I think I saw it in your testimony and the bill itself; how does this bill change the current rule or regulations regarding the 20 percent moisture-free or whatever it is regarding wood-burning logs, wood logs?

GERRY KELPIN: There's no current regulation other than you can't use wood as a primary source of hear.

COUNCIL MEMBER LANCMAN: Okay, 'cause I thought the Commissioner just testified... [crosstalk]  
[background comment]

GERRY KELPIN: Well the state... the state has regulations about the moisture content of wood.

2 COUNCIL MEMBER LANCMAN: What are those  
3 regulations, in a nutshell?

4 GERRY KELPIN: 20 percent moisture  
5 content... [crosstalk]

6 COUNCIL MEMBER LANCMAN: Only... limited to  
7 20 percent moisture content. And that's a state law?

8 GERRY KELPIN: Yes.

9 COUNCIL MEMBER LANCMAN: And...

10 GERRY KELPIN: And it actually has to do  
11 with to reduce insect migration.

12 COUNCIL MEMBER LANCMAN: Okay. So it has  
13 nothing to do with the type of particulate matter  
14 that's being released from the logs burning?

15 GERRY KELPIN: It has a secondary effect  
16 of reducing... of burning... of causing a cleaner-burning  
17 fire. [crosstalk]

18 COUNCIL MEMBER LANCMAN: So does this...  
19 does this bill adopt that standard as a city  
20 regulation?

21 GERRY KELPIN: Yes.

22 COUNCIL MEMBER LANCMAN: Okay. Do you  
23 expect the adoption of that regulation to a maximum  
24 of 20 percent moisture will have an effect on the  
25

2 amount of particulate matter that's released and  
3 would reduce the 18 percent that currently exists?

4 GERRY KELPIN: Yes, it should have an  
5 effect.

6 [background comment]

7 GERRY KELPIN: I mean we'll try to get  
8 you some, you know... [interpose]

9 COUNCIL MEMBER LANCMAN: Well...

10 GERRY KELPIN: better calculations on...  
11 [interpose]

12 COUNCIL MEMBER LANCMAN: Alright. So... so  
13 has the Department [background comment] considered  
14 rather than banning wood-burning fireplaces going  
15 forward entirely that maybe this 20 percent rule  
16 will, and better enforcement of it at the state  
17 level, or at least existing state rule, but that this  
18 20 percent rule will have a significant, or affect a  
19 significant decrease in this 18 percent particulate  
20 and why not try that first?

21 EMILY LLOYD: I think... Let us get you  
22 some rough numbers, but I think really, if we were  
23 trying to go all out from the point of view of  
24 protecting the health of the people adjacent to wood-  
25 burning fireplaces we would simply ban them and shut

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them down; we're not doing that, we're trying to allow people who have them to continue to have them and reduce the detrimental affect of what they do, but we think it's serious enough that we don't want more to get out into the City. The 20 percent reduces it, but does not reduce it very significantly and we will try to generate some numbers and get those to you.

COUNCIL MEMBER LANCMAN: Good; I appreciate that. Are there any other juris... before I move on to the other issue, are there any other jurisdictions that bar wood-burning fireplaces?

EMILY LLOYD: Yeah, and let us provide you with that list.

COUNCIL MEMBER LANCMAN: Terrific. Okay. Regarding the concerns raised by some of the folks in the restaurant industry relating to commercial char broilers and cook stoves and the issue of grandfathering; I'm told that some of the retrofitting that would need to get done might violate the existing Building Code or might require the approval of a landlord who doesn't choose to give his approval, which might be a great opportunity to

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get out a lease that the landlord doesn't wanna be in. How would you address those concerns?

ANGELA LICATA: Hi; I'm Angela Licata, Deputy Commissioner for Sustainability. And with respect to the issue that you're raising, as I've understood it, some of the restaurants are concerned that potentially as they look to install ventilation systems -- precipitators is what's typically used as an emission reduction device -- that they would have to get the building owner's permission and potentially other lessees within the building would also have to grant permission. So we are aware of that situation.

COUNCIL MEMBER LANCMAN: So what happens... and then there's the other situation where the work that needs to get done might violate the Building Code or be impossible to do in a way that's consistent with the Building Code?

ANGELA LICATA: Well in that situation they would have to come to us and then we would have to consider a waiver, but... [interpose]

COUNCIL MEMBER LANCMAN: Is... So there's a waiver process?



2 ANGELA LICATA: The Air Code itself has a  
3 waiver provision in it, but that would have to be  
4 reviewed on a case by case basis.

5 COUNCIL MEMBER LANCMAN: And what would  
6 you do... what would be the answer to a restaurant  
7 operator where the landlord or other lessees refuse  
8 to cooperate?

9 ANGELA LICATA: Well I mean it's hard to  
10 say now, sitting here without looking at the  
11 individual circumstance, but I think we would have to  
12 weigh the emissions that are occurring, where the  
13 point of emissions occurs and who is being affected  
14 by those emissions; even locally, where DEP is  
15 headquartered, we have a situation with a restaurant  
16 where we've had lots of complaints because the  
17 emission source is very low to the street level, and  
18 so the only potential for abating that would be to  
19 install precipitators, so to relocate the emission  
20 source. So it's a fairly common problem and it's a  
21 fairly common complaint. But to assess the situation  
22 we would really need to look at the individual  
23 circumstances.

24 COUNCIL MEMBER LANCMAN: Does the  
25 Department give any consideration to grandfathering

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people in those circumstances similar to the way you grandfathered wood-burning fireplaces?

ANGELA LICATA: I suppose what we would like to do is to really judge the individual circumstance and see what the costs associated and what the alternatives are for the restaurant; there's a variety of things that could be done; potentially installing high-end technology might cost more than relocating the emission source. So there's a lot of considerations; again, really hard to answer the question in the abstract. [background comment] I'm not looking to dodge you, but just a little difficult to answer in the abstract.

COUNCIL MEMBER LANCMAN: Good. Well, my parting comment before others ask questions is; I'd be a lot more comfortable supporting this bill if there was something in the bill which directed the Department to give really extra special consideration to business operators, owners who are unable to make the modifications necessary, either because doing so would violate the Building Code in some way that could not reasonable be mitigated or [background comment] where they could not obtain the permission

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of necessary parties, like a landlord or other lessees.

ANGELA LICATA: Okay.

EMILY LLOYD: I will say stress that along with fireplaces, they seem like a small source, but the char broilers and the fireplaces make up almost 40 percent of the particulate emissions that are still a big problem for the health of New Yorkers, and if they were easy to regulate we probably would've done it quite a while ago; they're not easy, but we're trying to do it because we think it's compelling enough from a health point of view, so we'll try to address all your questions, but neither of these is going to be simple to do.

COUNCIL MEMBER LANCMAN: Well I... I... I understand and respect that; I don't dispute that these... this equipment, you know, causes environmental issues, but if there's a way to regulate their emissions without potentially putting people out of business, but not for lack of effort, but you know, the Building Code is what the Building Code is, or a landlord is, you know who the landlord is; you know, I'd be a lot more comfortable. Thank you though.

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CHAIRPERSON RICHARDS: Council Member  
Costa Constantinides.

COUNCIL MEMBER CONSTANTINIDES: Good  
afternoon Commissioner, great to see you back. I  
have a question I know is a little bit outside the  
jurisdiction of DEP, but I definitely wanna bring it  
up and you know we've been talking earlier about 4  
and 6 oil and in my community I have power plants in  
my neighborhood that are not regulated; you know  
they're state entities, we can't write something into  
the Air Code that's gonna fix the problems that come  
from this particular problem, but you know I have the  
power plants, I have the airport, I have the Grand  
Central Parkway that runs through my district. We  
have a... I'd like to say an embarrassment of riches,  
but [laugh] they're certainly not riches when it  
comes to the environmental challenges that we have.  
But my question is; what are we doing to work with  
our state partners to see the phase-out? 'Cause I  
spoke with some of the power plants and they are not  
looking... they're aren't looking to do the phase-out  
of 4 and 6, they are gonna burn the 4 and 6 oil in  
perpetuity until it becomes more financially viable  
for them to move in another direction, and we're

2 trying to encourage them to build new turbines, and I  
3 think they are... they have discussed those  
4 opportunities, but we haven't see any action yet and  
5 that they still have the 4 and 6 oil and they're not  
6 going anywhere, so I was wondering what we're doing  
7 with our state partners to try to get that moving.

8 [background comments]

9 ANGELA LICATA: As you indicated, that is  
10 a really tricky problem because they're already  
11 permitted, they're existing and there's nothing  
12 compelling them to adopt the cleaner fuels, but  
13 certainly I'm very well aware of the types of  
14 emissions and the problems associated with them,  
15 because we are usually engaged with citing new  
16 facilities and it is the New York City DEP that takes  
17 a very tough look at those facilities under the  
18 Environmental Review statutes and we usually  
19 participate, much to the chagrin of those proposed  
20 facilities, in that process. However, with respect  
21 to the problem on the preexisting facilities, I think  
22 I would like to, you know take your concerns back and  
23 perhaps have a discussion with Venetia Lannon, who's  
24 the Regional New York State DEC Administrator, and  
25 see what we can do and potentially, you know, engage

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in a dialogue with you about that, because I don't have any answers off the cuff, but I would like to look further and more deeply into the issue.

COUNCIL MEMBER CONSTANTINIDES: I'd be much appreciative of that; I definitely would love to sit down with you and speak offline about that and see how we can move the ball forward for our community that's been sort of bearing the burden of, depending on the numbers; mean 55 and 70 percent of the City's power is generated in Astoria and you know, we are bearing the environmental burdens of that, so thank you.

CHAIRPERSON RICHARDS: I just wanted to go federal real quick, since he threw in the state. We have the airport as well and Costa, you have LaGuardia too, [background comment] just outside, but it's close enough... yeah, close flights, so I was wondering; what are we gonna do to work with the Port Authority as well in terms of... you know, I know that there are things they can do, they can plant more trees, they can make sure that they're using electric cars or carts to transport passengers, so I'm wondering what are we gonna do about that, and then on air monitoring, which is gonna be a separate

1 conversation, I'm sure, you know, we... so you guys  
2 will put a air monitor somewhere for two weeks and  
3 then more it and then move it and then move it, but  
4 we need to see more of a strategic way of monitoring  
5 air, we need to keep those air monitors, especially  
6 in places close to airports for a longer period of  
7 time so we know the effects, you know, that the  
8 airport is certainly putting on our community; right  
9 now we don't have a way... you know, our community has  
10 the right to know what they're inhaling and what  
11 they're breathing and you know, so I'm interested to  
12 hear what are we gonna do, although we're addressing  
13 the Air Code and we're gonna make some good revisions  
14 and I'm in support of all of these things and there's  
15 wiggle room to change some things, but what are we  
16 gonna do to monitor air better and especially EJ  
17 communities?  
18

19 EMILY LLOYD: Well one thing, and this is  
20 not always a very popular thing to say, but I'd  
21 really like... it seems to me that if the airport needs  
22 to have air monitoring they should bear the cost of  
23 doing that. When we do a project, a big construction  
24 project and the community wants us to monitor air  
25 quality around that, which we did all around the

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Croton Filtration Plant for years, we installed it, we then reported publicly the findings from it and so on a I think monthly basis to the community; it seems to me that if they're the source that they should be providing the monitoring as well; I'm sure I... I won't be popular with either people who would like the City to do it or with the Port Authority, but it just seems that fair is fair in that case.

CHAIRPERSON RICHARDS: But what are we doing... so let's not say on airport grounds, but outside of the airport grounds you certainly would have jurisdiction and according to the charter, your job is to monitor air.

EMILY LLOYD: Yeah; Dan's going to speak to it; I'm just always trying to protect you. Our tax... our taxes from taking on other responsibilities. [crosstalk]

CHAIRPERSON RICHARDS: No, I... I... I hear what you're saying; I mean I... I... I... I hear you 100 percent, but one of the things we should do is make sure we're at least pushing them in that direction and New York City, obviously they gotta come to us to renew their lease, so these are conversations [background comment] we should have with them when



1 they have to come to renew their lease with us.

2 [background comment]

3 DANIEL KASS: Every 100 years or whatever  
4 it is. [laughter]

5 CHAIRPERSON RICHARDS: Yeah, every 100  
6 years; whatever they need, they need something from  
7 New York City.

8 DANIEL KASS: So... so just... let me just  
9 frame the air monitoring question in a couple of ways  
10 and then I'll come to answer your specific question.  
11 So there is a requirement to do regulator compliance,  
12 air monitoring across New York City that's managed by  
13 a state agency, Environmental Conservation; those  
14 sites are specifically located to try to capture  
15 general conditions across the City, they are not  
16 designed to go to particular area sources, they're  
17 not designed to characterize air quality at a very  
18 fine geographic scale, they're really designed to  
19 characterize air quality as a region, not even  
20 necessarily as a city or as a borough. New York City  
21 is really unique across the country in having a  
22 different air monitoring system that the City itself  
23 adopted and the Health Department manages, called the  
24 New York City Community Air Survey, and I know we've  
25

1 spoken about this before, both to you and to other  
2 Council members on occasion and that I think is what  
3 you're referring to where we move monitors, we keep  
4 them up on lamp posts to characterize breathing level  
5 air quality for a two-week period and then we rotate  
6 them across the City. But in every location was  
7 selected in order to be able to do a couple of  
8 things: (1) characterize critical sources of air  
9 pollution and how they differ across the city. So  
10 they were sited to get variability across a spectrum  
11 of factors that include truck traffic, vehicular  
12 traffic, population density, building density, and a  
13 variety of other factors. So the sites were selected  
14 in order to be able to do that. They were also  
15 selected in order to be able to characterize  
16 neighborhood scale, air quality conditions. Now no  
17 one monitor is intended to characterize the air  
18 quality at that particular site; we use a statistical  
19 technique that basically says, well here are the  
20 characteristics of the world around this monitor and  
21 even where we don't monitor, we know the similar  
22 characteristics of that world and we can apply the  
23 results from one or more monitors to there, so it's a  
24 modeling exercise. Now I should say that we didn't...

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we don't have monitors specifically designed to detect the airport signal, right, but we do have monitors nearby airports and we do look at the degree to which they differ or look the same as other ones and we don't find, especially around Kennedy Airport, that we see a very distinct signal; part of that has to do with wind conditions, part of it has to do with the fact that we capture... much of the local pollution is actually captured by truck traffic or vehicular sources as opposed to airplane sources. So we will continue to... I mean we'll talk to you about opportunities for that; we... you know when we look at our apportionment of where the devices are located, they do disproportionately represent low-income areas, communities of color, where we do know from epidemiologic studies that the burden of air pollution is greatest.

CHAIRPERSON RICHARDS: And what I'm getting at is, the more that we can get that information and give it to the Port, who is responsible for their grounds, it gives the City more of an argument to go to them to say hey, you guys need to do better, but right now how do we go to them and say you need to do X, Y, Z? So we should be

2 utilizing it as a resource for us to push them to do  
3 better by communities. But I have just two last  
4 questions and I will let you go.

5 On the char broilers, so how do you guys  
6 intend... I know saying people would be able to cook  
7 875 pounds of meat a week; can you tell me, how do  
8 you guys... how do people report that in particular to  
9 you and how do you monitor that?

10 EMILY LLOYD: How did we come up with  
11 that number?

12 ANGELA LICATA: Well the number was  
13 actually borrowed from information that we got from  
14 California, so that was... you know, we looked at  
15 California as having paved the way on this issue, and  
16 the reporting requirements... you're right to you know  
17 point out that that is gonna be a very difficult  
18 thing to track, so we're looking to remain flexible  
19 on this, but we believe that the restaurants do keep  
20 track of the quantities of meat that are delivered  
21 and so they're keeping that information for their own  
22 purposes in terms of, you know, business reporting  
23 and expenses.

24 CHAIRPERSON RICHARDS: But how do we know  
25 if they'll cook more in a... so how would you determine

2 if they're cooking a particular amount a week; would  
3 you work with... so what I'm getting at is, you know,  
4 we have the Department of Health who monitors and  
5 gives these grades A, B and C; when they go in to do  
6 their inspection, would this be something they look  
7 at?

8 [background comments]

9 ANGELA LICATA: What we've actually...  
10 [crosstalk]

11 CHAIRPERSON RICHARDS: Would you guys  
12 work closely together?

13 ANGELA LICATA: We have spoken to the  
14 Health Department about that; I'll let them answer  
15 that question for themselves; one thing I wanna point  
16 out is that the legislation I think that's before you  
17 may not have the greatest and latest language with  
18 respect to this issue, so I'd like to furnish you  
19 with revisions that we think further explain in  
20 detail how we would track this requirement, but then  
21 I'll turn it to Dan.

22 DANIEL KASS: While we haven't worked out  
23 the specifics, one opportunity is that every year a  
24 restaurant is required to renew its permit with the  
25 City; they can do so online or they can do so at a

1 window that the Department of Consumer Affairs  
2 manages. We have a new system in place for managing  
3 permitting in the City that it adopted just about a  
4 year ago for the first time and the restaurant  
5 industry was actually the first to move to the new  
6 system, so we have an opportunity to modify the  
7 registration process for the permit, at which point  
8 we can ask restaurants questions about their  
9 operations. One of the questions we can consider  
10 asking is something about their anticipated, if  
11 they're new or their current... whether they have a car  
12 broiler, for one thing, which not all restaurants do;  
13 we estimate, based on surveys of our own work with  
14 inspectors that just about 38 percent of restaurants  
15 have some level of char broiling; we don't know what  
16 percentage of those would meet the 875-pound weekly  
17 threshold, but we would ask restaurants to basically  
18 tell us that.

20 CHAIRPERSON RICHARDS: But I would not  
21 trust them to tell you that they're gonna cook  
22 [laughter] 875 pounds of meat a week, so I'm  
23 interested in seeing how we're going to in particular  
24 enforce that or at least get real reporting, because  
25 we know John Doe is gonna say, I'm only cooking 400

1                   COMMITTEE ON ENVIRONMENTAL PROTECTION                   71  
2       pounds of meat a week and he could be takin' 1,000  
3       for all we know.

4                   Then the last question is; so we went  
5       through Hurricane Sandy in particular; many of my  
6       public housing developments and many people affected  
7       around the City, Ritchie Torres in the Bronx and  
8       Carlos Menchaca in Brooklyn, and so they have these  
9       temporary boilers and so I'm interested in knowing,  
10      are we monitoring those and where do monitoring these  
11      particular temporary boilers fall into the Air Code?

12                   [background comments]

13                   MIKE GILSENAN: Yes we have, we've had  
14      our inspectors go out, we've looked at a bunch of  
15      locations and we've also been in contact with HPD and  
16      it's our understanding that they are going to, at  
17      some point in the very near future, they're gonna  
18      start changing out those boilers and bring in boilers  
19      that run on natural gas, so that's all in the  
20      process.

21                   CHAIRPERSON RICHARDS: So I understand  
22      that, but did you guy... so what did you find when you  
23      guys went to investigate or inspect... how... you know,  
24      the... the... I understand NYCHA's gonna do that,  
25      actually; not HPD... [crosstalk]

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MIKE GILSENAN: Right. Right. Right.

CHAIRPERSON RICHARDS: but what did you guys find with the temporary boilers, because we... there were 311 complaints, we got complaints of smog... [crosstalk]

MIKE GILSENAN: Yes, we went out... I don't... you know I'd have to... I'd have to go back; I don't have that information right at my fingertips... [crosstalk]

CHAIRPERSON RICHARDS: So if I can ask you guys to put a... [crosstalk]

MIKE GILSENAN: Absolutely.

CHAIRPERSON RICHARDS: special emphasis on this, because... [crosstalk]

MIKE GILSENAN: Absolutely.

CHAIRPERSON RICHARDS: as we know, people in public housing have some of the poorest air quality... [crosstalk]

MIKE GILSENAN: Absolutely.

CHAIRPERSON RICHARDS: and you know, to add onto what they're already enduring is... is not a good thing, so you know, as we address this, I would certainly hope to hear from the Commissioner on what



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are we doing to monitor these temporary boilers until we get permanent ones.

MIKE GILSENAN: Absolutely. But rest assured, we are out there.

CHAIRPERSON RICHARDS: 'Kay, great. And you inspected all; are you saying you inspected all?

MIKE GILSENAN: We've... No, I can't say... I can't say definitely all... [crosstalk]

CHAIRPERSON RICHARDS: Okay.

MIKE GILSENAN: but I know we've been to very many locations, we've looked at them; we've looked for their registrations; those that didn't have registrations we issued NOVs to; those... I think that... and this is just off the top of my head; let me again... we can get back to you on the actual [background comment] numbers, but I think there were one or two occasions where there was some that were smoking and all that we issued [background comment] and we had them correct those things, those... [interpose]

CHAIRPERSON RICHARDS: Okay. So if you can get that information back [crosstalk] [background comments] to the Committee as soon as possible, that would be appreciated. Thank you, Commissioner, thank

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you Deputy Commissioner; thank you all for coming out, thank you; look forward to working with you. Wanna acknowledge my colleague, Council Member Ruben Wills has come in. [background comments] [laughter] I forgot you... I do care about you; I didn't look at it... [background comment] and from Queens... and from Queens.

Alrighty, so in this particular order we will have people come and testify -- first we'll hear from Andrew Moesel from the New York State Restaurant Association, we'll also call up Robert Bookman from the New York Hospitality Alliance and Felice Farber from the General Contractors Association of New York, in that order.

[pause]

You begin, just Samara's gonna swear you in, so if you all can... [background comment]

SAMARA SWANSTON: Can you please raise your right hands? Do you swear or affirm to tell the truth, the whole truth and nothing but the truth today? [collective agreement]

ROBERT BOOKMAN: Good afternoon; my name is Robert Bookman; I'm counsel to the New York City Hospitality Alliance, a trade association

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2 representing New York's restaurants and nightlife  
3 establishments that are regulated by the New York  
4 City Department of Health, Buildings Department and  
5 Consumer Affairs, Department of Environmental  
6 Protection; Fire Department, just to name a few. We  
7 worked closely with DEP on the portion of this new  
8 Air Code which seeks to further regulate commercial  
9 char broilers and cook stoves; we had a very good  
10 working group and we thank them for their outreach;  
11 we were some of the stakeholders that they were  
12 talking about, Andrew's group; my group, and  
13 personally I'm thrilled to see that Emily Lloyd is  
14 back, I worked closely with her years ago on the  
15 noise code and I know she knows how to work with  
16 businesses and try to come up with, you know  
17 reasonable accommodations for everyone.

18           Two problems do remain however; the first  
19 is the date by which new cook stoves and kitchens  
20 will have to comply with the new law. When we  
21 started talking about this, as they said, some time  
22 ago, really a couple years ago; July 1st, 2014 seemed  
23 like a long time away for the effective date; now  
24 it's little more than a couple months away; obviously  
25 any change as large as this would need some

1  
2 considerable lead time and I think we need to adjust  
3 that, 'cause in the draft that you have that was  
4 published, that was something we were working with  
5 them and I think it was about two years ago we had  
6 that date.

7           The second issue raised by us but never  
8 resolved, as it involves agreement and cooperation  
9 between multiple City agencies, so it was kicked down  
10 the road a bit and Councilman Lancman raised it, and  
11 the problem is rooted in a retroactive nature of  
12 these sections. Some kitchens will have to be  
13 retrofitted by a certain date to comply with the new  
14 law; that is, while not common that new codes require  
15 construction work and have a retroactive application,  
16 it's not unheard of, zoning particularly is  
17 prospective, building and other codes sometimes are  
18 and sometimes are not. The problems arise when the  
19 venting work or other construction work needed to  
20 comply either cannot physically be done in an old,  
21 small restaurant space or if it can be done, the  
22 building owner will not grant permission for the  
23 work. There is no grandfathering here for our char  
24 broilers, which was said, 38 percent of the existing  
25 restaurants have it, there's only just a small...

1 there's just a three-year lead time. The becomes a  
2 perfect opportunity, unfortunately, for a landlord  
3 who wants to get rid of an old mom and pop restaurant  
4 tenant who is in a nice, long lease and replace them  
5 with a much higher-paying chain, bank or drugstore,  
6 something I know you all desperately need more of in  
7 your neighborhoods. [laughter] We wanna save our  
8 neighborhood stores, I know the members of this  
9 Committee agree with that; this can have the opposite  
10 effect, as all landlords would need to do is refuse  
11 permission to allow work to be done, you know for  
12 example, some solution might be here venting up a  
13 building, you know, to the roof of that building in  
14 order to satisfy the requirement; that's fine if the  
15 landlord says okay, but that's permission that the  
16 landlord has to grant. We have a lot of these, what  
17 we call cond-ops also New York, increasingly, in new  
18 buildings and renovations where the commercial space  
19 is the condominium usually owned by the developer and  
20 that's our landlord and they are placed in a co-op  
21 which owns the rest of the building; the co-op may  
22 not... you know, maybe... our landlord may be happy to  
23 have the work done; the co-op may not be and may also  
24 see it as a good opportunity to get back at the  
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1  
2 developer who got... you know, who put a tenant in  
3 their building.

4           So those are practical problems and other  
5 times it may simply be impossible to do the venting  
6 work that is required and still meet the codes. So  
7 I... we hope it is not the intent of the Council and  
8 the Mayor to close down existing neighborhood  
9 businesses by not grandfathering them in; we should  
10 certainly... local businesses should not be treated any  
11 less in this law than a fireplace, and they're  
12 grandfathering in existing fireplaces; we think  
13 businesses that pay taxes, that hire individuals,  
14 that are the foundation of our communities are worth  
15 at least as much as a residential fireplace, and  
16 while we have no problem with new codes, effective  
17 codes, improving air quality going forward, as long  
18 as there's enough lead time for a construction, you  
19 know, you just factor those costs in and if a  
20 particular location you can't do it, well then maybe  
21 that's not the right location for you to build your  
22 new restaurant, but that's okay going prospectively;  
23 retroactively, you know, is the problem and I think  
24 DEP knows it, but because it involved Buildings  
25 Department and others it became complicated, so we

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think that they should either be grandfathered or at a very minimum, if they can show that the... the statute should say that if they can show they're willing to do the work, but for the reasons we discussed they cannot do it, there should be a statutory exemption, not a case by case analysis where you're begging somebody at DEP to keep my restaurant opened up and... [interpose]

CHAIRPERSON RICHARDS: Well thank you, Mr. Bookman, I remember you; I was a much younger man when I met you, [laughter]... [interpose]

ROBERT BOOKMAN: Oh man. [laughter]

CHAIRPERSON RICHARDS: I'm interested in being hospitable, so I look forward to meeting with you. How much more lead time would you anticipate you guys would need on the cook stoves?

ROBERT BOOKMAN: I think instead of July 1st, 2014, July 1st, 2015 would be fair.

CHAIRPERSON RICHARDS: 15?

ROBERT BOOKMAN: Yeah. You figure, if you pass this in a few months, it would be probably about a one-year lead time at that point.

CHAIRPERSON RICHARDS: Okay.

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ROBERT BOOKMAN: And again, that would only be for... we understand, that's for the... [interpose]

CHAIRPERSON RICHARDS: Right.

ROBERT BOOKMAN: you know the new and the larger ones; I'd say most construction projects are not much more than a year in advance... [crosstalk]

CHAIRPERSON RICHARDS: Year, uh-huh.

ROBERT BOOKMAN: so we... you know, that would be, you know, about as close as we can cut it.

CHAIRPERSON RICHARDS: And obviously you said a waiver or being grandfathered in would be helpful, so...

ROBERT BOOKMAN: Well grand... and out and out grandfather for... you know, for the... for those who... certainly for those who cook less than 875 pounds...

CHAIRPERSON RICHARDS: [laugh] Okay. Okay.

ROBERT BOOKMAN: you know, and of course restaurants will tell you the truth, especially you, Mr. Chairman, [laughter] we're not gonna... we're not gonna hide... [crosstalk]



2 CHAIRPERSON RICHARDS: Okay. Right.  
3 Right.

4 ROBERT BOOKMAN: but especially for the  
5 small mom and pops, [laughter] you know who are  
6 using, you know, cooking steaks and seafood and stuff  
7 like that, you know, if you can't see yourself clear  
8 towards grandfathering, everybody who currently  
9 exists; at a minimum those who are doing less than  
10 875... [crosstalk]

11 CHAIRPERSON RICHARDS: Right.

12 ROBERT BOOKMAN: should be permanently  
13 grandfathered.

14 CHAIRPERSON RICHARDS: Okay. Well-noted.  
15 Okay, we will hear now from... and you'll start that  
16 timer, Mr. Sergeant of Arms... we'll hear from Andrew  
17 Moesel from the New York State Restaurant  
18 Association.

19 ANDREW MOESEL: Hi, thank you very much  
20 Mr. Chairman; I am here representing the New York  
21 State Restaurant Association, which represents 5,000  
22 establishments, hospitality establishments here in  
23 New York City; we are the largest such organization  
24 in the State and we've been, as Mr. Bookman here,  
25 very involved with the DEP as a stakeholder and

1                   crafting some of these new regulations. The  
2 restaurant industry, in general, has been at the  
3 forefront on a lot of the issues over the past couple  
4 years in the City; we were very happy to work with  
5 some of the members here in the Council to ban  
6 polystyrene and to mandate organic separation  
7 composting in some of the City's larger restaurants,  
8 which we all think will go to helping the environment  
9 here in New York City and in the region. You know we  
10 are always very wary of new regulations such as this,  
11 but you know we're willing to entertain reasonable  
12 investments into our restaurants if we think there's  
13 a real public good and we think that that falls under  
14 this category. I share this, and our organization  
15 shares the same concerns which Mr. Bookman numerated  
16 about the deadline which we'd like pushed back at  
17 least a year and some of the other concerns about  
18 concessions in situations where the landlord of the  
19 least could cause difficulties and we hope there's an  
20 aggressive waiver program or something that will take  
21 those matters into consideration; I won't go too in-  
22 depth, because it's been addressed.

24                   The other concern, which, Mr. Chairman  
25 you raised, is this provision about how we're gonna

1 tell if a restaurant actually cooks 875 pounds a  
2 week; I'd like to see the new language that the DEP  
3 said they've been working on, because the language,  
4 as it was... the language, as was originally written,  
5 actually said that... sort of implied that the guy  
6 who's cooking the meat would actually have to keep  
7 records of how much meat he was cooking, which is,  
8 you know logistically almost laughable, especially  
9 when a lot of people in the kitchen are already  
10 running around and you might be familiar with a lot  
11 of the... the Health Codes actually have to keep track  
12 of how hot the pasta is, so it's not too... you know,  
13 it stays within time and temperature parameters and  
14 all this stuff, but to keep track of that as well  
15 would nearly impossible and even if we did... you know,  
16 keeping track of how much meat they order or billing  
17 provisions also has its own challenges, but hopefully  
18 we can find some way to make that work.

20 The last thing I'll mention is, you know  
21 while we... while we will work with the City on new  
22 regulations that have penalties, obviously there's a  
23 need for enforcement in any such regulatory system;  
24 we think a much better way to handle things like this  
25 is with incentives. The panel here from the DEP said

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that they are considering giving... waiving the fee for food trucks if they are willing to comply with some of these new regulations, yet there's no concession like that for restaurants who are paying a lot more in taxes and being much better city partners than many of the food industry; not that... I'm not trying to knock them, but why not waive... why not have either some sort of tax incentive or why not waive the registration fee for the permit the restaurant has to file every year if they comply with this law in a timely manner? We... [interpose]

ROBERT BOOKMAN: Or we could be waived from the letter grade.

ANDREW MOESEL: Oh that's right, or... [laughter] that would be even better. Any sort of... you know, any sort of incentive, we think... 'cause the fact is, we think the D... we work close with the DEP and we think some of the costs are reasonable, but the fact is that these are additional costs that the restaurants are incurring, so the... you know, if the City could see fit for giving us a break somewhere else to help offset those costs, that would be fantastic.

CHAIRPERSON RICHARDS: Great. Thank you.

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FELICE FARBER: Thank you, Council Member Richards and members of the... [bell]

ANDREW MOESEL: Time's up, sorry.

[laughter]

FELICE FARBER: and members of the Environmental Protection Committee for the opportunity to comment today; I am Felice Farber, Director of External Affairs at 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 waste water systems. While we support the overall goal to update New York's air rules and improve New York's air quality, we have a few serious concerns about several provisions of the bill. We appreciate the recent efforts of the Council staff and DEP staff to address industry concerns and we welcome the opportunity to continue to work collaboratively on changes to the Air Code that will both accomplish the City's goal and be fair, reasonable and easily understood by the affected parties.

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2 First, the requirement to obtain a work  
3 permit for certain types of very large construction  
4 equipment is onerous, vague and we believe goes  
5 beyond the goals of the Air Code to improve New  
6 York's air quality. Very large compressors and  
7 generators are occasionally used on some of New  
8 York's largest construction projects to power the  
9 tools and equipment used on the job site; these  
10 compressors and generators can exceed 600 horsepower  
11 and are often on a job site for 12 months or longer,  
12 making them stationary under the new Air Code  
13 provisions. Int. 271 would require such equipment to  
14 obtain a work permit, but a close look at the work  
15 permit requirements shows the inapplicability of  
16 these requirements to the construction industry. For  
17 example, the construction work permit application  
18 applies to boilers and other building equipment,  
19 although we understand DEP is looking to clarify  
20 that; the application must be signed by an architect,  
21 engineer or other license professional, equipment  
22 rental houses do not keep architects or engineers on  
23 staff; the equipment owner must demonstrate that the  
24 equipment is of a proper size to handle the plan  
25 load; this puts DEP in the position of second-

1  
2 guessing construction means and methods and provides  
3 the contractor with no certainty about what will be  
4 acceptable during the bidding process; the new clear  
5 standard set forth in the legislation for granting  
6 work permits; no standards would be set by rule,  
7 leaving the construction community with a vague law  
8 and uncertainly about how to obtain a work permit,  
9 and the City's goals are to know the location of  
10 large equipment and ensure that such equipment meets  
11 air quality standards and the work permit requirement  
12 misses the mark. As currently written, the work  
13 permit requirements are not consistent with these  
14 goals and not relevant to the heavy construction  
15 industry. Contractors plan their equipment usage to  
16 be most efficient in terms of lowest overall impact  
17 on deliveries to the job site, intrusion on the  
18 community, noise, etc., and ability to rapidly  
19 progress the job. The work permit requirements  
20 impede the contractor who's taking all the risk for  
21 delivering the project, for managing its equipment as  
22 he needs to perform the work. Also, as a tool of the  
23 trade, there is no place for the architect or  
24 engineer to opine as to the suitability of the  
25 equipment for accomplishing the work. Telling a

1 contractor whether or not a 600 horsepower generator  
2 is properly sized to the job is like telling a  
3 carpenter [bell] what kind of hammer to use.

4 [background comment] And really, I'll just  
5 summarize. One other issue we have is really the  
6 ability to make changes by rule rather than by law;  
7 we're hopeful that... since we're really looking for  
8 certainty, that you could have an industry advisory  
9 committee to make sure that things that are adopted  
10 are things that are implementable; it's something  
11 that has been done in the Noise Code and we think  
12 would work well here. And the issue about the stop  
13 work orders; there should... it's something that's  
14 already regulated by the Department of Buildings,  
15 it's for airborne dust violations, and there should  
16 be an ability for the contractor to immediately cure  
17 a problem without getting a stop work order.

18  
19 So we thank you for your time and we hope  
20 we continue to work with you on these issues and  
21 really resolving them for a successful Air Code  
22 change.

23 CHAIRPERSON RICHARDS: Thank you Miss  
24 Farber, it was a pleasure to see you and I look



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forward to having further discussions with you on this.

FELICE FARBER: Thank you.

CHAIRPERSON RICHARDS: Thank you.

Alrighty, the next panel, [background comments]

Denise Katzman of EnviroHancement, Michael Sessback [sic] from the American Lung Association and Eric Goldstein... oh, did I... oh Seilback, sorry, and Eric Goldstein from the Natural Resource Defense Council.

[background comments] Alrighty, I'll take the next two; I will have Cecil Corbin-Mark from We Act and also David Evans, myself. [background comment] We can get a few more chairs up here as well.

[background comments] Alrighty, we'll start with...

SAMARA SWANSTON: Can you please raise your right hand? Do you swear or affirm to tell the truth, the whole truth and nothing but the truth today? [collective agreement]

CHAIRPERSON RICHARDS: Alrighty. I'll start with Eric Goldstein, from the Natural Defense Council.

ERIC GOLDSTEIN: Thank you Mr. Chairman; my name is Eric Goldstein with the Natural Resources Defense Council. In 1966... I guess I should say that

2 we're pleased to be here today; thank you for  
3 inviting us; we are here in support of both Int. 271,  
4 the Air Code, as well as 230.

5 In 1966, a blue ribbon panel appointed by  
6 Mayor John Lindsay concluded New York City had the  
7 most polluted air of any city in America and it was  
8 in that setting that the City Council began to talk  
9 about and first adopted the Comprehensive Air  
10 Pollution Control Code more than four decades ago.  
11 By the way, the Chair of the Environmental Protection  
12 Committee at that time was Ted Weiss, who after a  
13 strong career here at the City Council went on to be  
14 a very prestigious congressman from New York City,  
15 just... [background comment] just saying... just saying.  
16 [laughter] Obviously, for many reasons... [interpose]

17 CHAIRPERSON RICHARDS: My congressman; I  
18 hope he's not watching. Okay.

19 [laughter] [background comment]

20 [laughter]

21 ERIC GOLDSTEIN: Thank you, Mr. Chairman.  
22 For many reasons, obviously, including actions taken  
23 by the Council in that passage of the Air Code and  
24 subsequently, the situation with respect to New  
25 York's air quality has improved significantly since

1  
2 the 1960s and early 1970s, but, like many densely  
3 populated areas around the nation, New York City  
4 still faces significant air quality challenges and  
5 those challenges are not borne equally, air pollution  
6 varies from neighborhood to neighborhood, block to  
7 block and sometimes even from building to building,  
8 and so while we're looking at these general downward  
9 trends or improvements in air quality, we have to  
10 recognize that there are still significant burdens  
11 that many communities and many residents in this city  
12 face, and if this level of mortality and morbidity  
13 occurred in a single incident, it would be front page  
14 news and the City would mount a full-blown effort to  
15 address the problem and we are committed, as we know  
16 you are, to addressing this problem systematically;  
17 passage of the Air Code revisions as proposed is one  
18 step in that direction. The legislation you're  
19 considering today isn't the sexiest bill to ever come  
20 before this Committee, it eliminates some outdated  
21 definitions and references and requirements, it  
22 updates provisions to make them consistent with state  
23 and federal law and it modernizes some filing and  
24 reporting requirements and streamlines and simplifies  
25 application and other processes. But it goes further

1 than just technical amendments and two of the  
2 provisions that have been at issue today are two of  
3 the reasons why the Natural Resources Defense Council  
4 is most supportive of this revision. In Section  
5 24-149.4, emissions from commercial char broilers  
6 would be addressed in large restaurants or  
7 restaurants with large boilers would be required to  
8 install pollution-control devices; this will address  
9 one of the most significant uncontrolled sources of  
10 particulate matter in New York City, and this concept  
11 was not pulled out of thin air, and I'm sorry that  
12 the other members of the Committee are not here to  
13 hear from the environmental representatives of the  
14 public today, but this and the other provisions  
15 [bell] are following directly from what other states,  
16 particularly California, have done who have been  
17 leading in addressing urban air pollution issues.  
18 And so it's appropriate to not only take action with  
19 respect to the char broil folks, but in 24-149.2, to  
20 phase out wood-burning fireplaces and wood-burning  
21 heaters; these are remnants from previous centuries;  
22 they have no place and are completely consistent with  
23 modern urban life in a city as densely populated in  
24 New York. New York City is still in violation of  
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1  
2 National Health Standards and these are two of the  
3 most significant ways in which this 182-page set of  
4 new proposals can tackle and address air quality  
5 problems today, there's a lot of stuff that makes it  
6 easier for DEP, there's a lot of stuff that makes it  
7 more convenient for businesses; if you really wanna  
8 get at attacking the problem of air pollution, the  
9 two provisions on char broilers and on air wood-  
10 burning fireplaces; wood-burning heaters, those are  
11 the ones to preserve; that's the core of this. And  
12 significantly, we like one other thing, which is that  
13 this version does not eliminate, as the earlier  
14 legislation did, the citizen enforcement provision;  
15 in Section 24-182 it allows any citizen to file a  
16 complaint; we love this provision and we indeed hope  
17 it'll be strengthened and more frequently utilized  
18 and we hope that in the months and weeks and years to  
19 come we can focus on that more. The legislation  
20 isn't perfect; we wish it included a shorter time  
21 period for the final conversion and phase-out of even  
22 home heating oil No. 4; it's until 2030; you know, if  
23 you're giving folks more than 10 years, that's  
24 plenty, more than plenty, more than enough lead time,  
25 so we hope you come back and revisit that, because as

1  
2 you know, this too is such a significant localized  
3 source of pollution. We also would like to see  
4 stronger provisions to facilitate the greater use of  
5 biodiesel. There are other issues for another day,  
6 but on the whole, NRDC believes the proposed Air Code  
7 revisions that are set forth here in this legislation  
8 are an important step down the road to healthier air  
9 for all New Yorkers and we strongly support it, and  
10 thank you for your efforts.

11 CHAIRPERSON RICHARDS: Thank you, Eric,  
12 thank you; good to see you. The next panelist is  
13 Michael Seilback from the American Lung Association.

14 MICHAEL SEILBACK: Thank you very much;  
15 my name is Michael Seilback and I'm the Vice  
16 President of Public Policy and Communications for the  
17 American Lung Association of the Northeast.

18 The Lung Association supports Intros 271  
19 and 230 because they'll help give New Yorkers  
20 healthier air to breathe. Healthy air is central to  
21 our mission, which is to save lives by improving lung  
22 health and preventing lung disease. We know that  
23 polluted air can shorten lives and worsen lung  
24 disease, like asthma and chronic obstructive  
25 pulmonary disease and can even cause lung cancer. As

1  
2 you heard from the Chairman and Commissioner Lloyd  
3 and others, while New York City has made major  
4 strides in reducing air pollution over the last  
5 several decades, we still have work to do in  
6 achieving the goal of making our air the healthiest  
7 air of any major city in the world. One impediment  
8 to our progress is the City's antiquated Air Code.  
9 You've heard about the very real dangers from ozone  
10 and particle pollution. Ozone exposure has been  
11 compared to getting a bad sunburn on the tissue of  
12 your lungs. Particle pollution is a physical  
13 reaction; when it's breathed deep into the lungs it's  
14 like taking a piece of sandpaper and rubbing it on  
15 your lung tissue.

16           The Lung Association supports Int. 271  
17 because it'll comprehensively modernize the Code for  
18 the first time in decades. As such, the Code will  
19 better reflect the many different air pollution  
20 sources affecting our city today, as well clean up  
21 portions of the Code which are outdated, repetitive  
22 or irrelevant today. We particularly supportive of  
23 the sections dealing with outdoor wood boilers,  
24 fireplaces, wood stoves, char broilers, cook stoves  
25 and stationary generators. Furthermore, we add our

1 support to the section dealing with school bus  
2 retrofits; we believe that the Administration's  
3 proposal is a good way forward, but we do support any  
4 efforts moved that could make that process go faster.  
5 We also support the ambulance auxiliary power unit,  
6 motorcycle and diesel engine standard sections. Some  
7 of these issues are the issues that we hear the most  
8 from when it comes to air quality concerns here in  
9 New York City.  
10

11 We believe these revisions are necessary  
12 and will help reduce air pollutants from ozone and  
13 particle pollution. I wanna voice; we also support  
14 the use of things like anaerobic digesters and waste  
15 to energy use, but we want to reiterate our strong  
16 opposition to the use of combustion use to energy  
17 technologies and glad that this bill further limits  
18 its use.

19 With regard to the proposed amendment to  
20 the City of New York's idling laws, we support these  
21 mostly technical amendments; motor vehicle, truck and  
22 bus exhaust, especially from diesel engines, is very  
23 harmful to human health; unnecessary idling increases  
24 these dangers considerably. With these increased  
25 measures we also need increased enforcement. The



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fact is, it's far too common to see vehicles idling while double parked or sitting in front of a building; idling laws must be enforced if we're going to see true air quality improvements. Thank you.

CHAIRPERSON RICHARDS: Next we will hear from Denise Katzman, from EnviroHancement.

DENISE KATZMAN: Thank you Chair Richards. Yesterday, Earth Day, in Union Square, Mayor Bill did inform us that New York City's air is the cleanest it's been in 50 years, which was limitedly correct. The reality of that is anthropogenic climate crisis, which was made very clear by the World Health Organization's report October 17, 2013 and it was made explicitly clear at the last hearing and your inaugural hearing, which was wonderful, on February the 28th. My two favorite anthropogenic definitions are causation via human activity, e.g. air pollution, and degradation of the environment; idling -- I'm gonna speak specifically to Int. 230 -- idling to warm up vehicles is a barbaric myth; it is 2014, drive the car, drive the vehicle. All idling degrades engines and all related parts. Humans have caused the carcinogenic destruction of our atmosphere via idling. National

1 Security Advisor Susan Rice stated, when she was  
2 departing U.N. Security Council Ambassador, "Climate  
3 change has the potential to impact peace and  
4 security." We have dozens of countries in this body  
5 and in this very room whose very existence is  
6 threatened; they've asked this Council to demonstrate  
7 our understanding that their security is profoundly  
8 threatened; because the refusal of a few to accept  
9 our responsibility, this Council is saying by its  
10 silence, in effect, tough luck; this is more than  
11 disappointing, it's pathetic, it's short-sighted and  
12 frankly, it's a dereliction of duty. Int. 230 has a  
13 large proportion that is a dereliction of fiduciary  
14 duty. Permitting idling loopholes and waivers for  
15 hardship is an easy way out, it's an old barbaric  
16 school way out; there are sustainable resilient  
17 resolves that can and must be instituted; not  
18 constantly saying hardship for waivers. As Michael  
19 mentioned, motorcycles; refrigeration vehicles cause  
20 double whammy climate crisis via burning carbon and  
21 HFCs (hydrofluorocarbons), which do great damage to  
22 the ozone layer. It's obvious and easy to get  
23 batteries and biodiesel increased, and a lot of this  
24 can be done through sponsorship, it's New York City,  
25

1 corporations love sponsorship in New York City. New  
2 York City also is devoid of idling zone signage,  
3 that's another way to make the air a heck of a lot  
4 healthier, and it's chronically behind the worldwide  
5 nexus that has been doing this stuff for years. In  
6 '010 [sic] the U.S. military [bell] declared war on  
7 fossil fuels and this week the military broke ground  
8 on the largest U.S. solar array, and Elon Musk says  
9 we must wean ourselves off of fossil fuels. The law  
10 that exists that Bloomberg ignored, because he said  
11 the cops had better things to do, well the cops do  
12 have better things to do, like giving out the tickets  
13 that will generate hundreds of thousands of dollars  
14 for New York City at bear minimum; this should be the  
15 responsibility of the Police Department, not the DEP,  
16 they are not good at this, and enforcement is a major  
17 component, because without enforcement we get  
18 citizens angry, really, really angry and lawsuits  
19 happen and those lawsuits aren't necessary, and the...  
20 as an example, the no smoking in City parks law, it's  
21 not enforced and millions more dollars are gonna be  
22 spent on health care and legal costs. Climate crisis  
23 will end up causing conflicts and as of 04-03, the  
24 head of the World Bank said, climate change will lead  
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to battles for food. Now no one's talked about methane, methane is a byproduct of fracked gas and this is what happens when you burn the gas in vehicles and it causes asthma, it causes ADD and it causes ground-level ozone, which is destructive to the atmosphere. So we need to get hip to what Eric said, California. California has the low-carbon fuel standard; I don't know why DEP is talking about EPA saying we can't do this; if California can do it, New York sure as heck can do it. Thank you.

[applause]

CHAIRPERSON RICHARDS: Thank you. We will next hear from David Evans.

DAVID EVANS: Thank... oh, oh, thanks. I'm David Evans; I'm on the faculty of the Columbia University School of Public Health and work with their Environmental Health Science Center and work also with We Act, but this proposal is my own proposal, not of those organizations.

So idling cars, buses and trucks emit about 140,00 tons of pollutants into our air each year, according to ALA and the Environmental Defense Fund; the cost of fuel wasted is \$28 million and although, as we've heard, there are anti-idling laws;

2 consistent enforcement has really been difficult. So  
3 I propose a solution involving electronic technology  
4 which could first be applied to the New York City  
5 government vehicle fleet, and then gradually expanded  
6 to other New York City vehicles. The City Council  
7 should enact a rule and perhaps modify Int. 230,  
8 requiring devices be installed on cars and trucks  
9 that could, first, detect whether or not the motor  
10 was running; second, whether or not the car was in  
11 motion or standing still and count how long;  
12 determine the location of the vehicle by GPS, and  
13 then transmit information about idling for three  
14 minutes or more to the DEP, including the location,  
15 the vehicle ID number and the duration of idling. So  
16 there are two options for actually enforcing anti-  
17 idling with this information and they could be  
18 combined.

19 The first; the device could tell the  
20 driver, could actually speak to the driver after  
21 three minutes, telling the driver to either move or  
22 turn off the vehicle and warning them that the motor  
23 would be turned off in approximately 30 seconds; if  
24 they didn't move, the motor would get switched off.  
25 This is the more direct approach and would likely

1  
2 have the most immediate and strongest impact on  
3 idling and without the penalty or trouble of  
4 administering fines. Drivers might try to defeat it  
5 by moving their vehicle a little, but the device  
6 could be programmed to require say about 15 feet of  
7 motion or something, some amount like that. Another  
8 concern might be traffic jams, but most cars don't  
9 sit completely motionless for three minutes, and it  
10 should be possible to program the device to recognize  
11 slow, intermittent movement. Finally, drivers might  
12 try to disable the devices, but if they were  
13 programmed to send a handshake to DEP, the way  
14 commercial aircraft do with air traffic controllers,  
15 the disabling could be detected and a fine imposed.

16           The second approach to enforcement; the  
17 device could simply transmit the information on  
18 idling to the DEP and the registered owner of the  
19 vehicle could be given a ticket based on the length  
20 of idling and perhaps the type of vehicle. If not  
21 paid, the fine could be essentially attached to the  
22 next time the driver tried to register the vehicle.

23           So after an initial period of testing,  
24 this technology in the City vehicle fleet it could be  
25 easily expanded to school buses and working with, I

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guess with the state to the MTA bus fleet as the second step. And finally, it could be expanded to all [bell] cars and trucks registered in New York and perhaps to vehicles that travel regularly into the City. The system could be operated without GPS, which might be more acceptable to the population, but this would limit DEP's ability to map out where idling is taking place and to make improvements in parking traffic flow that actually might be causing problems that might be causing idling. So overall I believe this is an effective and affordable way to reduce idling and reduce air pollution that's harming our health.

CHAIRPERSON RICHARDS: Thank you for your proposal; I certainly would be for a pilot probably on City vehicles, [background comment] because you know, you get into the privacy of individuals with GPS, [background comment] but certainly, I mean if they're tracking sanitation trucks now by GPS, right...

DAVID EVANS: Yeah.

CHAIRPERSON RICHARDS: during the storm, so at least we can... I mean I think it's worth...  
[crosstalk]

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DAVID EVANS: Find out where it works,  
yes.

CHAIRPERSON RICHARDS: Yeah, but we'll...  
we'll [crosstalk]

DAVID EVANS: Okay.

CHAIRPERSON RICHARDS: cross that road  
when we get there.

DAVID EVANS: Yeah.

CHAIRPERSON RICHARDS: We will hear from  
now, Mr. Cecil Corbin-Mark from We Act.

CECIL CORBIN-MARK: Good afternoon,  
Chairman Richards and I know there are no longer  
other members of the Committee here, but definitely  
wanna thank them in absentia. I wanna start by  
congratulating you on your appointment and say that I  
look forward to working with you myself and folks  
that We Act for Environmental Justice look forward to  
working together with you on environment protection  
for all New York City residents, especially those  
most vulnerable communities, like the one you  
represented in the Rockaways and Queens and my very  
own Harlem and Washington Heights, where I spend a  
lot of my time for work. I also wanna extend my  
gratitude to your able committee staff, especially



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your Counsel, Samara Swanston, a great team begins [clapping] with its support staff and you've made a smart decision on that front, so thanks for that; that's great.

As you know, my name is Cecil Corbin-Mark and I'm the Deputy Director of We Act for Environmental Justice; we've been around for 25 years; I wanna thank you for coming out to our membership meeting last Saturday; I think you were both well-received and people went away enthused around your vision and some of the things that you talked about and hopes for your leadership in the future, so thank you for that.

Last November it was, I was here to testify around this revised set of provisions for the Air Code; I am back to testify again [laughter] and I am happier this time than I was when I first arrived. I'm happier because in listening to some of the complaints that we raised and between both the then chair, Chairman Gennaro, and the counsel to the Committee and others and the work with DEP, they've gone back and they've made some improvements and so I've switched from being opposing to certainly being

1  
2 supportive. I do however still have some significant  
3 concerns; I wanna raise those with you.

4 So my support is now based on the fact  
5 that the citizens complaint section, Section 24-182,  
6 has been restored; I thought it was ill-advised and  
7 was a very silly thing for them to be doing, removing  
8 tools that regular citizens could use to help in  
9 environmental protection enforcement, and so I wanna  
10 applaud DEP for that; it's good to be heard, or at  
11 least listened to; not just heard, but listened to.

12 Section 24-141, their proposed revision, at best, was  
13 confusing and confounding and it dealt with odorous  
14 air contaminants; I felt that there was no specific  
15 scientific justification for that and to their credit  
16 they've gone away and eliminated that confusion,  
17 although they tried to explain to me, you know what  
18 they were doing; I was like uh... but they got  
19 [laughter] on the right track, [laugh] which is  
20 usually my track... no, I'm just joking. [laughter]

21 The one thing that I will say is that  
22 they did talk to me about environmental justice; I  
23 raised the issue of an environmental justice analysis  
24 and I applaud your focus on those communities that  
25 are most vulnerable in our City and I certainly hope

1  
2 and expect that you will continue to be our champion  
3 on this; here is one area that I still remain  
4 unsatisfied with the work that they've done -- their  
5 focus... [bell] should I... [interpose]

6 CHAIRPERSON RICHARDS: Keep going.

7 CECIL CORBIN-MARK: Okay. Their focus  
8 was on improving enforcement and having been engaged  
9 in the business of environmental justice advocacy for  
10 at least the last 15 years, I have found that this  
11 talk about enforcement is often much ado about  
12 nothing, since it's Shakespeare's birthday;  
13 [laughter] if I don't see the dollars reflected in  
14 the budget to say that there is more enforcement and  
15 if those dollars don't get translated into specific  
16 capacity on the ground; having 47 air inspectors for  
17 the entire City... [interpose, background comment] air  
18 and noise, forgive me, [laughter] for the entire City  
19 does not inspire confidence that... you know, some of  
20 the poorest sections of Harlem and Washington  
21 Heights, in your very own Rockaways and Queens, will  
22 get that kind of attention, because even sometimes  
23 when we scream and holler or we increase filing of  
24 complaints with 311, the enforcement is just not  
25 there -- 47 inspectors for the entire City is like

1  
2 what, 9 per borough; I mean really? No, I don't  
3 think so. So I don't... I respect how hard the folks  
4 work, I respect the fact that, you know, they're  
5 doing the best they can with limited resources, and I  
6 believe that they are committed civil servants, but  
7 that is unacceptable level of enforcement to support  
8 the changes in the Air Code that they're talking  
9 about.

10                   Secondly, I wanna... I mean, the other  
11 source of my problems with this revision, this  
12 particular point in time, is yes, the phase-out time  
13 for the school buses in Section 24-163.9 is  
14 unacceptably long; it is six years and there's no  
15 reason for us to be waiting six years to be putting  
16 our children inside of... forgive the use of this  
17 terminology... what are effectively gas chambers. The  
18 study that we did with regards to school bus and  
19 crankshaft cases several years ago and was supported  
20 by Senator... State Senator Jose Serrano, thank you  
21 very much, really demonstrated the fact that there  
22 are equipment changes that can be made for this and I  
23 totally understand the 2007 engine issue, they are  
24 correct on that, but then phase the buses out, phase  
25 them out as quickly as possible; why do we have to

1                   wait six years for that; that should be something  
2                   that should be put at the top priority of the  
3                   Administration that cares so much about school  
4                   children; this needs to be another way in which we  
5                   ensure their growth and development into the future.  
6                   Those buses can be phased out; I would suggest that  
7                   the City reach out to our very able U.S. Senator  
8                   Charles Schumer and let's figure out what are the  
9                   resources of the federal government to actually  
10                  replace those buses, because there have been  
11                  replacement programs that have been funded by the  
12                  federal government in the past.

14                   I'll quickly wrap up by saying, the issue  
15                  of also the phase-out time for No. 4 heating oil;  
16                  when... we worked very diligently with the previous  
17                  administration in getting that law passed; we were  
18                  advocates for it because of its public health  
19                  benefits primarily, but secondarily, also because of  
20                  its climate change benefits; it is a very important  
21                  thing for us to be doing. But there are many  
22                  buildings in our city; there was recently a New York  
23                  Times article on this issue where my organization; I  
24                  was quoted, as well as members from my organization  
25                  were quoted, about the reality that there are some

2 landlords in our city that just will not even get off  
3 No. 6 and to say that the phase-out time for No. 4  
4 needs to be year 2030, that too is also too long.

5 Now I am sympathetic and I understand that we have to  
6 balance all constituencies; there are folks in the  
7 fuel industry who have some concerns about that; I  
8 think they need to be brought back to the table and  
9 this needs to be renegotiated for a shorter phase-out  
10 time. If the oil of No. 6 is gonna become obsolete  
11 in this marketplace, then I see no reason for us not  
12 to use the same aggressive strategies in making the  
13 oil of No. 4 grade to be obsolete in this marketplace  
14 on a much faster basis.

15 Finally, I wanna talk about the issue...  
16 this is something that has just recently surfaced,  
17 but a set of researchers from the University of  
18 Minnesota, a Drs. Julian Marshall, Lara P. Clark and  
19 Dylan Millet have literally put together an  
20 exhaustive research study that characterizes the  
21 entire nation and really shows sort of a pattern of  
22 environmental injustice. The study points to the  
23 fact that minority communities deal with, as well all  
24 generally know, a disproportionate health risk from  
25 tailpipe exhaust or coal plant emissions, but very

2 specifically the study has looked at the issue of  
3 unequal exposure to a key pollutant, and that key  
4 pollutant is nitrogen dioxide; it's produced by cars,  
5 it's produced by construction equipment; it's  
6 produced on industrial sources, and this has been  
7 linked to higher risk of asthma and heart attack;  
8 they found this all over the country, that it is an  
9 uneven and unequal distribution of burden and in  
10 most... even in most rural states and the cleanest  
11 cities they found that "minorities are exposed to  
12 more of the pollution than our brothers and sisters  
13 who are Caucasian."

14 So this to me is yet another sort of, you  
15 know, document... that evidences the fact that we have  
16 disproportionate burden; it to me calls to importance  
17 of why we need to reform the Air Code; it to me calls  
18 to why we have to have strong enforcement for it,  
19 because this is a set of issues that are really  
20 impacting people's lives. They said on average the...  
21 [interpose]

22 CHAIRPERSON RICHARDS: Are you gonna wrap  
23 up?

24 CECIL CORBIN-MARK: I am, yes...

25 CHAIRPERSON RICHARDS: 'Kay.

2 CECIL CORBIN-MARK: absolutely; sorry; I  
3 can get carried away... [crosstalk]

4 CHAIRPERSON RICHARDS: No problem.

5 CECIL CORBIN-MARK: On average, the  
6 exposure to... people of color were exposed 38 percent  
7 higher levels to outdoor nitrogen dioxide than  
8 Caucasian brothers and sisters and in either  
9 communities. So this is something that we have to  
10 tackle and for that last panel that had the person  
11 from the GCA, the General Construction... [interpose]

12 CHAIRPERSON RICHARDS: Association.

13 CECIL CORBIN-MARK: Association, thank  
14 you, I hear all of those concerns, but at the end of  
15 the day, protecting people and public health needs to  
16 take primacy with regards to these construction sites  
17 and the industrial machinery that's there in our  
18 neighborhoods. Thank you.

19 [clapping]

20 CHAIRPERSON RICHARDS: Thank you. Thank  
21 you. This is our last panelist; you guys have done  
22 your jobs; wanna hang around; we have one last  
23 panelist and that is George [background comments]  
24 Pakenham; did I say it right... [background comments]  
25 from the TM Film, *Idle Threat*.



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SAMARA SWANSTON: Can you raise your right hand, please?

GEORGE PAKENHAM: I will; I'll raise my right hand.

SAMARA SWANSTON: Do you swear or affirm to tell the truth, the whole truth and nothing but the truth today?

GEORGE PAKENHAM: Yes. [static] Thank you having me. Five years ago I had the honor of sitting before this body; at that time I was in the middle of conducting a study about the idling problem in New York City; that study ran a total of five years. Over those five years I approached more than 2,900 idling drivers in the street; I was successful 80 percent of the time, without a badge on my chest, in getting them to simply turn off their engine. [background comments] Thank you. [laughter] I was never accosted and I provided you... I will provide you with a copy of the data kept over five years, at the end of my testimony.

As part of the research effort I made a documentary film called *Idle Threat*; it's been screened at film festivals, on college campuses and at high schools; I now have a five-year contract with

1 a major distributor and I'm looking at cable TV  
2 offers and I'm about to sign a co-branding, a major  
3 co-branding contract with a major university. The  
4 film includes interviews with then Council Member and  
5 now Speaker Viverito, John Liu, Robert Jackson and  
6 then Mayor Bloomberg, and of course, Councilman Dan  
7 Garodnick, who wrote Bill 881-A, which would have  
8 empowered traffic agents to enforce the City's anti-  
9 idling law. The film is both an eco comedy and an  
10 expose. It depicts the noble efforts of City Council  
11 and the utter indifference of the Mayoral  
12 Administration and the NYPD towards enforcing the  
13 anti-idling law.

15 At the City Council meeting at which I  
16 spoke in the winter of 2009, Environmental Defense  
17 Fund attorney, Isabel Silverman, projected that  
18 traffic agents could write almost 21 million tickets  
19 per year for violations of the idling law, which  
20 would have produced, at the time, \$4.6 billion of  
21 revenue for the City. [background comment] But the  
22 Mayor's Office and the NYPD abandoned enforcement  
23 efforts and these projections were never realized;  
24 instead, only 2,848 tickets were written in 2010,  
25 only 2,339 tickets in 2011 and only 1,733 tickets

2 were written in 2012. That's a far cry from the 21  
3 million tickets that could have been written and that  
4 if written would have brought much-needed revenue to  
5 the City and would have greatly improved the quality  
6 of the air that we all breathe.

7 The film *Idle Threat* asks the following  
8 questions: Why was Bill 881-A by Dan Garodnick never  
9 passed; how could the NYPD fall so short of the  
10 Environmental Defense Fund projections; why was the  
11 idling fine reduced from \$220 to \$115 in May of 2009;  
12 why did the Bloomberg Administration include idling  
13 as an issue in PlaNYC, then ignore the issue  
14 entirely? Failure to address this issue has already  
15 had serious health consequences; in August 2013  
16 Massachusetts Institute of Technology published a  
17 five-year study which concluded that tailpipe  
18 emissions were the number one cause of air pollution-  
19 related deaths in the United States of America,  
20 beating out smokestack emissions. And as I point out  
21 in the film, NYC had over 400 homicides in 2012, but  
22 also had over 3,000 deaths associated with air  
23 pollution, according to the Department of Health, yet  
24 enforcement of our existing idling laws is barely on  
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the radar screen of the DEP and the NYPD and I ask why?

The bill that is before us now has both strengths and weaknesses, but I studied this problem for five years and I have some strong recommendations how the bill could be made stronger: (1) the bill should eliminate the three-minute rule entirely; the rule turns patrolmen into timekeepers, not law enforcement agents and it's a quagmire of complexity. The bill should also include zero tolerance for all passenger cars, except for hybrids; the bill should include zero tolerance for all school buses and passenger buses; when they pull up to the curb, engines should be shut off, without excuses, and no exceptions for different temperatures, but most importantly, the bill does not address the utter failure of the DEP and NYC traffic agents to enforce the law; the bill should include ticket quotas for each traffic agent, each DEP agent and each Sanitation and Parks agent, and to take it a step further, I suggest that a special task force be created to focus only on idling violations, strict quotas and direct accountability must be created. And finally, there should be no allowance for the 800

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EMS vehicles to idle 24/7 across the City; these vehicles should be in fire houses where they don't idle and waste public funds and fill the air with toxins. If all these changes I just mentioned are made, number one, ticket revenues would soar in NYC, the air quality would improve for a greater public health, less CO2 would be emitted into the air to help thwart global warming, NYC would become a world leader in striving for improved air quality and live up to the high standards within PlaNYC and not least, you as Council Members will have the defense, when the full impact of my film reaches the public and when they begin to ask questions of you, at least you'll be able to point to a specific and strong plan of action; time for Band Aids and lip service is over.

I'd be happy to discuss this in more detail with you, Mr. Richards, and with you from the DEP [background comments] and I'd be happy to have a screening of the film for both parties, and I thank you for your time. But I... [interpose]

CHAIRPERSON RICHARDS: You...

GEORGE PAKENHAM: I would ask that Chief Tuller and Carter Strickland, who just announced his

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departure by the way, be part of the screening.

Thank you for your time.

CHAIRPERSON RICHARDS: Thank you for your  
testimony; this will conclude our hearing.

[gavel]

[background comments, laughter]

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date            May 6, 2014