

**Testimony of Steven W. Lawitts
Acting Commissioner
New York City
Department of Environmental Protection (DEP)
at a hearing of the New York City Council
Committees on Environmental Protection, Contracts, and Civil Service
& Labor**

Thursday, March 5, 1 p.m.

Good afternoon Chairs Gennaro, James, and Martinez. I am Steven Lawitts, acting commissioner of the New York City Department of Environmental Protection (DEP). Thank you for the opportunity to present testimony on the staffing of the water filtration facility that DEP is currently constructing in Van Cortlandt Park, in the Bronx. When constructed, that facility will be New York City's first ever filtration plant. It will filter the Croton water supply, the oldest and smallest of the three City watershed systems. The City's remaining two water supply systems operate under a Filtration Avoidance Determination (FAD), making New York City one of only five large cities in the country that are not required to filter the majority of its drinking water.

Launching a significant new facility, particularly one involving processes that the City has not operated before, requires careful consideration, planning, and a rigorous analysis of how it will be run, including how it will be staffed. In this case, the decision is particularly complex because of the highly specialized nature of filtration, the extensive experience, education, training and examinations required to obtain the necessary certifications, and

the fact that some of the certifications are not currently required by civil service titles.

For example, operation of the Croton facility will require individuals who possess New York State Department of Health Grade 1A and IIA certifications as defined under the State Sanitary Code. There are currently no civil service titles requiring that particular certification as part of the job specifications. Similarly, although there are DEP titles that require experience in the operation and maintenance of a wastewater treatment plant, or experience in establishing wastewater treatment performance standards, schedules and methods for water treatment, there are no titles that require experience with respect to drinking water treatment plants.

As I will explain in my testimony, DEP is exploring the pros and cons of different options for operating the plant. I will also explain where we are in the process of making this analysis and what our projected timeframe is for completing it. I emphasize that we have not yet made a decision on how the agency will staff this plant, but because of the complexities mentioned earlier, we must explore our practical options for staffing.

Before I speak in more detail about options for staffing the Croton facility, I think it would be useful to review briefly what the filtration plant will do and why New York City is building it.

The Croton filtration plant is both integral to the long-term dependability of the City's water supply system and mandated under a consent decree with the United States Environmental Protection Agency (EPA) and the New

York State Department of Health (DOH). The main structure is being constructed under Van Cortlandt Park. When completed, the facility will be underground, and the roof of the facility will be restored as a substantially enhanced version of the driving range that occupied the site before construction. The plant itself will have the capacity to filter up to 290 million gallons of drinking water per day.

New York City is filtering the Croton supply even though the Croton watershed has provided high quality, unfiltered water to consumers for many years. Although Croton water meets current health-based water quality regulations, the Croton watershed features soil and geology that contributes to high levels of organic material that, at certain times of year, could violate New York State standards for color, taste, and odor. For this reason, when the Croton system has suffered from these conditions, we have taken it out of service. This occurs typically in the summer and fall months. Filtration will eliminate these problems.

In addition, under the Federal Safe Drinking Water Act, as more strict standards are adopted, Croton water will likely be unable to meet future water quality regulations without filtration. As a result, DEP is under a federal-court ordered consent decree that mandates the construction of the plant.

The filtration plant will minimize seasonal variability and ultimately result in the Croton system being able to supply 30%, rather than 10%, of the City's current water need. This capacity will be critical as we take other essential water infrastructure, such as the Delaware Aqueduct, out of service for repair or upgrading. The plant will also ensure that we can meet the

requirements of existing and future regulations, and augment the capacity and operational flexibility of the City's overall water supply system.

DEP began construction of the treatment Plant in 2004 and work has continued since that time. We expect construction to be completed in 2011 and plant operations to begin in 2012.

Now, let me explain where we are in the process of determining operational staffing for the plant. Though DEP has had discussions about potential plant operations with several City agencies over the past few years, now is the time when we need to establish operational plans and protocols so that the facility can begin operation in 2012.

Based on the plant design and preliminary operating plan, an estimated 100 people would be required to operate the plant on a 24-hour, seven-day-per-week basis. Certain operating staff would need to possess New York State Department of Health certification specific to filtration plant operations. In addition, plant operations would be governed by strict environmental, health and safety (EH&S) regulations as well as an aggressive DEP internal EH&S protocol. Because the City has never operated this type of facility before, DEP must consider multiple staffing options for the facility, including the possibility of using an outside contractor, relying on in-house staff, or a combination of both.

As a necessary step in exploring the option to have a private firm operate the Croton facility, which – I want to emphasize – is common at water utilities throughout the country, on January 15th of this year DEP published a

Request for Qualifications (RFQ) in the City Record. In addition DEP's consultant distributed the RFQ to nine firms in this industry that are known to provide filtration operations services. In the RFQ, DEP announced that it is establishing a Pre-Qualified List (PQL) of firms who will be allowed to compete in a competitive request-for-proposal (or RFP) process for a contract to operate the Croton plant.

The RFQ invited firms interested in submitting qualifications to provide by March 12, 2009 a submission consisting of three basic parts: company information; relevant project experiences and references; and financial qualifications. On February 5th, DEP hosted a non-mandatory, pre-submission conference at which interested firms that registered in advance were allowed to ask questions about the design and construction of the plant, as well as the procurement process. Ten individuals representing five firms were present at the conference. Those firms were: Black & Veatch, CH2M Hill, United Water, CDM and Veolia North America.

As indicated in the RFQ, DEP will convene a selection committee to evaluate the submissions based on the following general criteria: background and capabilities; experience and strategies in the area of operations and maintenance; references; financial capabilities; and interviews, should DEP choose to conduct them. In the RFQ, DEP indicated that we are scheduled to make selections for the list of pre-qualified firms in May 2009.

Above all, I want to be clear that DEP's investigation of contract operations for the Croton filtration plant does not reflect a lessening of our respect for the thousands of dedicated, committed City workers who keep our water and

sewer systems running each day. In my time at DEP, I have been extremely fortunate to work with and lead such an outstanding workforce, charged with the responsibility of operating our critical infrastructure. However, as we plan to operate a new facility for the first time, we also have a responsibility to all New Yorkers to explore the best way to do that.

As DEP reviews responses from the RFQ/RFP process, and further establishes the requirements associated with in-house staffing, we will be able to make a fully-informed decision about which staffing option best meets the needs of the Croton filtration plant.

DEP is committed to operating the Croton plant efficiently and cost-effectively, and to exploring all means of doing that—including hiring a contract operator. Our highest priority, as always, is to continue providing world-class drinking water to New York's eight million residents, as well as to the million visitors and workers who visit our city every day. But, we must also do so in the most efficient way possible, and particularly in these times of fiscal constraint, we must continue to seek the most cost-effective solutions that meet our water quality goals.

Thank you. That concludes my prepared testimony.

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Testimony of James Tucciarelli
President of Local 1320, District 37, AFSCME, AFL-CIO
Before the Committees on Contracts, Environmental
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March 5, 2009

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Good afternoon Chairs James, Gennaro, and Martinez and fellow Councilmembers. Thank you for the opportunity to testify before you today speak about the Request for Proposal (RFP) on the Croton Water Filtration plant in the Bronx. My name is James Tucciarelli and I am President of Local 1320 representing New York City Sewage Treatment Workers and Senior Sewage Treatment Workers. Our Local, as well as DC 37, believes the issue of contracting out services for this water treatment facility undermines the civil service system, comprises security, fails to save the city money, puts the water supply at risk, and allows a foreign company with a profits as their only goal with the ability to hold the City hostage to contract renewals.

I will point out that over the past century; the water supply system in New York has been considered one of the best in the world. But the actions of the Department of Environmental Protection (DEP) are putting that reputation, as well as our supply of drinking water, at risk. The overriding reason that DEP gives for formulating this scheme to privatize the Bronx Water Filtration plant is that our present workers can not be certified as operators in such a plant. I would argue that point by reminding the City that twenty years ago when the City was forced through court order to stop deep water dumping of sludge and start dewatering waste sludge for shipment and land disposal, my members were certified by New York State Department of Environmental Conservation (DEC) to operate these dewatering facilities and have been doing so since then. Back in 1995 the City, again under court order, had to build and operate wastewater treatment plants in the watershed areas. Again, the City needed to train and have certified operators for these upstate wastewater facilities. Without much fanfare, the City had new employees trained and certified to run these facilities.

During both World Wars, soldiers were posted at all reservoirs and at important points along the aqueduct to prevent sabotage. Since 9/11, DEP has trained and deployed hundreds of security personnel to guarantee the

safety of the water system and work with homeland security to protect any interruption of the flow of our precious water supply to residents of this fine city. Now DEP in its infinite wisdom has decided to turn over one of the main junction points of the entire water system to a private foreign owned company. The City recently contracted with Sverin Trent to manage and operate the Flushing Bay Combine Sewer Overflow facility. This two year contract with Sverin Trent is under the premise that the facility needed to have the final kinks worked out and to have the operation up and running before they handed it over to City employees. What happened over the two years was a mismanagement of the facility with no regard to safety standards and little maintenance performed leaving a multimillion dollar facility rundown and in need of immediate repair. Failure of this facility could result in sewage runoff being dumped into Long Island Sound. Failure of the Bronx Filtration Plant could at a minimum leave the water supply at risk for pollutants and bacteria could endanger the supply of water to the City.

Other jurisdictions entrusting the water supply to private contractors have had negative consequences for the local communities. American Water Works, another foreign owned operator of water systems, was put in charge of the water supply for five New Jersey counties. In January of this year, when the current contract with its employees expired, these counties were faced with a threat of interruption to their water supply. Unlike City employees, private contract employees do not fall under the Taylor Law, which restricts City employees from striking. The main reason for the Taylor Law was the services provided by City employees were considered essential and any interruptions of services would endanger the health and welfare of the City. But the DEP is willing to bypass this important protection that New York City has garnered for itself in order to hire a private contractor. The whole action puts the City at risk to blackmail by either the owners of private companies or by their employees. In either scenario, the citizens of New York City lose.

The final set of reasons against privatizing any services of the City holds true in this case, and in almost any other situation, that a private contractor is put in charge of public services. The lack of vetting of employees, including federal background checks and monitoring of any future criminal activity, are allowing questionable workers at crucial facilities. It has been shown that some contractors have had corrupt employees or corrupt subcontractors. When someone sues based on actions of these corrupt employees the City is on the hook for some, if not all, of the costs attributed to litigation. Contractors tend to provide shoddy repairs, less oversight and leave facilities with more deterioration than those managed by City employees. And since contractors are required to pay prevailing wages with health benefits and a retirement system, the proposed savings are really a fiction pushed by DEP since all contractors are allowed a 15% profit

margin. In both the short and long run, privatization efforts have demonstrated higher costs with more risk to both the facilities and to the public they serve.

Our Local, along with DC 37, believes granting this RFP is bad policy for the City. It will cost more in the short and long haul, takes accountability out of the hands of our elected officials and gives it to private contractors who only care about the bottom line and prevents the City from having control over the essential services putting all New York City residents at risk. Please reject this RFP and start putting the people of New York City first over the profit driven motives of private foreign owned companies who will cost the City more and deliver less.

Attached are some articles that refer to the strike that was averted in New Jersey, which I previously mentioned in my testimony, as well as a list of "Top 10 Ways that Private Control of Water Wastes Public Resources".

Thank you again for the opportunity to testify before you today and I will take any questions you may have.

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N.J. American Water negotiating with union leaders to avoid strike

BY ERIK LARSEN • TOMS RIVER BUREAU • JANUARY 19, 2009

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With their contract set to expire at the end of the month, union workers with New Jersey American Water said negotiations are "mired in quicksand" and have threatened to strike.

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"That could spell disaster for the tens of thousands of residents and families in towns and municipalities throughout Ocean, Union, Somerset, Middlesex, Mercer, Burlington and Hunterdon counties who depend on American Water for the safe and uninterrupted flow of their water supply, routine repairs and response to leaks, water main breaks and other emergencies," Utility Workers Union of America Local 423 said in a written statement.

In total, the water company actually serves municipalities in 17 of the Garden State's 21 counties, including Monmouth and Ocean. However, none of the workers threatening to strike is employed in Monmouth or Ocean, according to company officials.

The union represents plant and station operators, clerical personnel, lab technicians, equipment operators, field service representatives, maintenance mechanics, meter readers, sub-foremen and utility workers.

"We are currently in negotiations with the union leadership, and we are trying to reach a contract agreement, and we hope to do so," said Richard G. Barnes, a spokesman for New Jersey American Water. "We're making contingency plans to ensure our customers will receive uninterrupted service and that would include our 24-hour response call center support, and they will notice no change in their water quality or water pressure."

A number of negotiation sessions still are planned, and management hopes to resolve its differences with the union soon.

Mike Esposito, president of Local 423, said he is skeptical about the company's desire to settle before Jan. 31.

"This is no way to treat customers in towns and municipalities throughout Ocean County who, a little more than a month ago, were saddled with a whopping \$72.1 million water rate hike. American Water requested this increase and received approval on Dec. 8, 2008, from the Board of Public Utilities," Esposito said in the statement.

"New Jersey American Water is negotiating with union leadership in good faith," Barnes said.

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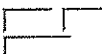
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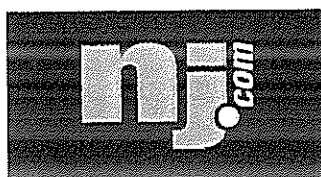
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Water company workers OK strike

Friday, January 23, 2009
BY RYAN TRACY

Members of a union representing 240 employees of New Jersey American Water Co. have authorized their negotiators to call a strike if the two sides do not reach an agreement by Jan. 31, according to a union press release.

Labor leaders said a work stoppage would pose a danger to public safety and water service for the NJ American's customers across Mercer County and the state.

The company serves households in parts of West Windsor, Lawrence, and Princeton and is close to acquiring Trenton Water Works pipelines in Ewing, Hopewell Township, Lawrence, and Hamilton.

"The only way the company can ensure the safe flow of the highest quality water to Mercer County and West Central New Jersey customers is by having Local 423 members on the front lines responding to emergency and repair calls," said Mike Esposito, president of Utility Workers Union of America Local 423.

Last week, Esposito claimed the sides had made "zero progress" toward a deal and blamed management's intransigence. As of yesterday, no further movement had been made, he said.

"We're hopeful a contract can be reached before the deadline." NJ American spokesman Richard Barnes said. "Our proposals are similar or the same as the contracts we have negotiated with other unions representing (NJ) American employees."

"There will be no impact to our customers and public safety will not be compromised" in the event of a work stoppage, Barnes added.

"I don't want to get into all the details of what our contingency plan is, but we would use managers who have" 15 to 20 years of field experience "as well as our engineering staff who in some cases designed" the distribution system, he said.

Barnes acknowledged the company will also continue to use outside contractors, though he did not say whether NJ American would be adding extra contractor work in the event of a strike.

Bob Brower, vice president of the New Jersey State Firemen's Mutual Benevolent Association, said the contingency plan couldn't replace "technicians that do this work every day of the week."

"It is absolutely vital to the safety of citizens and firefighters that (NJ) American) keep its experienced union employees on the front lines without any interruption to ensure that fire hydrants are being maintained," Brower added in a press release....

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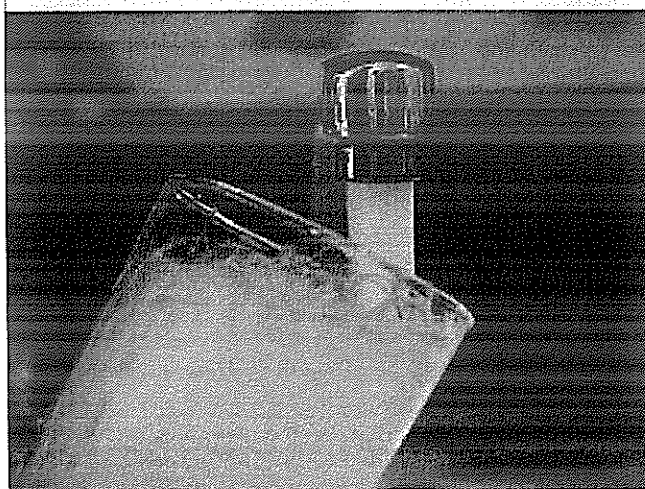
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NJ American Water Strike Averted

Last Edited: Sunday, 01 Feb 2009, 10:08 AM EST
Created On: Sunday, 01 Feb 2009, 9:56 AM EST

Luke Funk

MyFoxNY.com - New Jersey American Water and the union representing its workers reached a contract agreement Sunday morning that will avert a threatened work stoppage and could have affected drinking water for hundreds of thousands of people in seven New Jersey counties.

The contract for more than 200 workers expired January 31 at midnight. Talks continued Sunday morning in Woodbridge until the agreement was reached at about 8:15 a.m.

A work stoppage could have jeopardized service, including the company's response to water main breaks and other emergencies in Union, Middlesex, Somerset, Ocean, Mercer, Burlington and Hunterdon counties.

The union had authorized negotiators to call a strike on January 23.

About 240 workers from Local 423 of the Utility Workers Union of America will need to ratify the agreement. The local represents plant and station operators, clerical personnel, lab technicians, equipment operators, field service representatives, maintenance mechanics, meter readers, subforemen and general utility workers.

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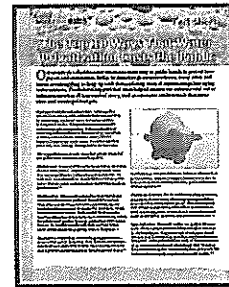
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Top 10 Ways that Private Control of Water Wastes Public Resources

Our country's valuable water resources must stay in public hands to protect taxpayers and consumers. Sadly, in these tough economic times, many cities and towns are struggling to keep up with the escalating costs of rejuvenating their aging water systems. The federal support that once helped sustain our nation's vital water infrastructure has all but washed away, and an extensive credit crunch threatens state and municipal budgets.

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Confronted with these hard realities, certain public officials have attempted to abdicate their responsibility by transferring control of water and sewer utilities to the private sector. This practice is unaccountable and damaging to communities. When multinational water corporations take over the ownership, operation or management of water systems, costs grow and households must pay much more, if not through their water bills then through damage to the environment.

The research shows 10 main ways that private control of our public water resources costs the public:

1. **High Rates.** A survey of the rates in more than 20 states shows a strong trend: corporations charge much more than municipalities for both water and wastewater. Private water costs as much as 80 percent more than public water. Private sewer service costs up to twice as much as public service.
2. **Bad Service.** Many multinational water corporations cut corners to increase profits at the public's expense. They often use shoddy construction materials, ignore needed maintenance and downsize the workforce, which impairs customer service. Such neglect hastens equipment breakdowns and increases replacement costs, which the public must pay for. In many contracts, private operators can technically comply with their contract terms while effectively shifting upkeep costs to the public.
3. **Expensive Financing.** Private financing is more expensive than public financing. Even the best-rated corporate bonds are 25 percent costlier than municipal bonds and 2.5 times costlier than State Revolving Fund loans.

4. **Inefficiency.** Private utilities are not more efficient than public utilities, according to several academic studies. In fact, more studies have found that the public is the more efficient operator.

5. **Profits and Taxes.** Private utilities usually pay income, property and other taxes, whereas government utilities pay no local or state property taxes. They also typically seek at least a 10 percent profit on their investment. In total, corporate profits, dividends and income taxes add 20 to 30 percent to operation and maintenance costs.

6. **Cost Inflation.** The profit motive can further drive up costs. That's because private utilities tie higher earnings to increased costs. They earn a rate of return on investment, so that the more they spend on a system, the more they profit. Perhaps that's why a study of the construction of 35 wastewater treatment plants found that "choosing the privatization option is more costly than going with the traditional municipally owned and operated facility."

7. **Contracting Expenses.** Contract preparation can easily set a city back \$75,000 to \$100,000. Monitoring a corporation can cost as much as 20 percent of the total contract. In total, contract monitoring and administration, conversion costs, charges for extra work and the contractor's use of public equipment and facilities can add up to 25 percent to the price of a contract. Change orders, cost overruns and termination fees also can inflate the cost of private service.

8. **Limited Competition and Consolidation.** The water market is "rarely competitive," and the little competition there is faces "increasing difficulties," including consolidation, according to one academic study. The nation's massive infrastructure needs may only make this worse as water corporations merge for greater access to capital to finance improvement projects. Without competition, the public has no room to negotiate and can get stuck with bad and expensive contracts.

9. **Lost Public Benefits.** Municipal operation often has several additional benefits that cities lose when they privatize: revenue from government entrepreneurial sales of services and products, including biosolids and wastewater effluent; intra-government coordination to pool resources and assist other government departments; and inter-government coordination to protect water resources, manage watersheds and work for long-term sustainability.

10. **Lack of Accountability.** Multinational water corporations are primarily accountable to their stockholders, not to the people they serve. For example, private utilities cherry-pick service areas to avoid low-income neighborhoods where low water use and frequent bill collection problems drive down profits.

Ways Forward. Instead of allowing irresponsible private control of our water, we need to plan ahead and create a dedicated source of public funding that will help public utilities protect our country's valuable water resources. A national water trust fund and an infrastructure reinvestment bank can achieve this feat and ensure the safe and sound operation of our water systems, but to get the best deal for consumers and taxpayers, this assistance must go only to public entities and public projects. Public utilities are more responsive, reliable and cost-effective.

With a renewed federal commitment, our nation's good public operators can keep our water safe, clean and affordable for generations to come.

For footnotes, download the factsheet.

For more information, see our report *Money Down the Drain: How Private Control of Water Wastes Public Resources*.

The logo is a large triangle with a double border. Inside, there is a smaller triangle containing a gear-like shape with the year '1937' in the center. Above the gear is a lightbulb, and below it is another lightbulb. The word 'TECHNICAL GUILD' is written across the top of the triangle.

125 Barclay Street, 6th Fl., New York, NY 10007-2179

Fax: (212) 815-7533

SAFETY
Bobby Shah

Thursday, March 5, 2009

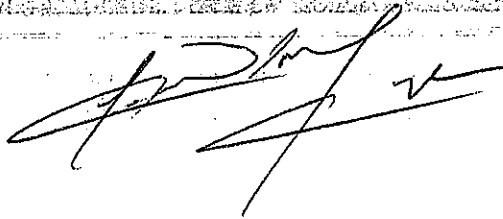
Staffing at the new filtration plant, broadly speaking, is concentrated in four areas: administration and management, maintenance, operations, and quality assurance. My members work in the latter area. I represent Chemists, Research Chemists, Scientist Water Ecologists, and Lab Technicians working in New York City's Department of Environmental Protection, in addition to other titles. These professionals sample water and insure its purity. Many have doctorates and decades of City service. There is no reason to consider hiring anyone else apart from civil servants who are properly credentialed.

This will be the first water filtration plant in New York City, providing clean water to our residents, and it will use ultraviolet light as a disinfecting agent in addition to other technologies, but it is by no means unique. In the DEP's own white paper on the new filtration plant, written a few years ago, the plant is described as "incorporating standard treatment processes that are already in use in similar facilities around the country."

While there has been extended discussion about the type of filtration system the plant will use, these are by no means untried or untested technologies, and they are well-known to the unionized professionals who currently have operational and maintenance responsibilities at DEP water facilities including the sewage treatment plants at Owl's Head and Newtown Creek. And there is no reason why City workers cannot undertake the operational and maintenance aspects of running this plant as well, and do it with distinction. I speak here not only on behalf of Local 375's members but for other workers represented by District Council 37. Again, there is plenty of time for training and certification before the plant opens.

What is the reason behind this back-door privatization of City services? It isn't about cost, expertise, or an emergency situation. It's about short-sighted deals done to serve private interests. This is a mission-critical installation for the City of New York, and it's something that must be entirely within the City's control. The idea that a private company could have even partial control over the City's water system is almost too frightening to contemplate.

The City must use workers, properly credentialed civil servants, for maintenance, operations, and quality assurance at the Croton Water Filtration Plant. This plant will supply ten percent of our drinking water, and up to 30% in times of drought or severe need. It's hard to imagine anything more vital to our future. Let's do it right.

A handwritten signature in black ink, appearing to be "John" followed by a stylized flourish.

THE COUNCIL THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
☐ in favor ☒ in opposition

Date: _____

(PLEASE PRINT)

Name: RODOLPH RICHARD GORDON

Address: 4101 WHITE PLAINS ROAD THE BRONX 10466

I represent: CORPORATION BOARD #12 (THE BRONX)

Address: SAME AS ABOVE

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

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
☐ in favor ☐ in opposition

Date: 03/05/09
(PLEASE PRINT)

Name: CLAUDE FORT
Address: 125 BARCLAY ST, NY NY 10007
I represent: LOCAL 375/AC37
Address: _____

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THE CITY OF NEW YORK

Appearance Card

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☐ in favor ☒ in opposition

Date: 3/5/09
(PLEASE PRINT)

Name: James Tocione
Address: 125 Barclay Street NY NY 10007
I represent: President Local 1320 DC37
Address: Revenge Treatment Plant Workers

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Appearance Card

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Date: _____
(PLEASE PRINT)

Name: Jeff Foster
Address: _____
I represent: Local 375/DC37
Address: 125 Barclay St

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THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
☐ in favor ☐ in opposition

Date: _____
(PLEASE PRINT)

Name: Steven W. Lawitz
Address: NYC DEP
I represent: _____
Address: _____

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