

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON ENVIRONMENTAL PROTECTION

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November 19, 2009

Start: 2:57 pm

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HELD AT: Council Chambers  
City Hall

B E F O R E:  
JAMES F. GENNARO  
Chairperson

COUNCIL MEMBERS:  
Elizabeth Crowley  
Bill de Blasio  
Mathieu Eugene  
G. Oliver Koppell  
Dominic M. Recchia, Jr.  
Eric A. Ulrich  
Peter F. Vallone, Jr.  
Thomas White, Jr.

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

James Roberts  
Deputy Commissioner  
Bureau of Water and Sewer Operations  
DEP

Stewart O'Brien  
Executive Director  
Plumbing Foundation of the City of New York

William Connors  
Lilker Associates  
American Society of Plumbing Engineers

John Murphy  
Financial Secretary Treasurer  
Plumbers' Local 1

Kenneth Klein  
American Society of Sanitary Engineers

2 CHAIRPERSON GENNARO: Good  
3 afternoon. Sergeant, are we ready? Okay. First  
4 of all let me apologize for being delayed. The  
5 hearing was originally set for 1:00 and yesterday  
6 I realized I was going to have a bit of a time  
7 conflict due to an unbreakable medical  
8 appointment. I moved time to 2:00 and I should  
9 have moved it to 2:00 central time probably, that  
10 would have been a little more like it. So I do  
11 apologize for that and I'd like to just jump into  
12 the hearing without further ado. I'll ready my  
13 statement.

14 Good afternoon--I'm reading Jim  
15 Roberts' statement. How about I let Commissioner  
16 Roberts read his own statement and I will--why  
17 don't we do it that way. Is that okay?

18 [Pause]

19 CHAIRPERSON GENNARO: We'll go on  
20 with this one and then I'll wing it. Good  
21 afternoon and welcome. I'm Councilman Jim  
22 Gennaro, Chair of the Committee on Environmental  
23 Protection. What if you turn on your faucet and  
24 wastewater or water with hazardous chemicals came  
25 out with your drinking water? That scenario may

1  
2 actually be possible in certain New York City  
3 buildings. A 1999 DEP report indicated that more  
4 than 20,000 buildings might be in need of backflow  
5 devices. I think everyone here at this hearing  
6 knows what backflow devices are. Our hearing  
7 focuses on Intro 935, which is intended to address  
8 threats to the safety of the drinking water supply  
9 as a result of plumbing cross-connections and the  
10 potential for backflow into potable drinking  
11 water.

12 Backflow can occur when a possible  
13 connection exists between the potable water supply  
14 and any non-potable substance and then a change in  
15 pressure causes a reversal in flow from the  
16 intended direction, resulting in a non-potable and  
17 sometimes hazardous substance flowing backwards  
18 into potable drinking water. Even though these  
19 cross-connections are not legal they are  
20 routinely, we are informed, created by some  
21 plumbers. When backflow takes places chemicals,  
22 bacteria, metals, bodily fluids, even pesticides  
23 can mix into potable water inside buildings and  
24 can sometimes contaminate the public drinking  
25 water supply outside the source of origin.

1  
2 And if Bill, if you have my cup of  
3 water, and my annotated statement I will take  
4 that.

5 A single backflow event can expose  
6 many people to the health risks of contaminated  
7 water. According to the EPA, 57 illegal cross-  
8 connections between 1981 and 1998 resulted in  
9 9,734 cases of illness. A single backflow  
10 incident can also cause death. In one instance  
11 there was a backflow of ethylene glycol from a  
12 hospital air conditioning system into the  
13 hospital's potable water system that was the  
14 source of water used to prepare dialysis fluid. A  
15 patient undergoing dialysis treatment died a day  
16 after being exposed to the ethylene glycol  
17 mixture.

18 Providing safe drinking water is  
19 DEP's responsibility. In order to protect our  
20 drinking water supply, high hazard buildings need  
21 to be identified by DEP. I think some of that has  
22 already been done. Cross connections and backflow  
23 prevention devices and assemblies need to be  
24 inspected and repaired if necessary. Backflow  
25 prevention devices need to be installed and

1 enforcement actions need to be taken when  
2 necessary. The legislation being introduced today  
3 requires a licensed plumber, a licensed master  
4 plumber who discovers or identified a cross-  
5 connection in the building or structure, prior to  
6 undertaking plumbing work, to report that  
7 immediately, that it's a cross-connection, to the  
8 Department and also to the property owner. It  
9 also requires the property owner to certify to the  
10 Department that a backflow prevention device has  
11 been installed, and where appropriate that a  
12 backflow device has been replaced. And it  
13 requires the department to submit a report to the  
14 Council indicating the number of hazardous  
15 facilities, high hazard facilities and all other  
16 facilities which the Department believes have had  
17 required backflow prevention devices installed, as  
18 well as the number of facilities in each category  
19 that the Department believes still require the  
20 installation of one or more backflow prevention  
21 devices.  
22

23 What this statement doesn't speak  
24 to, my opening statement, I shall try to cover in  
25 my amended statement, is that there is a fair

1 amount of history here with regard to the New York  
2 State Department of Health's State Sanitary Code,  
3 which acted I believe in 1981 or before, because I  
4 believe rules came out in 1981 that required all  
5 local water suppliers to identify buildings where—  
6 that might be at risk for these cross-connections.  
7 And then it was up to local water suppliers to  
8 make sure that these backflow devices were put in  
9 place.  
10

11 DEP—do we have the chronology of  
12 the bill? I need the chronology.

13 [Pause]

14 CHAIRPERSON GENNARO: That's why  
15 it's good to get here a little before the hearing  
16 starts and iron out some of these things. Where  
17 is the chronology? We don't have it.

18 [Pause]

19 CHAIRPERSON GENNARO: Okay. Let's  
20 go over some brief history. Let me just run  
21 through this a little bit. I mentioned a little  
22 bit about the New York State Sanitary Code  
23 requires each supplier of water to protect public  
24 water by containing hazardous backflows through  
25 insulation of air gaps, reduced pressure devices,

1 double-check valves on water service line. Okay.  
2  
3 DEP is responsible for enforcing the State's  
4 Sanitary Code with respect to the water supply.

5 In 1981 New York State Department  
6 of Health issues guidelines for local suppliers,  
7 that would be DEP and others, to ensure compliance  
8 with the State Sanitary Code. These require the  
9 supplier to classify buildings by degree of  
10 hazard. 17 years later in 1999 DEP actually wrote  
11 this up and wrote to the City Council and  
12 estimated as much as 105,000 buildings in New York  
13 City may require a protective device. 22,765 of  
14 these buildings were put into a higher risk  
15 category and that was 1999. In 2000 DEP Chief  
16 Engineer issued a report to the DEP Commissioner  
17 that number one, confirmed that there were indeed  
18 almost 23,000 buildings in the hazardous category;  
19 and two, recommended targeting compliance in that  
20 hazardous category of 23,000 within five years and  
21 pointed out that an additional 82,000 plus  
22 buildings, "may also require devices". That was  
23 in 2000.

24 In 2006, staff has indicated here  
25 in this chronology that a DEP internal memo

1 indicated below 16% compliance of buildings in the  
2 hazardous category, that being the category that  
3 we're most focused on. April 2007 the New York  
4 City Filtration Avoidance Determination indicates  
5 that only 225 enforcement actions were anticipated  
6 for non-compliant hazardous premises, which seems  
7 strange when only the year before, 2006, there was  
8 a DEP internal memo indicating that there was  
9 below 16% compliance of buildings in this  
10 hazardous category. July 2007 City Council  
11 Environmental Protection Committee Chair, that  
12 would be me, requests compliance numbers from DEP.  
13 DEP never provides this information.

14  
15 In June 2008 this Committee held an  
16 oversight hearing. DEP indicated once again a low  
17 inspection rate of buildings in the so-called  
18 hazardous universe. As a first step to ensuring  
19 actual compliance as of June 2008, we're still  
20 very low, DEP also indicated they would contract  
21 and get help to try to figure out how to approach  
22 and reach out to and make an assessment of those  
23 that were not in compliance. Now that was June  
24 2008. This is November of 2009, a year and a  
25 half, whatever it is almost. To our knowledge,

2 DEP has not issued an RFP to do so. We look  
3 forward to hearing whether or not that's actually  
4 the case.

5 October 2008, last month, DEP  
6 released compliance numbers. According to the  
7 information I have here, still only 10,179 of the  
8 22,765 high hazard buildings inspected. 2,209  
9 buildings that were inspected of the 10,000 and  
10 change did not need devices. 4,274 did not  
11 require devices. I don't know how those figures—I  
12 don't understand this passage. I will ask staff  
13 to clarify it. So 2,200 did not need devices.  
14 4,200 did not require devices. That's not a  
15 question for you, Commissioner. That would be a  
16 question to my own staff as to what that means.  
17 661 notices of violations issued for failure to  
18 install. 610 notices of violation issued for  
19 failure to test. But as of last month, anyway, it  
20 would see—oh, pardon me. Oh, sorry. This was  
21 October 2008, not October 2009. So this would be  
22 13 months ago. And as of that date, only 10,000  
23 of the 22,000 and change high hazard buildings had  
24 been inspected.

25 And so what we've done is, you

1  
2 know, rather than, you know, just have another  
3 oversight hearing and ask once again to follow up  
4 on my July 2007 request to provide us information,  
5 which was not done until October of the following  
6 year, and my June hearing last year, which didn't  
7 really bear much fruit, the Council has decided to  
8 write an Intro to speak to this issue to get DEP  
9 to do what presumably they were required to do as  
10 of 1981 or even further.

11                   And I'm, you know, known sometimes  
12 for getting a little bit excited and kind of  
13 flailing my arms a little bit and getting silly  
14 and making a scene; I'm not going to do that  
15 today. But the calm tone of my voice shouldn't  
16 let people think that I'm not disturbed by DEP not  
17 taking a more proactive stance almost 30 years  
18 after the fact, coming into compliance with some  
19 very important State rulemaking. I'm just trying  
20 to be a nice guy because I'm late. You know, it's  
21 one thing to be late; it's another thing to show  
22 up late and be in a bad mood. You know, so. Had  
23 I been on time my voice would have sounded very  
24 different and I would have been doing my usual end  
25 zone dance.

2 And so this is getting a little bit  
3 silly and I'm wondering why my advice to previous  
4 commissioner, Emily Lloyd, with whom I had a  
5 conversation about this—can I have a lozenge or  
6 something, Bill? And Bill is really calling on a  
7 lot of duty, water, lozenges, updates. What is  
8 this? Violet? Can I trust this? Okay. Wow, a  
9 taste sensation.

10 So I told Emily that it was  
11 unlikely in the near term that DEP was going to be  
12 able to do all these inspections, and why don't we  
13 take the remaining numbers of the buildings on the  
14 high hazard list and merely send them a piece of  
15 mail, registered mail, certified mail, official  
16 mail, DEP mail, that says it's our understanding  
17 that your building is in this category of, you  
18 know high hazard and here's what we'd like you to  
19 do—this is my recommendation to Emily—that we  
20 should reach out to those buildings and say that  
21 we believe you are or may be one of these high  
22 hazard buildings and you need one of these  
23 devices; so what we need you to do is either send  
24 us some kind of certification that you have a  
25 working device of this kind in place that you can

1  
2 get a certified master plumber to make some kind  
3 of attestation to the fact that this has happened,  
4 or they can send something back to DEP saying,  
5 okay, we get it, we do need one and we're going to  
6 put it in, and we're going to put it in within the  
7 next month or two or whatever, and then DEP will  
8 know to go out there and make sure that they did  
9 it; or number three, they can challenge the fact  
10 that they even need one and they can send a  
11 statement to DEP that according to their plumber  
12 they don't fall into the category of an entity  
13 that needs it. And a plumber can make that  
14 statement, and if DEP wants to challenge that they  
15 could. That seems a more efficient way of  
16 reaching out to this universe of, you know, high  
17 hazard buildings that we have yet to reach out to.

18 And so we really have to do  
19 something here, whether it's through legislation  
20 or whether it's through, you know, DEP finally  
21 doing what it should have gotten done back in  
22 1981. But we just cannot allow this to continue.

23 I'd like to recognize that we're  
24 joined by Council Member Koppell from the Bronx  
25 and—pardon? Council Member Ulrich from Queens was

1 here, as was I believe Council Member Vallone and  
2 Council Member White, I believe. And I'm sorry  
3 that I was late and my lateness caused them to  
4 miss my opening rambling memorable statement,  
5 which I think holds the record of, you know,  
6 longest opening statement.  
7

8 A very, very serious matter; very,  
9 very dissatisfied with the snail's pace at which  
10 this has proceeded. A lot of frustration here and  
11 I'm looking forward to DEP giving me some insight  
12 as to what is current state of affairs as of  
13 November 2009, and how we can move forward, and  
14 hopefully support for the bill that we have before  
15 us so that it will be encoded in City law that  
16 this has to happen, because State law doesn't seem  
17 to be enough to get DEP to do that. So that  
18 concludes my opening statement. I welcome  
19 Commissioner Roberts here. We'll ask the Counsel  
20 to the Committee to swear in the witness. And  
21 Commissioner, I thank you for being here. You can  
22 state your name for the record after you're sworn  
23 and read your statement. Thank you.

24 SAMARA SWANSTON: Do you swear or  
25 affirm to tell the truth, the whole truth and

2 nothing but the truth today?

3 JAMES ROBERTS: I do. My name is  
4 James Roberts and I'm the Deputy Commissioner with  
5 the Bureau of Water and Sewer Operations with DEP.  
6 Chairman and Members of the Committee I have a  
7 prepared statement and then we can talk-

8 CHAIRPERSON GENNARO: [Interposing]  
9 Sure.

10 JAMES ROBERTS: --to some of the  
11 issues that you raised and see if we can clarify  
12 some of the misunderstandings.

13 So again, Chairman Gennaro and  
14 members of the Committee, I'm James Roberts,  
15 Deputy Commissioner of the Bureau of Water and  
16 Sewer Operations for the Department of  
17 Environmental Protection. Thank you for the  
18 opportunity to testify on Introduction 935, which  
19 addresses backflow prevention device reporting and  
20 certification.

21 Protecting New York City's public  
22 water supply is of paramount importance and  
23 backflow prevention is one aspect of affording  
24 this protection. I would like to mention at the  
25 outset, however, that DEP's extensive water

1  
2 quality testing and monitoring program is the  
3 frontline defense of ensuring the quality of the  
4 water in the distribution system.

5 New York City tests its finished  
6 tap water, which is a term we use for the water  
7 that is ready to be distributed for consumption,  
8 for approximately 240 chemical constituents—well  
9 above regulatory requirements. We perform more  
10 than 1,200 tests daily, 35,000 tests monthly and  
11 420,000 on an annual basis from up to 1,000  
12 sampling locations throughout the City. Test  
13 results are reported to our regulators and are  
14 summarized in our annual report on the quality of  
15 New York City's drinking water. While we agree  
16 with the intent of this bill, we believe that the  
17 goal of protecting the water supply would be  
18 better served by modifying the distribution lists  
19 of the extensive reporting requirements already in  
20 place, rather than mandating new requirements.

21 And we believe that the proposed  
22 duties of reporting and certification already  
23 exist in current law. But before I address the  
24 provisions of the bill, I'd like the opportunity  
25 to report to the Council on the progress DEP has

2 made in its identification, inspection,  
3 enforcement and outreach activities since DEP has  
4 testified in June 2008. I think you will agree  
5 that our active program far exceeds our  
6 commitments to the New York State Department of  
7 Health and continues our progress towards ensuring  
8 that any facility that requires a backflow  
9 prevention device has one.

10 Backflow prevention devices, also  
11 know as cross-connection controls function by  
12 preventing potential contamination within the  
13 premises from entering the public water supply.  
14 The possibility of contamination is caused by  
15 various kinds of plumbing configurations and or  
16 equipment that uses water under pressure. If the  
17 pressure in the internal system in a medical  
18 facility, like a hospital for example, is greater  
19 than the pressure in the public water supply  
20 system, dangerous chemicals can be inadvertently  
21 forced back into the public supply, unless a  
22 properly functioning backflow prevention device is  
23 in place to keep that from happening.

24 As you remarked, Council Member,  
25 the New York State Sanitary code contained in the

1  
2 public health law mandates that public water  
3 supplies require certain users to install cross-  
4 connection controls. The code requires submission  
5 of plans to the local public water suppliers,  
6 including DEP, for the installation of these  
7 devices as well as annual testing and reporting  
8 once the devices have been installed. The New  
9 York State Department of Health's guidance for the  
10 code divides users into three categories, non-  
11 hazardous, such as one- and two-family homes or a  
12 cell phone or computer shop that might exist in a  
13 strip mall; aesthetically objectionable, such as a  
14 residential building with an elevated storage  
15 tank; and hazardous, such as an auto repair shop  
16 or a drycleaner that might be using hazardous  
17 chemicals.

18 DEP's efforts with regard to  
19 inspection and enforcement have focused on what we  
20 have characterized as high-hazard facilities. The  
21 definition from New York State DOH's cross-  
22 connection guidance for hazardous facility is: A  
23 building that potentially contains substances that  
24 if introduced into the public water supply would  
25 or may endanger or have an adverse effect on the

1 health of other water consumers. Typical examples  
2 in addition to those previously mentioned are  
3 laboratories, hospitals, sewage treatment plants,  
4 industrial chemical plants, mortuaries, etcetera.  
5 The New York State DOH cross-connection guidance  
6 defines the type of activity performed at each of  
7 these sites that makes it hazardous.  
8

9 The term High Hazard was developed  
10 by DEP staff in 1998 to generate a priority list  
11 of potentially hazardous sites. This high hazard  
12 list was compiled from a list of all activities  
13 defined in the New York State DOH guidance as  
14 hazardous and requiring backflow prevention  
15 devices on their water service lived, compared  
16 with the Department of Finance records on building  
17 classifications. It was intended to merely  
18 establish a probability that a property might  
19 require a device. Whether or not all of these  
20 properties actually require a device must be based  
21 on physical inspection.

22 Currently it is the duty of a  
23 licensed professional, either a registered  
24 architect or professional engineer to determine at  
25 the planning stage of building or renovation

1  
2 whether a backflow prevention devices is  
3 necessary, and if so, to prepare and submit plans  
4 for its installation to DEP. After DEP approves  
5 the plans, the owners must hire a licensed master  
6 plumber to file a DOB application for the  
7 installation of the backflow prevention device.  
8 Once installed, the licensed master plumber must  
9 call DOB for an inspection, and in addition, the  
10 backflow prevention device must be tested by a  
11 State-certified backflow prevention device tester,  
12 who is either a licensed master plumber or  
13 employed by one, and inspected by a PE or RA,  
14 typically the filing applicant, the filing  
15 professional. This test will certify that the  
16 installation is in accordance with the approved  
17 plans. The completed test report must be sent to  
18 DEP and DOB. The owner must then have the  
19 backflow prevention device tested by a certified  
20 tester annually and submit a report to DEP.

21 The new plumbing code enacted in  
22 July of 2008 had added requirements for backflow  
23 prevention devices on equipment such as boilers  
24 and cooling towers, which are not otherwise  
25 regulated by other agencies.

2 In addition to the requirements of  
3 the State's Sanitary Code, DEP reports on the  
4 cross-connection activities as part of our  
5 federally monitored filtration avoidance  
6 determination, the FAD, for the Catskill Delaware  
7 part of our water supply. The 2007 FAD specifies  
8 the milestones that DEP is required to meet as it  
9 implements its cross-connection control program.  
10 Our compliance significantly exceeds those  
11 requirements and I will share those statistics  
12 with you later on in my testimony.

13 DEP created the interagency Cross-  
14 Connection Control Taskforce in 2001. Members of  
15 that taskforce included the Department of Health  
16 and Mental Hygiene, DOHMH, the Office of the  
17 Public Health Engineering, DOB, the Plumbing  
18 Foundation, Engineers Societies and the Real  
19 Estate Board. The taskforce helped develop amore  
20 comprehensive approach and disseminated the  
21 policies regarding DEP's cross-connection program.  
22 Public Heath Engineering reviews the cross-  
23 connection control programs required for FAD  
24 compliance, monitors the program's progress and  
25 conducts its own inspections and investigations of

1  
2 potentially high hazard facilities.

3 Another reporting mechanism  
4 instituted in conjunction with the taskforce is  
5 that DEP shares inspection information with Public  
6 Health and Engineering. While permits—the Public  
7 Health Engineering section of DOH permits ground  
8 wells, and these wells are of particular concern  
9 with regard to cross-connections, because  
10 groundwater wells can easily become contaminated  
11 and any interconnection could compromise our  
12 City's drinking water. Greater cooperation and  
13 coordination with DOHMH has proven beneficial to  
14 protecting public health.

15 Since I was appointed Deputy  
16 Commissioner in 2006, we've reviewed the work of  
17 the taskforce, including the original list of  
18 22,765 potentially hazardous properties, which was  
19 compiled based on the Department of Finance  
20 buildings classifications. I've reorganized the  
21 Cross-Connection Control Program, including the  
22 addition of the former chief of DOHMH's Public  
23 Health Engineering Office. We've instituted a  
24 system of information sharing with our Bureau of  
25 environmental compliance, which plays a role in

1 tracking facilities with hazardous chemicals to  
2 better leverage our institutional knowledge and  
3 allow us to more quickly identify potential  
4 problem facilities without devices on record.  
5

6 Also, we've determined where  
7 immediate attention is needed and quickened the  
8 pace by having staff target hazardous facilities  
9 by using market sector research, and most recently  
10 by engaging a consulting engineering firm to  
11 conduct the field inspections for the elimination  
12 of the inventory of the 1998 priority high hazard  
13 properties that may require installations of BPDs.  
14 My staff and I also determined that a significant  
15 percentage of the properties on the original list  
16 were not appropriate for inclusion in a list of  
17 potentially high hazard properties.

18 In previous testimony DEP detailed  
19 the process by which we refined the data derived  
20 from the 1998 report and a follow-up report in  
21 1999. We used the potential high hazard barometer  
22 to identify buildings requiring backflow  
23 preventives. Those among them that met the  
24 standard for high hazard, for example if it was a  
25 hospital, indicated the high priority for risk.

1  
2 What DEP did not have available in 1998 or in '99  
3 is inspection-based information on all the  
4 properties of concern. It is important to note  
5 that since 1987, all new buildings are either  
6 required to have backflow prevention devices or be  
7 found exempt in order to qualify for a certificate  
8 of occupancy. Therefore, once the backlog of the  
9 pre-1987 buildings needing evaluations is  
10 eliminated, we will have a complete inventory of  
11 existing high hazard properties. We expect to  
12 have this task completed by the end of 2011.

13 We have been compiling more  
14 detailed and current information about the number  
15 of buildings in New York City that require  
16 backflow prevention devices by data mining and  
17 field inspection. Generally speaking residential  
18 properties are not subject of concern except where  
19 they operate large boilers that use chemically  
20 treated water. Our approach has been to target  
21 our inspection resources more efficiently by  
22 identifying the types of commercial and  
23 residential properties that are most likely to  
24 post a risk. We continue to fill the gap in our  
25 knowledge by getting inspectors into the field and

1  
2 doing a labor-intensive job of going to previously  
3 identified properties. For example, in the 2007  
4 FAD Annual Report, of the 4,232 potentially high  
5 hazard properties that were inspected, 2,572,  
6 fully 60%, did not require a backflow prevention  
7 device. The report also shows that of the total  
8 6,500 plus inspections in calendar year 2007, 66%  
9 of the premises did not need a device.

10 By the end of October 2009 we had  
11 inspected or eliminated 13,659 of the inventory or  
12 22,675 high hazard locations. We determined that  
13 8,705 or 38% do not need a backflow prevention  
14 device or are exempt and 9,053 still require  
15 inspection, while 3,800 have had the devices  
16 installed. In order to expedite this process,  
17 beginning in January for an anticipated one-year  
18 duration, a consulting engineering firm, AG  
19 Consulting Engineers, will perform inspections of  
20 approximately 11,000 properties identified by  
21 address and block and lot numbers. At the  
22 completion of this contract, we will have  
23 inspected all of the 22,000 plus properties  
24 originally designated as potentially high hazard.

25 As an example of continuing

1 progress, I can report that the number of backflow  
2 prevention devices tested was up from a figure of  
3 5,659 in 2007 to 8,310 in 2008, an increase of 48%  
4 and that there were 4,000 plus for the first half  
5 of 2009. The devices installed and tested went  
6 from 2,306 in 2007 to almost 3,800 in 2008, again,  
7 a 65% increase—2,097 for the first half of 2009.  
8 So there were 2,097 devices installed and tested  
9 in the first half of 2009.  
10

11 We were also tracking address  
12 verification visits, which confirmed that the  
13 facility on the property is actually high hazard.  
14 This will better focus the consultant's work.  
15 Sometimes a business use changes and can be  
16 eliminated from the list. We have completed 4,770  
17 such visits in January to June of 2009.

18 The annual FAD deliverable for  
19 cross-connections states that DEP is obligated to  
20 issue 200 notices of violations for failure to  
21 test a cross-connection control annually, and the  
22 deliverable for full inspections requires DEP to  
23 conduct 300 to 400 full inspections of potentially  
24 hazardous premises. DEP is in full compliance  
25 with these requirements, well exceeding each of

1  
2 the US EPA Agency's prescribed deliverables. In  
3 2008 DEP issued 586 NOVs and conducted 3,207 full  
4 inspections of high hazard properties. In the  
5 first six months of 2009, 315 NOVs were issued and  
6 1,564 inspections were performed. The FAD also  
7 sets 400 as the minimum for both the number of  
8 approvals of backflow preventive plans and the  
9 number of exemption requests process. Here too  
10 DEP exceeds the target deliverables with 2,624  
11 plans approved, 1,160 exemption requests processed  
12 for 2008 and similarly for 2009, 1,387 plans  
13 approved and 342 exemption requests processed for  
14 the first six months of 2009. The targeted  
15 deliverable of 225 for enforcement against high  
16 hazard premises was well exceeded with 1,124 in  
17 '08 and 629 in the first half of '09.

18 We have also significantly  
19 increased our enforcement efforts. The  
20 administrative code provides for various  
21 enforcement measures from issuance of NOVs  
22 returnable to the Environmental Control Board and  
23 associated penalties, to the termination of water  
24 services and disabling of equipment that  
25 potentially creates a risk to public water supply.

1  
2 In 2007 DEP issued 720 NOVs for failure to test or  
3 install a backflow prevention device, 1,226 in  
4 2008 and almost 700 in the first six months of  
5 2009.

6 Prior to the issuance of NOVs, DEP  
7 issues letters or orders directing the owner to  
8 install a backflow prevention device. In 2007,  
9 2,765 such letters or orders were issued. 1,914  
10 in 2008 and almost 1,200 from January to June of  
11 2009. Our enforcement efforts do not stop with  
12 the issuance of an NOV. In addition to the  
13 penalties and enforcement actions I've just  
14 described, our Cross-Connection Unit reviews the  
15 list of properties who are cited to evaluate  
16 whether re-inspection is warranted based on a  
17 failure to submit a report or install a device.  
18 We then cross check to ascertain whether another  
19 City or State agency, example the New York State  
20 Education Department for hair salons, DEC for New  
21 York State DEC for drycleaners, or Consumer  
22 Affairs for auto repairs, etcetera, can  
23 collaborate on enforcement by advising it that the  
24 facility is operating in violation of the City and  
25 State laws by not having backflow prevention

1  
2 installed at the premises. Continuing non-  
3 compliance can result in further measures.

4 As we develop a more accurate  
5 assessment of the premises of greatest concern,  
6 DEP is also working to foster quicker compliance  
7 with backflow prevention requirements through  
8 procedural improvements. DEP has the support of  
9 the plumbing industry in its efforts to identify  
10 users who ignore the requirements to install the  
11 backflow prevention devices. The self-  
12 certification program, introduced in January 2007,  
13 and approved by New York State DOH, simplifies and  
14 expedites compliance and we hope to see the level  
15 of participation in this program rise. Until  
16 recently, before installation of all backflow  
17 prevention devices, a property owner submitted a  
18 plan for installation. That plan had to be  
19 reviewed and approved by DEP staff. For the  
20 installation of the simplest devices, such as the  
21 installation of a double-check valve device two  
22 inches or smaller with no complex plumbing or  
23 drainage issue, plan review and approval are  
24 unnecessary in terms of public health and is  
25 burdensome to both the applicant and DEP. DEP

1  
2 will continue to require plan review and approval  
3 for the more sophisticated devices that are  
4 required at the more hazardous properties. We  
5 also conduct post-installation audits of self-  
6 certified installations.

7           As part of our revamping of  
8 internal procedures, DEP has instituted further  
9 changes that have simplified the certification  
10 process but still maintain accountability. For  
11 instanced we've eliminated the post inspection  
12 advisory letter, which did not provide an  
13 effective means for improving compliance. Now,  
14 upon determination by our field inspector that a  
15 backflow prevention device is needed, DEP issues a  
16 Commissioner's order directing the property owner  
17 to install the device. We recently posted on our  
18 website the application for exemption and self-  
19 certification, all done in an effort to make the  
20 path to compliance more user-friendly.

21 Additionally we are revising the current  
22 guidelines and review approval process to create a  
23 more user-friendly environment to obtain  
24 compliance. And we hope to, with the advancement  
25 in some of our technology systems, to get to a

1  
2 place where some of that can be done more online.

3           While we've significantly improved  
4 and increased our enforcement efforts through the  
5 use of such things as orders and NOVs, I want it  
6 to be clear that our objective is simply to  
7 achieve and maintain compliance where necessary.  
8 Enforcement is an unavoidable necessity in  
9 achieving this compliance, not our primary  
10 objective. As an adjunct to this enforcement, and  
11 I have copies of the handout for the members of  
12 the Committee and you, Mr. Chairman, DEP will be  
13 sending out a mailing to owners of properties  
14 which are high hazard businesses, where high  
15 hazard businesses are located. These properties  
16 have been targeted by the same process of  
17 redefining the original database of high hazard  
18 properties. Each will receive a letter and  
19 brochure outlining essential information on the  
20 process of installing BPDs under the auspices of  
21 the Cross-Connection Control Program. The  
22 brochure is being translated into six languages  
23 designated in Mayor Bloomberg's executive order to  
24 translate all essential documents. The database  
25 includes nearly 5,000 property owners citywide,

1  
2 and we are continuing to conduct inspections in  
3 order to refine and update our information.

4 In closing, I'd like to offer some  
5 comments on the provisions of Introduction 925.  
6 Although the goal of BPD installation where needed  
7 is laudable, we believe it is already adequately  
8 covered by current laws and rules. We view  
9 section 2C of Intro 935, which contains reporting,  
10 certification and repair requirements as  
11 duplicating existing requirements in Title 15,  
12 Chapter 20-04 of the Rules of the City of New  
13 York. Under those rules property owners have an  
14 affirmative duty to install a backflow prevention  
15 device where a cross-connection presents a  
16 potential hazard as determined by the Commissioner  
17 of DEP as well as the inspection and reporting  
18 requirements outlined earlier in my testimony.

19 The reporting requirements in  
20 Section 2D capture some of the key management  
21 indicators for the work of this program and are  
22 already part of the FAD deliverables I mentioned  
23 earlier. We would certainly be glad to include  
24 the Council on the list of recipients of the FAD  
25 deliverables and any other reporting of these

1  
2 statistics. Creating standalone reporting  
3 requirements is redundant and diverts resources  
4 from the core mission of ensuring the protection  
5 of the public water supply from cross-connection.  
6 We can work with the Mayor's Office to capture  
7 what the Council is interested in receiving in  
8 terms of data.

9                   Section 2B places an affirmative  
10 duty on licensed master plumbers and the plumbers  
11 who discover cross-connection, presumably one  
12 without an appropriate BPD, prior to undertaking  
13 work or if it's discovered in the course of  
14 emergency work, to report it to DEP and the owner.  
15 Given that the plumbing foundation has  
16 consistently advocated for the active  
17 identification and outreach program DEP is now  
18 engaged in, it's hard to imagine that the licensed  
19 master plumbers of the trade it represents would  
20 neglect to report the existence of such a threat  
21 to public health. As with the other requirements  
22 proposed in the bill, it appears that the  
23 provision might be effectuated by means other than  
24 additional legislation.

25                   We are also very concerned about

1  
2 the potential additional administrative burden the  
3 law could place on us. At DEP we've devoted  
4 considerable effort to creating a new  
5 organizational structure and protocol for cross-  
6 connection controls to eliminate the backlog and  
7 move forward expeditiously. It is essential that  
8 this momentum not be impeded by isolated reports  
9 that are not being evaluated according to the same  
10 strict criteria that our engineering staff are  
11 applying. We are also particularly concerned  
12 about small businesses. Of course those who  
13 require backflow preventers will be made to  
14 install them, but we must ensure that the rigorous  
15 evaluation goes into making that determination,  
16 otherwise small businesses may experience it as an  
17 excessive regulatory burden.

18 The definition of hazardous  
19 facility in the bill conforms to the existing  
20 definition of hazardous facility in the New York  
21 State DOH guidelines. But as I mentioned, the  
22 term high hazard facility is a term of art  
23 internal to DEP that was used to help in  
24 prioritization of its identification and targeting  
25 enforcement efforts. The definition high hazard

2 in the bill applies to facilities at risk from  
3 explosive dust and the like and does not apply to  
4 facilities that present a risk from faulty  
5 backflow prevention. It could be eliminated  
6 though, since the term hazardous facility is  
7 sufficient. I'd like to thank you for the  
8 opportunity to testify and I'll be glad to answer  
9 any questions if I can.

10 COUNCIL MEMBER KOPPELL: Mr.  
11 Chairman?

12 CHAIRPERSON GENNARO: First of all,  
13 let me just thank the witness. Thank you, Deputy  
14 Commissioner Roberts. And yes, Oliver?

15 COUNCIL MEMBER KOPPELL: I just  
16 would like to observe, I didn't want to interrupt  
17 the witness and didn't do so, but I would like to  
18 observe for the purpose of this witness and anyone  
19 else who is listening that in the future I will  
20 interrupt if people are just going to read very  
21 lengthy statements. We have the statement; we can  
22 read it. The witness should be summarizing the  
23 statement. I would also suggest that in  
24 connection with this statement, a chart or charts  
25 would have been particularly useful and could have

1 presented the information much more quickly to us.  
2 We could look at the chart and see the numbers  
3 rather than reading all these numbers, none of  
4 which I remember. So I really think that the—and  
5 I'm saying this for the future, I expect that  
6 you're going to be here—that presenting the  
7 testimony this way is not efficient, doesn't grab  
8 the attention of members and in my view should not  
9 be repeated.  
10

11 CHAIRPERSON GENNARO: Thank you,  
12 Oliver and I'll comment on what you said in a  
13 moment. Let me just take care of some  
14 housekeeping and say that we're joined by  
15 Councilman Dr. Eugene, Council Member Bill de  
16 Blasio was here, Council Member Crowley was here,  
17 Dominic Recchia was here.

18 And I wish to follow up on what  
19 Council Member Koppell said regarding the  
20 presentation of the information. I for one have  
21 no problem with the statement being read in its  
22 entirety, but it was quite difficult to follow  
23 with different numbers and different protocols and  
24 it was just difficult to follow. I don't think  
25 that that was the intent of the witness or of DEP

1  
2 to confuse the Chair or the Committee, but  
3 notwithstanding that that was I'm sure not their  
4 intent, you have succeeded and doing that. And  
5 Oliver makes a very good point that I will go so  
6 far as to reinforce. And if things can be  
7 presented in a graphic way, in a PowerPoint way,  
8 in some way that gives us some visual grasp of the  
9 complicated subject matter that's being presented,  
10 I think the time of everyone would be more useful.  
11 And presumably you support that, Oliver.

12 JAMES ROBERTS: Mr. Chairman, I  
13 would say number one, it was obviously not our  
14 intent or my intent to make it other than clear.

15 CHAIRPERSON GENNARO: I didn't  
16 think it was at all.

17 JAMES ROBERTS: With that said, the  
18 Council Member Koppell's comments are noted and  
19 frankly I agree with them. In any future  
20 discussions that we have, we'll do our best to see  
21 if we can sort of summarize and condense it down  
22 to a more comprehensible presentation. Our  
23 apologies for that.

24 CHAIRPERSON GENNARO: Thank you.

25 COUNCIL MEMBER KOPPELL: Thank you.

2 CHAIRPERSON GENNARO: And let me  
3 just—I made some notes during your statement and  
4 made some annotations. With regard to your  
5 statement at the outset that your Cross-Connection  
6 Program far exceeds commitments to the New York  
7 State Department of Health, by that you mean that  
8 with regard to the mandates placed on DEP, with  
9 regard to the requirements of the FAD, right?

10 JAMES ROBERTS: I think, Chairman  
11 Gennaro, I think the State and the regulators,  
12 both the City and State Health Departments  
13 realized and recognized the breadth of the issue.  
14 And so while obviously the ultimate goal, the  
15 ultimate objective is to get to that universe of  
16 full compliance everywhere with everything—

17 CHAIRPERSON GENNARO: [Interposing]  
18 I just want to focus on—

19 JAMES ROBERTS: [Interposing]  
20 Those, what I was referring to there was the  
21 requirements that we've agreed with the State as  
22 being milestones that should be met.

23 CHAIRPERSON GENNARO: And those  
24 milestones were developed in connection with the  
25 FAD, is that right?

2 JAMES ROBERTS: As part of that, I  
3 believe it was the 2007 FAD.

4 CHAIRPERSON GENNARO: Okay. Now  
5 let me just silence my phone so it doesn't beep  
6 anymore. Now presumably if New York City didn't  
7 have the benefit of a FAD and for some reason we  
8 had been forced to filter a couple of years ago to  
9 go on that track; presumably the Department of  
10 Health that issued these guidelines in 1981, which  
11 if that's not an accurate date you can correct me,  
12 but if New York City didn't have a FAD, presumably  
13 the New York State Department of Health would  
14 still have concerns about whether or not its 1981  
15 rulemaking or whatever it was regarding cross-  
16 connections was being followed and that was  
17 proceeding. And what I'm trying to ask is, is the  
18 FAD the only hook by which New York State  
19 Department of Health seems to care about this  
20 cross-connection thing, or is there some other  
21 entity within the State Health Department that  
22 even absent of FAD would be trying to make sure  
23 that the cross-connection thing was done? And are  
24 they happen with the pace at which this is  
25 proceeding, or is it only the FAD people within

1  
2 the State Department of Health that seem to care  
3 about this? Hopefully that was a clear question.

4 JAMES ROBERTS: I think I  
5 understand what the question was. I'm going to do  
6 my best to give you an answer to it. A couple of  
7 things. Number one, I think when the regulation  
8 was originally passed in 1981, I think you were  
9 right with 81; there was a recognition that the  
10 requirement on the water suppliers was to develop  
11 the program that was then going to be implemented.  
12 And that admittedly took time to understand how  
13 exactly it was best to do that, particularly in  
14 the context of a system as our own, which is both  
15 expansive and old. With that said, I think the  
16 people who review both the FAD and are concerned  
17 about our cross-connection compliance are the same  
18 people, and it might just be the convenient place  
19 for the reporting. In the absence of the FAD, I  
20 believe we would have another vehicle or mechanism  
21 whereby we would have a similar exchange about  
22 what our program was and where we were with it  
23 and, you know, what our reasonable compliance  
24 milestones towards achieving, you know, that  
25 ultimate objective were.

2 CHAIRPERSON GENNARO: Now what  
3 seems kind of fantastic in a certain sense or  
4 bizarre is maybe more the word, that we're now,  
5 you know, 28 years out from that original  
6 rulemaking and, you know, DEP comes before us  
7 today with what is essentially a plan for how it's  
8 going to ultimately come into compliance, as well  
9 as some progress that's been done recently  
10 regarding outreach. And I guess how can it be  
11 that the State who went through the trouble to do  
12 this in 1981 seems to continue to have a very  
13 relaxed posture to the extent that it sets  
14 milestones and guidelines that New York City seems  
15 to be meeting, based on your testimony, but we're  
16 still nowhere near full compliance? And I guess  
17 that is really more a question for the State  
18 regulator. But how could it be that, you know, 28  
19 years out we're still not in compliance and  
20 they're still asking for only, you know, minimal  
21 progress towards the fulfillment of the whole  
22 cross-connection program in full compliance?

23 JAMES ROBERTS: Mr. Chairman, there  
24 were a lot of questions in that. I'll do my best—

25 CHAIRPERSON GENNARO: [Interposing]

I'm a tricky guy. You've got to keep up.

JAMES ROBERTS: I'm working hard to do that.

CHAIRPERSON GENNARO: I kept up with your statement, which wasn't easy.

JAMES ROBERTS: Which was not easy. I apologize for that. And I won't—

CHAIRPERSON GENNARO: [Interposing] And I don't mean to make light of the subject.

JAMES ROBERTS: Right. I won't be presumptive enough to speak for the state or the City Health Department either, but I think there are a couple of, to be frank, candid, misconceptions about where we are with regard to—I think the understanding of what that, quote, unquote, high hazard population, represented has been something that has not been clearly, and I have tried over the last two occasions that we've had to talk about it, to try and make that distinction—but I don't think it's been clearly understood or represented, you know, what exactly that population meant or was meant to be. It was really intended to present a population that had a probability. And so once you get into, as my

1  
2 testimony represented, nearly 40% of the  
3 population that we've looked at, you know the sub-  
4 part of that 22,000 population, has been found to  
5 not need them. And so, concurrent with that,  
6 concurrent with us looking at that 22,000  
7 universe, we are also looking at other facilities  
8 and industry pieces, you know, as well. And I  
9 think prior to our last discussion in June of '08,  
10 we had initiated targeted research where we were  
11 able to hone in on, you know, areas of the  
12 businesses that were of major concerns, car washes  
13 and the like. And we were able, by honing in on  
14 those specific areas; we were able to eliminate  
15 them rather quickly. And I think we've done, you  
16 know, a much better job of getting to where we  
17 want to be. Compliance at the end, Mr. Chairman,  
18 frankly is going to be a perpetual, you know,  
19 quest. There are changes every day. Businesses  
20 go in and out and things change. So we'll always  
21 be marching towards compliance. But I think what  
22 the regulators convey to us is that they're  
23 satisfied with the approach and the pace at which  
24 we're working to do it. And, you know, again we  
25 were somewhat delayed because of contractual

1  
2 bidding issues. We had to reject the bid that  
3 went out. So I was a little disappointed,  
4 frankly, that the consultant contract that I  
5 referenced wasn't out six months ago. It was  
6 certainly my intent to have it out much sooner.  
7 With that said, it will be on the street at the  
8 turn of this year and we're excited about that.

9 CHAIRPERSON GENNARO: And that  
10 would be—is that the one for AG? Is that what  
11 you're saying?

12 JAMES ROBERTS: Yes. And it's an  
13 almost a half a million dollar commitment on DEP's  
14 part to really get out, knock away the remaining  
15 balance of those properties that were in that  
16 universe, frankly as much to allay the Council's  
17 apprehension that we're not really, you know,  
18 serious about it. But we anticipate that the  
19 percentages are really going to run along the same  
20 lines they've been running.

21 CHAIRPERSON GENNARO: Thank you.  
22 And let me continue going through the statement  
23 here, some notes that I made.

24 [Pause]

25 CHAIRPERSON GENNARO: And when you

1  
2 talk about AG, they will be making an assessment  
3 of what you call on page 6 of your statement, the  
4 inventory of the 1998 priority high hazard  
5 properties. Right? And that's really the 9,000;  
6 that would be about 9,000 or so locations. That's  
7 what you mean by the inventory, right?

8 JAMES ROBERTS: That's correct.

9 And again, we will hopefully be able to utilize  
10 those resources. My hope is that we'll be able to  
11 go far beyond, you know, just that 9,000 property  
12 population and they'll be able to augment our  
13 administrative capacity and help us with the data  
14 entry. There's an enormous amount of  
15 administrative burden that comes with both plan  
16 review—and it's technical—plan review, back and  
17 forth. It's interesting, because I guess my name  
18 is the one that's on the letter that goes out, the  
19 order that goes out. And so I frequently am  
20 sitting at my desk at 7:00 at night and get phone  
21 calls that I pick up, and there are people, there  
22 are many people out there that are really  
23 interested in complying, they've gotten the  
24 message, and they really need to be just walked  
25 through it. And I think we've made enormous

1  
2 strides in the last two years towards making it a  
3 little bit more user-friendly.

4 CHAIRPERSON GENNARO: Aren't they  
5 getting some brochure thing or something? Is that  
6 what you're talking about? Is that what they're  
7 responding to?

8 JAMES ROBERTS: I have that here.  
9 If you want I can give it to you now or we can  
10 give it to you-

11 CHAIRPERSON GENNARO: [Interposing]  
12 We'll just talk about it. I mean, is this the  
13 thing that they're responding to when they call  
14 you up?

15 JAMES ROBERTS: No. They respond  
16 to letters that they get from my office, from our  
17 Cross-Connection Unit, that have my name on them.  
18 I don't know if I'm signing them or one of the  
19 staff is signing them, that advises them that an  
20 inspection's been done and you need to address it.  
21 And so it's really the first part of the  
22 enforcement mechanism. And often-our goal is to  
23 get them to comply. We really don't want to be-we  
24 don't want to be policemen in that regard.

25 CHAIRPERSON GENNARO: So all of

1  
2 these properties we think have already received  
3 some kind of communication from your office?

4 JAMES ROBERTS: No, no. I  
5 apologize if I'm not clear, Mr. Chair, but what  
6 I'm talking about is the people that we do inspect  
7 where we find--whether they're in the population,  
8 whether they're a subset of the population of  
9 22,000 or something else. There are many more  
10 properties out there that we look at outside of  
11 that specific--

12 CHAIRPERSON GENNARO: [Interposing]  
13 Right.

14 JAMES ROBERTS: --universe.

15 CHAIRPERSON GENNARO: Oh, I see.  
16 Now this brochure concept that you talked about,  
17 that is targeted directly at this high hazard  
18 universe. Is that--

19 JAMES ROBERTS: [Interposing] We're  
20 going to use that brochure to target the specific  
21 industry sectors that we're most concerned about  
22 as being potentially hazardous facilities or  
23 pieces of the, you know, segments of the  
24 industries that cover them. The rest of the  
25 universe of the originally 22 and half thousand,

2 we're going to have the consulting engineering  
3 firm basically, you know, wipe that piece off the  
4 ledger.

5 CHAIRPERSON GENNARO: How are they  
6 going to do that? Are they going to do  
7 inspections?

8 JAMES ROBERTS: Yes.

9 CHAIRPERSON GENNARO: So they're  
10 going to physically go to these places.

11 JAMES ROBERTS: That's correct.

12 CHAIRPERSON GENNARO: Just to wipe  
13 out the backlog.

14 JAMES ROBERTS: Well to-

15 CHAIRPERSON GENNARO: [Interposing]  
16 That will be the charge of the AG-

17 JAMES ROBERTS: [Interposing]  
18 That's correct.

19 CHAIRPERSON GENNARO: --contract.

20 JAMES ROBERTS: And again-

21 CHAIRPERSON GENNARO: [Interposing]  
22 And this is what you mean with regard to having  
23 that task done by the end of 2011. Is that what  
24 that is?

25 JAMES ROBERTS: That's correct.

2 CHAIRPERSON GENNARO: So AG is  
3 going to come on and by the end of 2011 they're  
4 going to physically inspect these places and  
5 report to DEP as to what their findings were and  
6 then DEP will take action against those that—or do  
7 whatever they need to do to get these people into  
8 the family of compliant buildings. Is that a fair  
9 way to say it?

10 JAMES ROBERTS: I think I would say  
11 that they will be able to do the inspections, and  
12 I would also add that I think the only appropriate  
13 way to really ensure whether it's necessary or  
14 it's not is by having an inspector on the ground,  
15 having boots on the ground at the facilities. But  
16 their charge will be to do those inspections,  
17 bring the information back to us and frankly help  
18 us, if need be, you know, with the administrative  
19 piece to deal with whatever percentage of that  
20 population needs to be, you know, needs to go down  
21 the enforcement or—

22 CHAIRPERSON GENNARO: [Interposing]  
23 And that is a preferential approach in your  
24 opinion than to my earlier suggestion where we  
25 just reach these people and have them either say

1  
2 that they're compliant and they send something  
3 back that's been certified by a master plumber or  
4 they say that they don't need to be part of this  
5 program and they provide something to prove that  
6 or, you know, show that or they say that they do  
7 need to be part of this program that they're going  
8 to do that? So you don't think that's the  
9 approach to go.

10 JAMES ROBERTS: I frankly think the  
11 approach we're taking, Mr. Chairman, is the right  
12 approach. And I'd offer as an example of a place  
13 that I think would strike home with you. We have  
14 a Convent in Queens that you would never-it's  
15 Convent.

16 CHAIRPERSON GENNARO: Right.

17 JAMES ROBERTS: You wouldn't think  
18 that they would be somebody that would be of  
19 particular interest to us. From the outside of  
20 the Convent wall we didn't think it was a problem  
21 either until we were actually, I apologize for  
22 that, we were actually inside. And they had some  
23 industrial washing machine facilities and so on  
24 and so forth. So inspection is the right way to  
25 do it. I think the other approach is a little

2 bit, with all due respect, a little bit, you know,  
3 scatter shot and not as effective.

4 CHAIRPERSON GENNARO: Okay.

5 [Pause]

6 CHAIRPERSON GENNARO: You talked a  
7 little bit about on page 9 of your statement the  
8 self-certification program that was introduced  
9 about two and a half years ago, almost three years  
10 ago, and approved by the State Health Department  
11 that simplifies and expedites compliance and you  
12 hope to see the level of participation rise. If  
13 you could just tell us a little bit about that,  
14 why it's a good approach and while DEP, according  
15 to your statement, indicates that DEP hopes to see  
16 the level of participation in that rise. What is  
17 DEP doing to get the level of participation up?  
18 It's nice to hope, but what are we doing?

19 JAMES ROBERTS: It's always good to  
20 hope. So the advantage, and I think it really  
21 comes from the perspective of being able to have  
22 self-certification with an audit program, because  
23 I don't think unless you have an audit sample that  
24 you can go back and sort of make sure that there  
25 is, you know, everything is being done the way

1  
2 it's supposed to be—the self-certification program  
3 was to take the simple routine and mundane away  
4 from the desks of the technical people that, you  
5 know, we have, which is admittedly, you know, at  
6 times they have, you know, a lot to do—to sort of  
7 concentrate their technical expertise somewhere  
8 else. We really viewed it as something that would  
9 be embraced. We're not clear why the industry is,  
10 you know, the applicant, you know, the filing  
11 industry hasn't embraced it a little bit more, you  
12 know, firmly—

13 CHAIRPERSON GENNARO: [Interposing]  
14 How would this work, with like new buildings and  
15 new construction?

16 JAMES ROBERTS: Yes.

17 CHAIRPERSON GENNARO: So we're not  
18 talking about this inventory classification, like  
19 they don't do self-certification.

20 JAMES ROBERTS: Or it could be a  
21 facility, for example, and again I'll use a  
22 drycleaner as an example; as you're aware many  
23 drycleaners now are really just middlemen in the  
24 dry-cleaning process.

25 CHAIRPERSON GENNARO: Right.

2 JAMES ROBERTS: So we see a  
3 drycleaner and we issue them, you know, a  
4 Commissioner's Order and we tell them that they  
5 need it. They would be able to have a registered  
6 architect, a professional engineer file a self-  
7 certification application to us that explains how  
8 their business, and that they didn't have  
9 chemicals on board and so on and so forth.

10 CHAIRPERSON GENNARO: Right.

11 JAMES ROBERTS: So I think it works  
12 both—I think it can work both for new construction  
13 and for, you know, existing facilities that as we  
14 come across them I think it's there. And I would  
15 also say that your comment and your observation  
16 about not hoping and doing. I think we do need to  
17 look at and I am looking at right now, trying to  
18 make the processes and the communication of what  
19 our requirements are a little bit more robust and  
20 a little bit clearer. Maybe we're not as clear as  
21 we could be or should be, and maybe that's part of  
22 the problem. So we are looking at that. I have a  
23 consultant engineering firm that's actually  
24 looking at all of the processes within my whole  
25 bureau, but also within that subset.

2 CHAIRPERSON GENNARO: Thank you.

3 [Pause]

4 CHAIRPERSON GENNARO: I think I  
5 already spoke to this a little bit about page 10  
6 of your statement, DEP was sending out a mailing  
7 to owners of properties of high hazard businesses  
8 or located—that's the whole brochure concept,  
9 right?

10 JAMES ROBERTS: And we have a copy.  
11 I actually have a couple copies here I can leave  
12 for you and the Committee Members.

13 CHAIRPERSON GENNARO: Sure. And  
14 that's going out to business sectors, right?

15 JAMES ROBERTS: That's our intent.

16 CHAIRPERSON GENNARO: But that  
17 hasn't happened yet.

18 JAMES ROBERTS: That's correct.  
19 And we have--

20 CHAIRPERSON GENNARO: [Interposing]  
21 And is this being developed by DEP in-house? Is  
22 there some entity that's doing it on your behalf?

23 JAMES ROBERTS: We have been doing  
24 that in-house and we have been working with it.  
25 Part of—there are some challenges with getting the

1  
2 right language and getting-

3 CHAIRPERSON GENNARO: [Interposing]

4 The translation and all-

5 JAMES ROBERTS: [Interposing]

6 Translations and things like that. But again,  
7 it's something that we think is important and  
8 we're working to get on the street.

9 CHAIRPERSON GENNARO: Thank you.

10 [Pause]

11 CHAIRPERSON GENNARO: I'm going to  
12 go over some other questions that might still be  
13 relevant, but in the meantime, while I'm doing  
14 that, Council Member Crowley has questions for the  
15 Commissioner and I recognize Council Member  
16 Crowley.

17 COUNCIL MEMBER CROWLEY: Thank you,  
18 Mr. Chairman. I have, the first question, you  
19 mentioned the Convent that you happened to come  
20 about noticing that they had hazardous materials  
21 coming out. How did you--did someone call the DEP?  
22 Or how did you...?

23 JAMES ROBERTS: No, our inspectors.  
24 And it wasn't, Council Member Crowley, it wasn't  
25 that they had hazardous chemicals coming out.

1  
2 It's that there was a potential, that given  
3 certain scenarios and sort of the pieces falling  
4 into place there was the potential. And that is a  
5 significant part of the whole Cross-Connection  
6 Program; it's the potential for this  
7 contamination. It's not that every facility that  
8 has, you know, any potential will necessarily, you  
9 know, contaminate the water; it's just the  
10 potential that's there. If, you know, the ducts  
11 line up the right way, that you can have a  
12 problem.

13 COUNCIL MEMBER CROWLEY: Right.

14 JAMES ROBERTS: So if their washing  
15 machines, let's say for example if we had turned  
16 the water off in the street and their washing  
17 machine was somehow being fed and pumped the water  
18 back into the system, something like that.

19 COUNCIL MEMBER CROWLEY: And there  
20 are a lot of numbers, like from each year since  
21 you've been doing your inspections. And there are  
22 approximately over 10,000 high hazardous areas  
23 that you've found?

24 JAMES ROBERTS: Originally, Council  
25 Member Crowley, we had taken an educated guess at

1  
2 trying to work with the Department of Finance  
3 Database to cull down a list of over 105,000  
4 properties to something that was reasonable. And  
5 by saying that, you know, certain classifications—  
6 industrial, let's look at all the industrial  
7 properties—we developed this list of 22 and a half  
8 thousand as having a high probability, or having a  
9 probability. And rough 10,000 is what remains of  
10 that original estimated list. But at the same  
11 time that we've been pairing down on that 22 and a  
12 half thousand, we've been doing, you know,  
13 concurrently targeted sectors like carwashes and  
14 drycleaners and those type of things, and getting  
15 them off the board as well. So we've got parallel  
16 paths, so sometimes those numbers can be a little  
17 bit deceiving. And I'd have to agree with Council  
18 Member Koppell that we probably could have done a  
19 little bit better job in representing the data.  
20 There's a lot of data there. I apologize for  
21 that.

22 COUNCIL MEMBER CROWLEY: I agree.

23 Yeah, because it seems like there are a lot that  
24 have been inspected and found to be of high hazard  
25 and then that maybe you didn't determine that they

1  
2 needed a backflow device or maybe they didn't  
3 install one yet. Is there an area that's like  
4 gray in here that they haven't had a violation  
5 given to them and the DEP hasn't followed through  
6 or followed up?

7 JAMES ROBERTS: Right. So, and I  
8 think I understand the question. Because a  
9 property was on that original list, we would want  
10 to go inspect it. So we had some apprehension or  
11 some concern that they may be a problem. And I  
12 think the example that I just gave of the  
13 drycleaner that doesn't really do the dry-cleaning  
14 on site is a good tangible example. So we look at  
15 it, it says, ABC Dry-Cleaning. Well we say,  
16 drycleaners, we want to go take a look at it. We  
17 go there and in point of fact it turns out that  
18 they're really not doing the dry-cleaning on site.  
19 And so they wouldn't need one. Right? They were  
20 really just taking the clothes in and passing the  
21 clothes out and, you know, not doing the work  
22 onsite. Does that make sense?

23 COUNCIL MEMBER CROWLEY: So do you  
24 document them in your numbers?

25 JAMES ROBERTS: Yes, yeah. And in

2 the myriad of statistics that are in there,  
3 there's roughly 38% of the population that we have  
4 looked at that doesn't need them.

5 COUNCIL MEMBER CROWLEY: So this is  
6 from the 20,000 pool?

7 JAMES ROBERTS: Yes, that's right.  
8 That's correct. So of the 22 and a half thousand,  
9 that original list, there's about 9000 and change  
10 that are remaining. The balance of, 13,000, we  
11 have inspected. And of that 13,000 roughly 40%,  
12 it's 38%, when we inspected them they didn't in  
13 fact need it. So it was, you know, our guess was,  
14 you know, not as accurate as—and that's a good  
15 thing, not a bad thing.

16 COUNCIL MEMBER CROWLEY: So then  
17 you determined you don't need the device—

18 JAMES ROBERTS: [Interposing]  
19 That's correct.

20 COUNCIL MEMBER CROWLEY: --at that  
21 location.

22 JAMES ROBERTS: That's correct.  
23 And now we have a record of it, which is as  
24 important.

25 COUNCIL MEMBER CROWLEY: And then

2 all others you've had, either the locations have  
3 had the devices installed or they received some  
4 type of violations because they haven't installed  
5 them yet.

6 JAMES ROBERTS: Of the ones we've  
7 inspected, that other 60%, they either had them or  
8 we took the--started the process in making sure  
9 that we moved towards getting them installed.

10 COUNCIL MEMBER CROWLEY: And  
11 they're all accounted for within your testimony?  
12 So when you get from that pool to 22,000, you  
13 narrow it down to about 11,000 that you've decided  
14 need to install these backflow devices, then you  
15 further are able to say that the DEP has followed  
16 up and given violations for those that have it  
17 installed?

18 JAMES ROBERTS: We've either--they  
19 either had them and we were satisfied; and there  
20 are really two parts to it, it's do they have them  
21 and are they tested, are they current. So do they  
22 have them and are they compliant. Sometimes they  
23 have them, but sometimes the submissions of their  
24 tests, their testing is not up to date. So  
25 there's a little bit of a duality that's in play

1  
2 there. But first, do they have them. If not, we  
3 advise them that they need to do it. And then we  
4 follow through on if they are advised to do it we  
5 follow through on making them submit plans. And  
6 sometimes it takes, it does take, you know, months  
7 to get through. They have to find professionals  
8 that know how to do this and there's not a really-  
9 it's sort of a niche specialty in some of the  
10 engineering and architectural people. So, you  
11 know, we do work with them. So long as they're  
12 working with us, right? So long as they're in  
13 contact with us and we are comfortable that  
14 they're demonstrating an effort to get where we  
15 want them to go, then we'll work with them. As  
16 soon as we're not, then we'll start issuing NOV's  
17 and sort of let that whole course play out.

18 COUNCIL MEMBER CROWLEY: And I'm  
19 sorry if you said this earlier; what is an NOV's  
20 violation? How much is it usually?

21 JAMES ROBERTS: Typically the  
22 environmental control board will, you know, order  
23 them to do it. They'll give us the authority to  
24 terminate, you know, I guess at the real endgame  
25 they give us the authority to terminate the water

2 service, which is really again not where we want  
3 to be. Whether there are fines, specific monetary  
4 fines I'd have to go back and look. I'm not, you  
5 know, I'm not familiar with the real day to day  
6 machinations of that except to know that it is a  
7 process that we have to go through. In order to  
8 get the authority to ultimately say, listen, if  
9 you don't comply we're going to turn the water  
10 off, we have to go through that process.

11 COUNCIL MEMBER CROWLEY: And you've  
12 turned water off to businesses?

13 JAMES ROBERTS: In very rare  
14 occasions, we've had to. Sometimes the specter of  
15 us, you know, making clear that we will do it is  
16 enough to spur people into action. But if  
17 necessary, we would. We're really not looking to  
18 go down that road if we don't have to. Certainly,  
19 and this has manifested itself on one or two  
20 occasions. Certainly if we know that there is a  
21 facility that we say, listen this is problematic  
22 regardless of how long it's going to take, you  
23 need to expedite it and, you know, get this done  
24 as soon as possible, we'll make them do it  
25 immediately as opposed to giving them—we'll

2 expedite the work for them. We'll expedite the  
3 review and the technical assistance and all that,  
4 but we won't let them sort of dawdle. And I've  
5 seen that happen, you know, in particular with a  
6 car wash where they had a situation that we just  
7 could not, we couldn't tolerate. We couldn't be  
8 comfortable and tolerate the absence of the device  
9 installed.

10 COUNCIL MEMBER CROWLEY: And you  
11 turned off the water in that case.

12 JAMES ROBERTS: We didn't allow  
13 them to use their water until they got the  
14 situation corrected. So we basically locked that--  
15 without having to dig their water up and terminate  
16 it, we had an agreement with the property owner  
17 that they were not going to use their water. We  
18 went back and checked up and that. So just short  
19 of terminating their water we made it clear to  
20 them that they weren't going to be able to use  
21 their domestic service until we had that resolved.

22 COUNCIL MEMBER CROWLEY: Is this a  
23 very serious issue for the DEP? Does the agency  
24 look at it as a very threatening...?

25 JAMES ROBERTS: Well, it's a

1  
2 serious issue. I mean and we're certainly always  
3 concerned about maintaining the integrity of our  
4 system and our supply. Do I think that we're, you  
5 know, that we have an overarching concern that  
6 there's something bad going to happen around every  
7 corner? I don't-

8 COUNCIL MEMBER CROWLEY:

9 [Interposing] Do you think that the department  
10 that checks up on these systems, do you think it's  
11 well staffed?

12 JAMES ROBERTS: Council Member,  
13 like anybody else, it's always good to have, you  
14 know, resources are always a wonderful thing. I  
15 think that the staff that we have, I think being  
16 able to focus their, you know, their attention and  
17 priority to the things that are important, I've  
18 been able to, by basically, not reassigning, but  
19 by basically looking at the way they did their  
20 work--traditionally they might have an inspector  
21 that would go out and do three inspections for a  
22 sewer connection or a water connection or  
23 something along that line, and then, you know, not  
24 having the time to do another one of those big  
25 installations would sort of have a down period or

1  
2 a less effective use of that time. So what we've  
3 done is we've basically been able to utilize their  
4 resources to do more Cross-Connection inspections.  
5 So now we get more people doing, you know, little  
6 bites, you know, little helping hands that do a  
7 little bit more of it. And I think we've made  
8 good progress. And I will be happy when we've  
9 gotten through this next year with the consultant  
10 really bringing that heft to get past that one  
11 block, and I think we'll be in a good place.

12 COUNCIL MEMBER CROWLEY: Do you  
13 think you can put together for the City Council,  
14 for the Committee anyway, a table of the numbers?

15 JAMES ROBERTS: Sure.

16 COUNCIL MEMBER CROWLEY: Because it  
17 seems like there's a block that haven't, you know,  
18 that are found to be of high hazard and haven't  
19 installed and haven't received violations.

20 JAMES ROBERTS: I can definitely  
21 put together a table that represents data a lot  
22 more effectively. But I just want to again go  
23 back to the fact that they were originally  
24 identified in that list-

25 COUNCIL MEMBER CROWLEY:

[Interposing] Right.

JAMES ROBERTS: Does not mean that they are a high hazard facility, that they are a hazardous facilities. It just meant—

COUNCIL MEMBER CROWLEY:

[Interposing] I know, but the way I look at the numbers, it seems like you've taken the total high hazard inspections to a little over 10,000.

JAMES ROBERTS: A little less than 10,000.

COUNCIL MEMBER CROWLEY: A little less than 10,000. And then of that only about 2,200 have installed the devices.

JAMES ROBERTS: Where they were needed. And without—

COUNCIL MEMBER CROWLEY:

[Interposing] And then about 4,000 or so have it.

JAMES ROBERTS: Right. Without putting you through the painful—

COUNCIL MEMBER CROWLEY:

[Interposing] Right. Because I still see about 30% unaccounted for if you look at the total of NOVs issued and they failed to install the—

JAMES ROBERTS: [Interposing] Well

2 I'll be glad to get to the chairman and the  
3 committee a table that represents the data a  
4 little bit more clearly for you.

5 COUNCIL MEMBER CROWLEY: Thank you.

6 JAMES ROBERTS: Thank you.

7 CHAIRPERSON GENNARO: Thank you  
8 Council Member Crowley. I just want to return  
9 briefly to the AG contract. And they're supposed  
10 to physically look at the 9,000 or so properties  
11 in the inventory. That's really what they're  
12 going to do, right?

13 JAMES ROBERTS: That's the intent.  
14 And to offer us the additional administrative  
15 support that goes along with the inspections.

16 CHAIRPERSON GENNARO: Okay. Now  
17 how much is the AG contract going to be for?

18 JAMES ROBERTS: It's just a little  
19 less than a half a million.

20 CHAIRPERSON GENNARO: Okay. So  
21 round figures?

22 JAMES ROBERTS: I think the number  
23 that I was told this morning is 483,000 but—

24 CHAIRPERSON GENNARO: [Interposing]  
25 Okay. So in order to inspect 9,000 properties,

1  
2 call it—let's do a little math here. Round  
3 figures \$500,000, and round figures 10,000  
4 properties.

5 [Pause]

6 CHAIRPERSON GENNARO: That's about  
7 \$50 a property plus they're going to do some other  
8 administrative work. I mean does this contract  
9 seem like it's enough to get that done?

10 JAMES ROBERTS: We believe that it  
11 is, Mr. Chairman. And Commissioner Lawitts is the  
12 mathematics wizard with regards to crunching the  
13 numbers around, but when we estimated the number  
14 of, you know, remaining properties that we  
15 expected them to work on and the work—I believe  
16 our estimate was pretty good with respect to what  
17 we got in terms of the bid.

18 CHAIRPERSON GENNARO: Okay. I just  
19 want to point out that, and I hope it works out,  
20 but it seems like a lot of work for \$500,000. But  
21 hopefully the City will get great value from this.

22 JAMES ROBERTS: I was hoping you  
23 were going to the point—we're hopeful that that  
24 value is there. You do have to realize, Mr.  
25 Chairman, it doesn't take a day to inspect a

1  
2 property to know whether it needs—some might take  
3 20 minutes, 15 minutes. The biggest part of the  
4 inspection really is getting the people out.

5 CHAIRPERSON GENNARO: Right.

6 JAMES ROBERTS: So by basically  
7 setting the work up where you can concentrate your  
8 resources in specific areas and go through it—

9 CHAIRPERSON GENNARO: [Interposing]  
10 I'm just thinking about many inspections,  
11 traveling there, getting access—is that going to  
12 happen? Like a lot of funny things happen on the  
13 way to getting a site looked at. But I just  
14 wanted to raise that and hopefully that will be  
15 sufficient to take care of it.

16 I just want to follow up on  
17 something Council Member Crowley asked with regard  
18 to people in the Cross-Connection Unit. She  
19 wanted to know whether the staff was sufficient to  
20 do that. My question is a little more direct; I  
21 want to know how many people work in the Cross-  
22 Connection Unit and, like, what their duties are.  
23 Are their duties just—

24 JAMES ROBERTS: [Interposing] Some  
25 are—

2 CHAIRPERSON GENNARO: --I mean give  
3 me--

4 JAMES ROBERTS: [Interposing] Some  
5 are administrative. Many of them are  
6 administrative. There are certain people who  
7 concentrate more of their time on cross-  
8 connections. There are some people that spend all  
9 of their time on cross-connections and there are  
10 some people--

11 CHAIRPERSON GENNARO: [Interposing]  
12 But it's called the Cross-Connection Unit, right?

13 JAMES ROBERTS: That's correct.

14 CHAIRPERSON GENNARO: Okay. And  
15 so--

16 JAMES ROBERTS: [Interposing] But--

17 CHAIRPERSON GENNARO: [Interposing]  
18 How many people work in that unit, administrators  
19 and soldiers?

20 JAMES ROBERTS: I'd have to look at  
21 the org chart, but it's somewhere on the order of  
22 10 to 20. And again, it depends; they're a subset  
23 of a larger group that does inspections and  
24 permitted type work. So I'm a little reluctant  
25 to, you know, pigeonhole specific people to

1  
2 specific tasks, because I don't think that's  
3 necessarily the best way to do it. We've been  
4 able to increase, frankly, the number of  
5 inspections. Before I took over we probably had a  
6 little over one time full equivalent; a little  
7 over one full time equivalent performing routine  
8 inspections. And now it's probably in or around  
9 four full time equivalents performing inspections.  
10 And that's by utilizing the resources that we have  
11 a little differently.

12 CHAIRPERSON GENNARO: Doesn't that  
13 seem a little light considering the scope of the  
14 problem, even though it's enhanced over what it  
15 was?

16 JAMES ROBERTS: I'm reluctant to  
17 categorize it as a problem, Council Member  
18 Gennaro.

19 CHAIRPERSON GENNARO: Okay.

20 JAMES ROBERTS: It's work I think  
21 we take seriously and I think we've demonstrated  
22 over these last two or three years, in particular,  
23 that we're serious about it and that we are  
24 moving, you know, we're doing pretty well against  
25 sort of the expectations of our regulators.

2 CHAIRPERSON GENNARO: Okay. Let me  
3 just move on to just something I just thought of  
4 while Liz was posing questions. How many  
5 significant cross-connection events happen where  
6 you do get the cross-connection, you do get the  
7 backflow, like something happens with regard to  
8 some cross-connection incident in our system every  
9 year? That's kind of like the first part of the  
10 question. And I'm also curious as to whether or  
11 not this is really something that can be known  
12 fully in that perhaps things like this happen, you  
13 have pressure differences, whatever, you do get a  
14 little bit of a backflow with regard to the cross-  
15 connection, something gets into the system, the  
16 pressure kind of resets itself and then the cross  
17 condition kind of goes away and then maybe no one  
18 knows it even happened; and maybe the substance  
19 that's backflowing into the water supply is not  
20 something hazardous, and it's not knowing. So, I  
21 guess, you know, two questions. To what extent is  
22 something like a cross-connection/backflow event,  
23 you know, really knowable and how many happen on  
24 an annual basis within our system?

25 JAMES ROBERTS: So I think the

1  
2 answer to the first part of the question you just  
3 posed is that I think you really touch on the key  
4 piece of it. Our water quality inspection program  
5 and our testing program is really the backbone of  
6 what we use to make sure that we're in a good  
7 place with regard to water quality. And in my  
8 tenure we've had the one incident in Southeast  
9 Queens where we had a-

10 CHAIRPERSON GENNARO: [Interposing]  
11 The carwash.

12 JAMES ROBERTS: The carwash, that's  
13 correct. And one other carwash in Brooklyn, both  
14 of which were detected immediately by the water  
15 quality people and both of which were addressed.  
16 So the water quality sampling and monitoring that  
17 we do is really the chief sort of barometer of  
18 whether there are problems in the system or not.  
19 And I'd add we're currently working on additional-  
20 I really don't know how freely I can speak about  
21 some of it-but we're currently working on  
22 additional measures to be doing more predictive  
23 and early warning type things in the nature of our  
24 work.

25 CHAIRPERSON GENNARO: If you could

2 just expand upon that a little bit? I don't  
3 really understand what you're getting at. I don't  
4 want you to give away trade secrets, but I don't  
5 know what you're getting at.

6 JAMES ROBERTS: I would just say  
7 that we're in the process now of looking at more  
8 science and technology that would certainly help  
9 us both in this area and any other areas in terms  
10 of water quality monitoring—

11 CHAIRPERSON GENNARO: [Interposing]  
12 Help with regard to? I mean help with regard to—  
13 kind of like a canary in a coalmine sort of thing?  
14 If something got into the water we would see it  
15 sooner kind of help?

16 JAMES ROBERTS: That's one way of  
17 looking at it.

18 CHAIRPERSON GENNARO: Or help in  
19 finding out which entities might really be in a  
20 position to release stuff in a backflow way into  
21 the system?

22 JAMES ROBERTS: I think the former.

23 CHAIRPERSON GENNARO: The former.  
24 Okay. And I'd be, you know, curious just to be  
25 informed informally by you as to more of what

2 you're talking about there. And I recognize that  
3 if you don't want to state that on the record you  
4 probably have a good reason not for doing so. And  
5 it may tie into something having to do with those  
6 who might intentionally try to compromise our  
7 system. I expect that it's in that realm, but you  
8 don't have to say anything.

9 JAMES ROBERTS: Yeah, we welcome  
10 the opportunity to talk.

11 CHAIRPERSON GENNARO: Right. With  
12 regard to the DEP Cross-Connection Control Task  
13 Force, that is the entity which includes the  
14 Plumbing Foundation and other entities, right?

15 JAMES ROBERTS: That's correct.  
16 And-

17 CHAIRPERSON GENNARO: [Interposing]  
18 And how often does that meet?

19 JAMES ROBERTS: They currently meet  
20 twice a year. I think they met this past summer  
21 and are scheduled for December.

22 CHAIRPERSON GENNARO: Okay. Let me  
23 just...

24 [Pause]

25 CHAIRPERSON GENNARO: Okay,

1  
2 Commissioner. The hour is late, mostly because I  
3 was late. I certainly appreciate your being here  
4 and your comprehensive but, as Oliver Koppell  
5 stated, hard to follow presentation. We're not in  
6 any way, shape or form relaxing our posture  
7 regarding this issue. We have to hear from the  
8 good people from the Plumbing Foundation and  
9 others who are here who are going to present  
10 testimony that I suspect not completely  
11 synchronous with what the Department has put  
12 forward. It would be great to the extent that you  
13 can leave high level staff behind to get the  
14 benefit of the plumbing foundation and other  
15 witnesses' views; that would be greatly  
16 appreciated. And I look forward to further  
17 discussion on Intro 935, how we can make that  
18 better and how we could work together to  
19 accomplish what we all realize is a very important  
20 goal, made no less important by the decades that  
21 elapsed from when it was first conceived of to  
22 now. So I want to work with you on that and on  
23 935. I appreciate you being here today and thank  
24 you.

25 JAMES ROBERTS: Mr. Chairman, thank

2 you very much and we look forward to it.

3 CHAIRPERSON GENNARO: Oh yes. And  
4 Counsel to the Committee is very interested in the  
5 brochure for the record, we'd like to have that as  
6 part of the body of materials for today's hearing.  
7 And the Sergeant is going to take that from you,  
8 otherwise he's not going to—yeah. Okay. Great.  
9 Thank you, Jim. I appreciate it.

10 [Pause]

11 CHAIRPERSON GENNARO: Okay. And  
12 the next—

13 [Pause]

14 CHAIRPERSON GENNARO: We were  
15 thinking that perhaps the next witnesses, we would  
16 do a panel. Hopefully that makes sense for  
17 everybody. Does that make sense for everybody?  
18 Okay. And so we have a couple of slips here.  
19 Stewart O'Brian, of course from the Plumbing  
20 Foundation for the City of New York. I thank you  
21 Stewart for your advocacy on part of this  
22 important issue. William Connors from Lilker  
23 Associates, representing the American Society of  
24 Plumbing Engineers. Daniel, it looks like  
25 Lucarelli—I hope I'm saying that correctly—

1 Plumbers Local Union 1. Kenneth Klein,  
2 representing the American Society of Sanitary  
3 Engineers. So that should be...

4 STEWART O'BRIEN: Mr. Chairman?

5 CHAIRPERSON GENNARO: Oh. Sure,  
6 Stewart, go ahead.

7 STEWART O'BRIEN: I'll just wait  
8 for Ken to sit down. Mr. Chairman, My name is  
9 Stewart O'Brien-

10 CHAIRPERSON GENNARO: [Interposing]  
11 Oh, you know what we're going to do, Stewart? Why  
12 don't we just swear in the panel, like we did with  
13 Jim and then we'll proceed and we'll give you  
14 first up, Stew, on your presentation.

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

19 UNISON: Yes.

20 CHAIRPERSON GENNARO: Thank you  
21 Stew. And at the outset I really want to thank  
22 you and this panel for giving voice to this issue  
23 in a very special way. We certainly appreciate  
24 your vigilance, because your vigilance is  
25

2 ultimately going to result in the inventory of all  
3 these properties, ultimately, finally to be  
4 assessed. And, oh. Is Rick still here? Oh,  
5 fine. I just wanted to make sure DEP was still in  
6 the room. And so I thank you, Stew. And without  
7 further ado I ask you to make your statement and  
8 present your good testimony. And do I have a copy  
9 of your statement?

10 STEWART O'BRIEN: Yes, it was  
11 handed in earlier.

12 CHAIRPERSON GENNARO: Oh, I got it.

13 STEWART O'BRIEN: Mr. Chairman,  
14 before I make my opening statement I just want to  
15 make two comments on Commissioner Roberts's  
16 testimony.

17 CHAIRPERSON GENNARO: Certainly.

18 STEWART O'BRIEN: If you look at  
19 his statistics in there, that there are some  
20 numbers in there that are somewhat misleading, not  
21 intentionally so, but for a reader that hasn't  
22 seen or understands this stuff, it could be a  
23 little misleading.

24 When you stalk about installations,  
25 how many backflow devices that have been installed

1  
2 and filed at DEP, you've got to break them down  
3 into existing buildings that have been there  
4 forever, right, and new installations. If it's a  
5 new installation, a new building, one that's going  
6 up across the street, that device is installed and  
7 filed in DEP and nobody did anything about it.  
8 That's not in the 22,000 high hazard universe  
9 which is in existing buildings. So when you talk  
10 about, oh, 5,000 devices got installed in 2007,  
11 it's somewhat misleading because 90% of that is  
12 involved with new construction, which as to do it  
13 because you can't get a C of O.

14 CHAIRPERSON GENNARO: Right.

15 STEWART O'BRIEN: Secondly, in  
16 response to Council Member Crowley's question, DEP  
17 Commissioner Roberts offered to come up with some  
18 statistics on compliance on locations where they  
19 went out, inspected it and said on some of them  
20 doesn't need it but on the ones that do need it,  
21 what happened. That doesn't have to be done. DEP  
22 issued its own report in October of 2008, and  
23 these are the numbers from their own report.  
24 These are from the high hazard universe, the  
25 22,000. At that time, this is October of '08,

2 they inspected 10,179. Of that number, devices  
3 that had the devices, 2,209, leaving a balance of  
4 7,970. Right?

5 CHAIRPERSON GENNARO: Okay. It was  
6 ten and change and of those ten and change?

7 STEWART O'BRIEN: 2,200 had the  
8 device installed.

9 CHAIRPERSON GENNARO: Had them  
10 already.

11 STEWART O'BRIEN: Right.

12 CHAIRPERSON GENNARO: Okay. Got it.

13 STEWART O'BRIEN: So your balance  
14 is 7,900.

15 CHAIRPERSON GENNARO: Right.

16 STEWART O'BRIEN: Of those, 4,200-  
17 4,300 actually-didn't need the device. God bless  
18 them.

19 CHAIRPERSON GENNARO: Right.

20 STEWART O'BRIEN: They were  
21 inspected, didn't need it, which leaves a balance  
22 of essentially 3,700 that they inspected, said,  
23 yeah, it does need a device and didn't have a  
24 device.

25 CHAIRPERSON GENNARO: Right.

2 STEWART O'BRIEN: And of those  
3 3,700 they gave 661 violations, which leaves the  
4 question of, what did you do with the other 3,100.  
5 Not these inspections—oh, the universe may be  
6 wrong because they didn't really need a device.  
7 These are the ones where you confirmed had to have  
8 a device.

9 CHAIRPERSON GENNARO: Right.

10 STEWART O'BRIEN: And no violation  
11 was issued.

12 CHAIRPERSON GENNARO: Is it  
13 possible, I'm just kind of speculating because I  
14 don't know, is it possible for those that didn't  
15 have them and needed them that they were presented  
16 with some sort of timeline by which they were  
17 supposed to get it installed, and if they failed  
18 to do that they got a violation? Is that  
19 possible?

20 STEWART O'BRIEN: It is quite  
21 possible. My only comment on that is on a law  
22 that took effect in 1981, I mean how many bites of  
23 the apple are you going to give people? But let's  
24 not dither on that because I know we're under time  
25 constraint.

2 CHAIRPERSON GENNARO: Sure.

3 STEWART O'BRIEN: I just wanted to  
4 make those comments before I get into my very  
5 short testimony.

6 CHAIRPERSON GENNARO: Okay.

7 STEWART O'BRIEN: My name is  
8 Stewart O'Brien. I'm the Executive Director of  
9 the Plumbing Foundation of the City of New York.  
10 Our system of government, with its appropriately  
11 balanced separation of powers, works very well.  
12 The legislative branch makes the law and the  
13 executive branch enforces it. And while the  
14 legislative branch might provide oversight over  
15 the executive branch functions, agencies should  
16 not be required to directly report their  
17 performance to the legislative branch except in  
18 rare and compelling instances. This is one such  
19 instance.

20 For decades DEP has repeatedly  
21 failed to enforce a Health law that is routinely  
22 and effectively enforced outside of New York City.  
23 And my other colleagues at the table will talk to  
24 you about how this law, this same law, is enforced  
25 in Nassau and Westchester. They don't have these

1  
2 problems there; but I'll let them talk to you  
3 about that. Commissioner after Commissioner  
4 repeatedly promised that DEP would complete the  
5 inspection of the 22,000 high hazard buildings it  
6 designated as requiring backflow devices and then  
7 repeatedly failed to achieve those promises.

8           Skipping over DEP's failure to  
9 enforce this important health law in the 1980s and  
10 1990s, let's enter the 21<sup>st</sup> century. DEP's own  
11 2000 report on this subject indicated that the  
12 inspection of the high hazard universe of 22,000  
13 buildings would be complete by May of 2005. It  
14 failed to keep that promise. If anybody would  
15 like a chronological list, I think the Chair has  
16 already done that, but we have more documents and  
17 we have charts if you want to see that.

18           DEP's track record was so poor and  
19 was so unresponsive to this Council's formal and  
20 informal requests for information on this subject  
21 that this Committee had to have an oversight  
22 hearing on June 11<sup>th</sup>, 2008. At that hearing, DEP  
23 acknowledged that 13,000 of the 22,000 high hazard  
24 buildings had still not yet been inspected. And  
25 then made another promise, another promise.

1  
2 Within one year, actually it was 18 months, they  
3 Commissioner said within 18 months, the remaining  
4 uninspected buildings, the 13,000 would be  
5 inspected by utilizing a private vendor under an  
6 RFP that DEP was developing. It's now November of  
7 2009 and you heard from DEP once again, oh,  
8 they're going to start that contract in January of  
9 2010 and not complete it in 2011. To me and to  
10 the filing community and to the Citizens of New  
11 York, that's another broken promise made at this  
12 table to you guys. It was supposed to have been  
13 done already. Another broken promise based in  
14 this 1981 law.

15 Perhaps even more troubling is that  
16 this poor performance is in the most dangerous  
17 universe, the high hazard buildings. There are  
18 tens of thousands of other buildings that are  
19 required to comply with this health law. DEP's  
20 enforcement efforts in these buildings are  
21 undoubtedly even lower. If it's so bad on the  
22 high hazard buildings, what about the tens of  
23 thousands in the non-high hazard universe? There  
24 comes a time when agency promises can no longer be  
25 relied upon and the Council must force an agency

1  
2 to report on its compliance efforts on an  
3 important health law. This is why the Council  
4 should pass Intro 935, which requires DEP to  
5 submit a semi-annual report to this City Council  
6 on its efforts to enforce this backflow law. Now  
7 I'll turn it over if you don't mind, Mr. Chairman--

8 CHAIRPERSON GENNARO: [Interposing]  
9 Of course, sure.

10 STEWART O'BRIEN: --to John Murphy,  
11 who is the Financial Secretary of Local 1.

12 JOHN MURPHY: Good afternoon  
13 Chairman Gennaro, members of the Committee on  
14 Environmental Protection. My name is John Murphy;  
15 I'm the Financial Secretary Treasurer of Plumbers  
16 Local 1, but I am here reading the testimony of  
17 Business Agent Daniel Lucarelli, who had a family  
18 commitment and had to leave.

19 I'm appearing before you today to  
20 express our strong support of the legislation  
21 under consideration, Intro 935.

22 CHAIRPERSON GENNARO: If I could,  
23 I'm sorry, I just want to get--and you're speaking  
24 on behalf of Daniel, right?

25 JOHN MURPHY: Business Agent Daniel

1  
2 Lucarelli.

3 CHAIRPERSON GENNARO: Okay. And  
4 your name again, sir?

5 JOHN MURPHY: My name is John  
6 Murphy.

7 CHAIRPERSON GENNARO: Okay.

8 JOHN MURPHY: And I am the  
9 Financial Secretary Treasurer of Local 1.

10 CHAIRPERSON GENNARO: Okay. Say hi  
11 to George for me.

12 JOHN MURPHY: Sorry?

13 CHAIRPERSON GENNARO: I said say hi  
14 to George for me.

15 JOHN MURPHY: I will. I surely  
16 will. I'm appearing before you today to express  
17 our support of the legislation under  
18 consideration, Intro 935. As this Committee  
19 determined from its oversight hearing on June 11<sup>th</sup>,  
20 2008, the potential for cross-contamination of  
21 potable water supply in the City of New York poses  
22 a very real and significant safety hazard, which  
23 while not always readily ascertainable after  
24 cross-contamination occurs, can be ameliorated by  
25 unburdensome preventive measures. This

1  
2 legislation does just that. Specifically this  
3 legislation will make it incumbent upon licensed  
4 plumbers and master plumbers to report any  
5 discovered or identified existences of cross-  
6 connections between potable water and non-potable  
7 substance piping systems to the New York City  
8 Department of Environmental Protection, owners and  
9 operators of buildings to correct backflows or  
10 back siphonages of hazardous materials into  
11 potable water supply, when identified and  
12 certified the problem has been cured through the  
13 installation of a preventive device, and the DEP  
14 to submit semi-annual reports outlining the number  
15 of prevention devices installed and the number of  
16 buildings that require such devices.

17 Even though section 5-1.31 of the  
18 New York State Sanitary Code requires that  
19 suppliers of water protect their water supplies by  
20 preventing backflows of harmful materials, for  
21 nearly three decades despite various reports,  
22 surveys and data acknowledging that thousands of  
23 buildings across the City may be at risk for  
24 backflow of hazardous materials, the DEP has only  
25 met the minimum requirements of State law. Thus

1  
2 this is not a case of duplicitous legislation,  
3 rather the legislation would assist in affecting  
4 the goals of the State law by setting out  
5 guidelines for the DEP to ensure compliance,  
6 providing it with the information about known  
7 instances of cross-connections and allowing the  
8 City Council to continually and regularly monitor  
9 the DEP's progress.

10 Local 1, as the representative of  
11 licensed plumbers and master plumbers, is  
12 certainly aware that this legislation would  
13 propose disclosure requirements on its members.  
14 Despite this added responsibility, the Union and  
15 its members welcome this legislation as a  
16 proactive means to ensure a reliable and safe  
17 supply of potable water for New York City. We  
18 thank the Committee for holding this hearing and  
19 we urge its members to approve the legislation  
20 currently under consideration.

21 CHAIRPERSON GENNARO: Thank you.  
22 Thank you very much, Mr. Murphy and I'm certainly  
23 grateful for Local 1's advocacy, particularly when  
24 it's going to, as you say in the statement, going  
25 to require your own members to make reporting.

2 And so always very much appreciating interacting  
3 with the good folks of Local 1 in any way I can.

4 And thank you very much for your statement. And  
5 who wishes to be next? We have—I have a slip for  
6 Kenneth Klein and there was one other slip that I  
7 had.

8 KENNETH KLEIN: That's me.

9 CHAIRPERSON GENNARO: Okay, Mr.

10 Klein.

11 KENNETH KLEIN: I'm going to read a  
12 brief statement—

13 CHAIRPERSON GENNARO: [Interposing]

14 Okay.

15 KENNETH KLEIN: Which I think you  
16 have a copy of.

17 CHAIRPERSON GENNARO: Let me just  
18 see, Mr. Klein. I should have it right up here.  
19 Oh. That's my statement. Do I have a statement  
20 for Mr. Klein? Okay. Thank you. Mr. Klein,  
21 we're all set.

22 KENNETH KLEIN: Good afternoon. My  
23 name is Kenneth Klein. I'm a registered  
24 Professional Engineer in the State of New York  
25 with over 50 years of experience. I've been

involved-

CHAIRPERSON GENNARO: [Interposing]  
50 years of experience?

KENNETH KLEIN: Yeah, believe it or  
not.

CHAIRPERSON GENNARO: I remind you  
that you're under oath.

KENNETH KLEIN: I graduated in  
1960, so.

CHAIRPERSON GENNARO: All right.

KENNETH KLEIN: So it's almost.

CHAIRPERSON GENNARO: Mazel Tov.

KENNETH KLEIN: Thank you. I've  
been involved with the New York City Backflow  
Program for over 20 years. In 1990 I was  
instrumental in writing the Backflow Prevention  
Device Bill signed into law by Governor Cuomo in  
1990. From 2003 to 2007 I was a member of the  
Plumbing Subcommittee that wrote the New York City  
Plumbing Code, the 2008 Plumbing Code. Presently  
I'm a member of Department of Buildings Plumbing  
Operations Committee. I was a member of the DEP  
Backflow Committee in 1990 when DEP themselves  
identified the 22,765 hazardous facilities.

1  
2 To date DEP's compliance rate is  
3 under 30%, which is totally unacceptable and is  
4 putting the public at risk for a major event. The  
5 DEP is dragging its feet on the issue of  
6 compliance. To ensure accountability by DEP, I  
7 urge you to pass the local law requiring DEP to  
8 submit a report to Council outlining their  
9 activities relating to backflow prevention. As  
10 Stew O'Brien said, the DEP is only talking about  
11 their hazardous facilities, though the  
12 Commissioner did talk about the other  
13 aesthetically objectionable, which they're not  
14 even dealing with at the moment.

15 Also, many municipalities, Nassau  
16 County, Suffolk County, Westchester County,  
17 require every commercial building to put a reduced  
18 pressure zone backflow device on their domestic  
19 service, no matter what business is in that  
20 commercial establishment. It could be a card shop  
21 or it could be a printing—because they have found  
22 that you can have a business that doesn't require  
23 something, that business moves out and something  
24 else moves in without doing any renovation and can  
25 put the public water supply at risk. So that's

1  
2 how these other municipalities are dealing with  
3 that situation.

4           The Commissioner also spoke about  
5 hoping to get the engineering community more into  
6 the self-certification process. Part of that  
7 problem is that DEP themselves issues internal  
8 memos and changes their criteria from time to  
9 time, which if the engineers design towards what  
10 they thought was the correct understanding and  
11 they miss something by an internal memo and then  
12 were audited, their license is on the line. So  
13 it's much easier to submit it to DEP and let them  
14 review it; and that is the reason why that is not  
15 being accepted by the engineering community.

16           CHAIRPERSON GENNARO: Oh, because—  
17 you know what, let me follow up with questions and  
18 comments on all the witnesses after all the  
19 statement has been read. But I want to come back  
20 to that. I'm going to make a note. Okay. Mr.  
21 Klein, does that conclude your statement?

22           KENNETH KLEIN: Yes.

23           CHAIRPERSON GENNARO: Thank you.  
24 Thank you, Mr. Klein. And, the fourth witness I  
25 do not have a slip suddenly. Oh, William Connors,

2 right?

3 WILLIAM CONNORS: That's correct.

4 CHAIRPERSON GENNARO: Okay. Do you  
5 have a prepared statement, Mr. Connors?

6 WILLIAM CONNORS: I do. We  
7 submitted it before.

8 CHAIRPERSON GENNARO: Do we have a  
9 statement for Mr. Connors? This has been a very  
10 challenging day for me with regard to statements.  
11 I didn't have my own statement, when I had it, it  
12 wasn't complete. And then... Something with regard  
13 to my horoscope, my horoscope for today is having  
14 difficulty getting statements. Okay. I have it  
15 now. Okay. Sorry about that. And Mr. Connors,  
16 please continue.

17 WILLIAM CONNORS: Thank you, Mr.  
18 Chairman, members of the Committee. I'm a  
19 registered engineer in the State of New York. I  
20 started my working as a consulting engineer 20  
21 years ago, working in my family's business on Long  
22 Island. At that time, the requirement to install  
23 backflow preventers was relatively new. Both  
24 Nassau and Suffolk Counties were very strict and  
25 very aggressive about enforcement of the

1  
2 regulations and installation of the devices. I  
3 personally think that Suffolk was a little more  
4 strict than Nassau, but you know.

5 CHAIRPERSON GENNARO: Well with  
6 Suffolk, as I understand it, Suffolk County is the  
7 provider of water, whereas in Nassau County it's  
8 just like a hodgepodge of these, like, private  
9 providers.

10 WILLIAM CONNORS: That's true.

11 CHAIRPERSON GENNARO: I think the  
12 Suffolk County Water Authority does the whole  
13 county, right? Whoever gets municipal water?  
14 Okay. Maybe that's the difference.

15 WILLIAM CONNORS: Regardless, the  
16 building owners knew that they had to either  
17 comply with the regulations or they would face  
18 stiff penalties. An at first the backflow  
19 preventers were really a big deal. There was a  
20 lot of confusion and people had to adjust to the  
21 requirements. But now, the installation of  
22 backflow preventers is such a standard practice  
23 people understand the requirements and they've  
24 accepted the devices as just another part of the  
25 water service.

2 It's hard to believe that 20 years  
3 later we're still talking about backflow preventer  
4 installations. When you consider the risk that a  
5 hazardous facility poses to the water supply and  
6 the damage that a cross-connection can do, then  
7 you can understand why jurisdictions like Nassau  
8 and especially Suffolk Counties were so aggressive  
9 and why these counties have backflow prevention  
10 devices installed on nearly every hazardous  
11 connection.

12 Unfortunately New York City can't  
13 make that same claim. The fact is that many of  
14 the most hazardous facilities in New York do not  
15 have backflow prevention devices, and this is a  
16 condition that is polluting our water each and  
17 every day.

18 The New York City Department of  
19 Environmental Protection is the custodian of the  
20 public water supply. They're responsible for  
21 keeping the water safe for all the people in New  
22 York. And you have to ask yourself, why are so  
23 many facilities in New York allowed to continue  
24 without basic backflow prevention? Or better yet,  
25 we can ask the DEP why. Why are these facilities

2 allowed to continue to pollute our water and what  
3 are they going to do about it?

4 The City Council must hold the DEP  
5 to task, have them explain what they have done and  
6 what they are going to do to protect our water.  
7 Thank you.

8 CHAIRPERSON GENNARO: Thank you.  
9 And thank you, Mr. Connors. Thanks for being  
10 here. Where is your family's business on Long  
11 Island? Where is that?

12 WILLIAM CONNORS: We were  
13 originally in Syosset.

14 CHAIRPERSON GENNARO: Syosset.  
15 Okay. Are you still on Long Island?

16 WILLIAM CONNORS: I live on Long  
17 Island but I work here in the City.

18 CHAIRPERSON GENNARO: Oh, I see.

19 WILLIAM CONNORS: My father has  
20 since passed away.

21 CHAIRPERSON GENNARO: Oh. I'm  
22 sorry. Mine too. Let me go to Mr. Klein's  
23 statement, although Mr. Connors touched on this as  
24 well. With regard to what they did in Nassau and  
25 Suffolk, so Nassau and Suffolk based on your

1  
2 statements have took it upon themselves as local  
3 jurisdictions to do local laws above and beyond  
4 that which was proposed by the state. Is that  
5 correct? And just make sure you talk right into  
6 the microphone.

7 KENNETH KLEIN: Yes. Basically  
8 that's true. This whole thing started in '81 by  
9 the Federal government in the Clear Water Act,  
10 mandating that the purveyors of the public water  
11 supply do what is necessary to protect their water  
12 supply-

13 CHAIRPERSON GENNARO: [Interposing]  
14 Right and just to kind of follow along, the  
15 responsibility for the day-to-day implementation  
16 of that federal mandate was devolved to the State  
17 and the State issued guidelines-

18 KENNETH KLEIN: [Interposing]  
19 Correct.

20 CHAIRPERSON GENNARO: --in 1981 to  
21 enforce the federal mandate, right?

22 KENNETH KLEIN: Correct.

23 CHAIRPERSON GENNARO: Okay. And so  
24 the federal government acted, the State acted as  
25 an agent for the federal government in doing that,

2 and then, Mr. Klein, in 1990, I was not aware of  
3 this, that the State did this Backflow Prevention  
4 Device Bill, signed by Governor Cuomo in 1990.

5 What did that do that was different?

6 KENNETH KLEIN: That pertained to  
7 the testing of these devices and who could test  
8 them.

9 CHAIRPERSON GENNARO: Oh, I see.

10 KENNETH KLEIN: And that bill, New  
11 York City in that bill, the testing had to be done  
12 by a certified tester who was either a licensed  
13 master plumber or in the employ of a licensed  
14 master plumber.

15 CHAIRPERSON GENNARO: Okay. So  
16 this is sort of like further clarification on who  
17 could do this type of thing.

18 KENNETH KLEIN: That's correct.

19 CHAIRPERSON GENNARO: Okay, fine.  
20 But, it is the case that Nassau and Suffolk have  
21 chosen to go beyond that which is mandated by the  
22 federal government through the State and have  
23 chosen to act as, you know, local governments that  
24 have passed laws to—

25 KENNETH KLEIN: [Interposing]

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25

That's correct.

CHAIRPERSON GENNARO: --go beyond that which is required.

KENNETH KLEIN: To go beyond. That way they totally ensure that there is no possible backflow into their public system.

CHAIRPERSON GENNARO: Right.

KENNETH KLEIN: Because this way every commercial building has to have it, period.

CHAIRPERSON GENNARO: Why don't we do a bill like that? I'm just sort of like-

KENNETH KLEIN: [Interposing] I'd love to see that.

CHAIRPERSON GENNARO: --asking.

[Pause]

CHAIRPERSON GENNARO: I'm just having a little tactical sidebar with Counsel here.

[Pause]

CHAIRPERSON GENNARO: Okay. I'm listening to my lawyer. But on the record I'm prepared to say that the prospect of a bill like that has peaked my curiosity, although we don't want to take the focus of Intro 935 and what we're

1  
2 trying to do here, but having a hearing is all  
3 about getting good feedback and getting good ideas  
4 and that is one I wanted to probe a little bit  
5 about what Nassau and Suffolk and presumably  
6 Westchester also is doing something like that?

7 KENNETH KLEIN: Yeah, yeah. That's  
8 correct.

9 CHAIRPERSON GENNARO: Okay. And  
10 the reasoning being that they use groundwater and  
11 groundwater is subject to widespread contamination  
12 if there's a backflow. Perhaps—

13 KENNETH KLEIN: [Interposing] No,  
14 no I don't think that that's the real reason.

15 CHAIRPERSON GENNARO: Okay.

16 KENNETH KLEIN: But the important  
17 thing I think we have to focus on, on this  
18 legislation, because it's 20 years in coming—

19 CHAIRPERSON GENNARO: [Interposing]  
20 Right.

21 KENNETH KLEIN: And we've seen very  
22 little, if any, progress.

23 CHAIRPERSON GENNARO: Now perhaps  
24 some of the people on the panel can give me some  
25 sense as to why the Department of Health, you

1  
2 know, seemingly has a fairly relaxed posture in  
3 this regard and is, you know, looking upon DEP as  
4 an entity that's 28 years down the road from the  
5 rules being issued still very non-compliant. But  
6 DOH just puts in place these very easy to meet  
7 targets and milestones. Is there anyone on the  
8 panel that has any insight into why the state DOH,  
9 which has been given the responsibility to carry  
10 this out on behalf of the federal government, has  
11 such a relaxed posture on this?

12 STEWART O'BRIEN: You know, it's  
13 difficult to read into somebody else's mind. But  
14 you know, coming from government I know that it is  
15 difficult for one branch of government to sort of  
16 criticize a fellow branch of government--

17 CHAIRPERSON GENNARO: [Interposing]  
18 But the State's not shy about beating up the City  
19 for other things that it's not compliant with. If  
20 the State has a hankering to like, you know, give  
21 the City a hard time, they seemingly relish that.

22 STEWART O'BRIEN: That may be, but  
23 I believe in this case the State is basically  
24 saying, this is your issue. And we've contacted  
25 the State Department of Health--

2 CHAIRPERSON GENNARO: [Interposing]  
3 I see.

4 STEWART O'BRIEN: --and said,  
5 listen, the compliance levels in New York City are  
6 so low. And they didn't seem very interested at  
7 all in getting involved. And it's like this is a  
8 New York City issue, because compliance is pretty  
9 good, it's very high--it's not an issue, you've  
10 heard the other people testify--in the outlying  
11 jurisdictions. And we didn't check Chemung  
12 County, but I'm sure they're pretty good there.

13 CHAIRPERSON GENNARO: Right.

14 STEWART O'BRIEN: And so, I think  
15 the option before the Council, obviously is you  
16 sort of have to go it alone. It would be nice if  
17 you didn't have to do this, but given the 28 year  
18 track record, it looks like you're going to have  
19 to do this one alone.

20 CHAIRPERSON GENNARO: Right. Well,  
21 and we don't shrink from that. And the reason why  
22 we're on the precipice of just doing this bill is  
23 because after 28 years of waiting and after the,  
24 you know, State regulator having a relaxed posture  
25 on this and DEP--I don't want to speak for them--you

1  
2 know, getting hit from many sides on all kinds of  
3 regulatory matters from the State, from the  
4 federal government, from evolving, you know,  
5 standards for what can and can't be in the water  
6 supply with regard to disinfection byproducts and  
7 this that and the other thing. And they have a  
8 federal monitor who, I don't know, is still  
9 directly involved with DEP with regard to their  
10 health and safety program. They have regulators  
11 of every shape and size, you know, bearing down  
12 upon them. And I think the mindset that's out  
13 there, let's prioritize that which is—that we're  
14 getting beat up the most from these various State  
15 and federal regulators. And so, if that's the  
16 case, then the Council, so to speak, in its  
17 reporting has to essentially become one of those  
18 regulators and say, we want a report and we want  
19 to see it and where is it and what are you doing.

20 And so from that perspective, I  
21 think this bill makes sense to do so that we—not  
22 that we want to overburden DEP and take away from  
23 a lot of the good work they have to do, but at the  
24 end of the day we need this to be done. And  
25 wouldn't it be great if we were to do this law and

1  
2 DEP got into such a rhythm of compliance with  
3 regard to backflow that, you know, someday we  
4 could just repeal it and it can go away. Not that  
5 I'm offering that. I'm not offering the repeal  
6 before it's passed.

7 STEWART O'BRIEN: That would be  
8 great, Chairman.

9 CHAIRPERSON GENNARO: And so what  
10 we're really seeking is to figure out a way to get  
11 this done, to get this reported, to, you know,  
12 have the appropriate amount of daylight, you know,  
13 shined on this process so that people can fully  
14 understand the, you know, risks of not doing it  
15 and the benefit of doing it. And understand it in  
16 such a way that it's not, you know, woven into a  
17 blizzard of statistic that is hard to parse, which  
18 is what his statement was like—not deliberately,  
19 but, you know, a complicated issue with all sorts  
20 of numbers flying around. And so, I think that  
21 what transpired here today makes me want to more  
22 than ever get this done so we can bring, like, a  
23 proper amount of focus on this very important  
24 issue, get this done and keep up with the Joneses  
25 in our neighboring counties.

2 STEWART O'BRIEN: For the safety of  
3 New Yorkers it seems to, I think, all of us if I'm  
4 living in New York City I wouldn't expect any less  
5 protection than my fellow New York State Citizens  
6 in Nassau, Suffolk or Westchester.

7 And just one last comment is there  
8 was talk about, well, we don't want to do this  
9 twice a year report to the City Council because of  
10 the burden of it. I mean, you heard 13 pages of  
11 testimony this afternoon, putting the numbers  
12 together. The issue is going to be the Council  
13 has laid out very simply the statistics they want  
14 twice a year from DEP that sort of tracks how many  
15 buildings are in the universe--

16 CHAIRPERSON GENNARO: [Interposing]  
17 Right.

18 STEWART O'BRIEN: --how many do you  
19 need to inspect. The layout that I think Council  
20 Member Crowley went through--

21 CHAIRPERSON GENNARO: [Interposing]  
22 Right.

23 STEWART O'BRIEN: --that is very  
24 clear, very simple, not confusing, do it twice a  
25 year. They spent more time preparing the

2 testimony and all those numbers today—

3 CHAIRPERSON GENNARO: [Interposing]

4 Sure.

5 STEWART O'BRIEN: --than it takes  
6 to do that report. So I don't see the  
7 administrative burden on a City agency, and  
8 frankly, as I said at the beginning of my  
9 testimony, we do not recommend that this be a  
10 regular practice, but after a 28-year history of  
11 broken promises and dragging the feet, there comes  
12 a time when you've got to put the feet to the  
13 fire.

14 CHAIRPERSON GENNARO: Certainly.

15 And I would posit that if it is difficult for the  
16 Agency to compile this data, that in and of itself  
17 is an indicator of a problem. It should not be  
18 difficult to compile this information and report  
19 it. And so, with that let me just have one more  
20 little sidebar with staff.

21 [Pause]

22 CHAIRPERSON GENNARO: Okay.

23 Counsel has asked me to ask whether or not DEP's  
24 portrayal of the number of times that the Cross  
25 Committee Task Force meets—does it happen on a

1  
2 regular basis? Are these meetings significant?  
3 Are they taken seriously? If you could describe  
4 the, you know, nature of the Cross-Connection Task  
5 Force, how frequently it meets and DEP's  
6 participation in it. I'd be grateful for that.

7 KENNETH KLEIN: I can say that we  
8 haven't had a taskforce meeting since I believe it  
9 was 2007. At that time we did have fairly regular  
10 taskforce meetings. We have not had a meeting  
11 like that for over a year and a half, at least.

12 CHAIRPERSON GENNARO: Okay. Well  
13 the Commissioner was then mistaken when he  
14 indicated one happened this summer.

15 KENNETH KLEIN: We had a meeting at  
16 DEP this summer, but it was not a task force  
17 meeting. It was just a general meeting; it was  
18 not made up of the task force members.

19 CHAIRPERSON GENNARO: Okay.

20 KENNETH KLEIN: It was just a  
21 general meeting.

22 CHAIRPERSON GENNARO: And the task  
23 force was empanelled pursuant to what again? Like  
24 why did the task force come into existence and who  
25 made it come into existence?

2 STEWART O'BRIEN: Actually at the  
3 Foundation's request in 1998 we asked Commissioner  
4 Mealy, who was Commissioner at the time--

5 CHAIRPERSON GENNARO: [Interposing]  
6 Right.

7 STEWART O'BRIEN: --to put this  
8 together. And the Commissioner brought a group of  
9 interested parties together--

10 CHAIRPERSON GENNARO: [Interposing]  
11 Right.

12 STEWART O'BRIEN: --and they  
13 started meeting, which ultimately resulted in that  
14 2000 DEP report from their Chief Engineer.

15 CHAIRPERSON GENNARO: Right. So  
16 this task force meets pursuant to Commissioner  
17 Mealy's decree that it should meet. And now  
18 it's...?

19 STEWART O'BRIEN: It's sort of  
20 fallen on the wayside as Mr. Klein stated, that  
21 there are meeting at DEP that deal with--oh, let's  
22 have a meeting at DEP, we'll deal with all sorts  
23 of issues and there may be a slight discussion of  
24 cross-connection under some new procedure, and  
25 maybe Commissioner Roberts may be referring to

1  
2 that, but there has been no formal meeting of the  
3 Cross-Connection Committee that used to meet I  
4 think every two months, for at least two years.

5 CHAIRPERSON GENNARO: Every-not  
6 every two months but every-semi-annually, wasn't  
7 that it?

8 STEWART O'BRIEN: No. Initially it  
9 was meeting every two months.

10 KENNETH KLEIN: Every two to three  
11 months at the very most a three-month span. But  
12 it was, I believe, every two months that we did  
13 meet.

14 CHAIRPERSON GENNARO: Oh, I see.  
15 Is there any history or any documentation that was  
16 issued by, you know, Commissioner Mealy as to the  
17 creation of this Task Force that, you know, laid  
18 out who the members were and so on?

19 STEWART O'BRIEN: We can dig that  
20 out for you. We're pretty good with keeping  
21 records.

22 CHAIRPERSON GENNARO: Yeah. So  
23 what I'd like to do--this bill. Why don't we do  
24 this? Why don't we make a request of Acting  
25 Commissioner Lawitts to officially reconstitute,

1  
2 if you will, or like rededicate or reenact—I'm  
3 searching for a word here—this Cross-Connection  
4 Committee and mandate that it resume. And Bill,  
5 just research it and talk to Stew and find out  
6 whether it should be, you know, quarterly or, you  
7 know, whatever seems to make sense and whatever is  
8 consistent with what was originally provided for  
9 by then Commissioner Mealy.

10 STEWART O'BRIEN: Mr. Chair, as a  
11 matter of fact I have in my hand, as they say, the  
12 letter from Commissioner Mealy to Chairman Spigner  
13 of the Housing and Buildings Committee from July  
14 1999, which lays out that he had established a  
15 Cross-Connection Control Task Force and he laid  
16 out the representatives that DEP appointed to that  
17 task force in 1999. So as I said before, we're  
18 pretty good at record keeping, so we have a pretty  
19 good track record.

20 CHAIRPERSON GENNARO: Okay. And  
21 so, Bill, and now Bill, this is all on the record,  
22 like what I'm saying to you. People can look up  
23 like 100 years from now, like what I'm asking you  
24 to do and whatnot. You did it. And, you know,  
25 work with Stew to figure out whether or not we

1  
2 should call upon the Commissioner to reconstitute  
3 it, like, as it is with the same members or, you  
4 know, whatever seems to make sense we should call  
5 for. Because presumably those entities that were  
6 represented on it are still available and they're  
7 still interested in carrying on the work of this  
8 Committee, and so we could—that will be one more  
9 positive outcome that we can bring to this  
10 process. Because it's not just doing 935, we have  
11 to do whatever we can possibly do to make sure  
12 that this happens. And it would be good for the  
13 cause if the Acting Commissioner actually set this  
14 in stone, so to speak and would, you know, mandate  
15 that this actually happens on some recurring and  
16 frequent basis. Thank you for that, Samara.

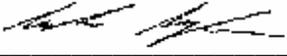
17                   Okay, so we're more, as I've said,  
18 I'm more determined than ever to try to get this  
19 done and greatly appreciative of this panel for  
20 its advocacy and its patience. And I'm going to  
21 do whatever I can to get 935 passed by talking to  
22 the leadership of the Council and to the, you  
23 know, folks at the Mayor's office who I suspect  
24 will be, or it certainly is my hope that they will  
25 be receptive after all these years of doing some

1  
2 simple commonsense measure to make sure that, you  
3 know, DEP gets this tied up once and for all and  
4 keeps it tied up going forward.

5           And with that said, I'd like to  
6 thank everyone for being here, to make an apology  
7 once again for being late. And as in keeping with  
8 the tradition of this Committee, we make special  
9 mention at the end of the Committee of a word that  
10 is used during the Committee that has never  
11 appeared before in the Committee, that has never  
12 been used before in the Committee under my tenure.  
13 And today the word that made its appearance in the  
14 Committee for the first time ever under my  
15 Chairmanship, is the word Chemung. Chemung has  
16 never been on the record of the Committee since I  
17 have taken over, and now it is on the record three  
18 times, twice by me and once by you, Stewart. So  
19 there you go. So Chemung is the word of the day.  
20 And Bill, I would like to ask you to prepare a map  
21 for me so I can actually find out where Chemung  
22 County is. And with that said, this hearing is  
23 adjourned.

C E R T I F I C A T E

I, Erika Swyler, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature  \_\_\_\_\_

Date December 2, 2009 \_\_\_\_\_