



NEW YORK CITY SOIL AND WATER CONSERVATION DISTRICT

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FOR THE RECORD

Comments on the implementation of the Sustainable Stormwater Management Plan

April 7, 2009

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Thank you for the opportunity to submit comments on the implementation of the Sustainable Stormwater Management Plan. I want to start with recognizing the efforts of the Mayor's Office of Long Term Planning and Sustainability, which has done a remarkable job of researching, analyzing and planning in a relatively short period of time. The Plan signifies the first step in the right direction by including source controls as viable alternatives to end-of-pipe solutions. As a member of the S.W.I.M Coalition, we appreciate the OLTPS reaching out to us and working with us to address our concerns. Because the plan has not been in the implementation phase for long, our comments are primarily questions pertaining to the status of the elements of the plan.

Public outreach and education

We understand that the Dept of Environmental Protection has hired the Public Outreach and Education Marketing Manager. It would be highly beneficial to host another public event where this Manager can inform the public of what services are available through her. As we have mentioned in our previous comment letters, there are property owners ("early adopters") who would like to install source controls – rain barrels, rain gardens, green roofs, etc. – on their property without a great deal of external incentives. We should actively nurture this sector of the public by providing as much information and technical assistance as possible. Most of them are eager and willing but do not know where to start.

We would also like to know the status of the "Request of Expression of Interest" to develop outreach programs. The S.W.I.M Coalition has dozens of members, many of whom are already engaged in outreach and education on sustainable stormwater management and are interested in partnering with the City.

Interagency coordination

Because many of the source controls involve multiple city agencies, regardless of property ownership, interagency coordination is critically important. We would like to be sure that the Interagency BMP Task Force is convening regularly and is developing a process for better coordination both among themselves and with non-governmental organizations. The latter is particularly important as several community-based organizations are involved with source control projects (such as tree pits) which require assistance from multiple agencies.

Monitoring of source controls

The New York City Soil & Water Conservation District is partnered with the Dept of Parks & Recreation in monitoring the stormwater capture Greenstreets. Quantitative evaluation of source control performance is absolutely necessary if the City is to coordinate the Sustainable Stormwater Management Plan with the CSO Long Term Control Plan and to reallocate resources from hard infrastructure to source controls. While new source controls are being installed as pilots both by the City and non-governmental organizations, monitoring may be lagging behind because of the lack of

standardized monitoring protocols. So that we can maximize the opportunity, the development of standardized monitoring protocols should be a priority.

We would like to thank the Environmental Protection Committee of the City Council on keeping a watchful eye on this endeavor. The New York City Soil & Water Conservation District and the S.W.I.M Coalition look forward to continuing our partnership with the Office of Long Term Planning and Sustainability.

Thank you.

A handwritten signature in black ink, appearing to be 'Shino Tanikawa', written in a cursive style.

Shino Tanikawa
District Manager

Testimony of Carter H. Strickland, Jr.
Senior Policy Advisor for Air and Water,
Mayor's Office of Long Term Planning and Sustainability

Before an oversight hearing of the
Committee on Environmental Protection
of the Council of the City of New York
on the City's Sustainable Stormwater Management Plan

April 7, 2009

Good afternoon, Chairman Gennaro and Committee Members. My name is Carter Strickland, and I am a Senior Policy Advisor with the Mayor's Office of Long Term Planning and Sustainability. I'm joined today by Angela Licata, Deputy Commissioner of the Bureau of Environmental Planning and Analysis in the Department of Environmental Protection (DEP). I am also joined by Aaron Koch from my office.

We are grateful for the opportunity to speak to you today about the City's Sustainable Stormwater Management Plan and the Administration's multifaceted approach to improving water quality by reducing combined sewer overflows (CSOs) and other sources of pollution to our waterways. The Administration supports the appropriate use of source controls – also known as best management practices, BMPs, green infrastructure, or low impact development – and looks forward to working with the Council on pursuing on-site management of stormwater and other innovative techniques to improve water quality.

Last year, under the leadership of Chairman Gennaro and this Committee, and working closely with the Administration, the Council passed Introduction 630. The Mayor signed Local Law 5 of 2008, which required the Administration to prepare a stormwater management plan to analyze the costs, benefits, and feasibility of certain measures to

control stormwater near its source, where rain falls on impermeable surfaces. Local Law 5 also required the Administration to consider a range of policies to implement those measures and improvements in notifying the public about combined sewer overflows. The views of the general public were to be solicited and considered through public meetings and a formal comment period.

The Administration took these charges to heart and produced the Sustainable Stormwater Management Plan (SSMP) in December 2008. It is posted on the PlaNYC website, along with a lengthy technical appendix. The SSMP has been well received by the U.S. Environmental Protection Agency and other regulatory authorities and experts across the country. Although we have met informally with Council staff on many occasions to discuss the plan, we have not yet had the opportunity to speak before the Environmental Protection Committee to discuss its contents.

Local Law 5 took place against the background of parallel efforts. PlaNYC adopts the goal of improving water quality by reducing pollution and preserving natural areas to such a degree that 90% of our waterways will be opened to recreation. One significant obstacle to that goal is the discharge of billions of gallons of CSOs every year when rainfall overwhelms our sewers. The mandatory capital plan for hard infrastructure solutions to improve water quality has resulted in DEP's construction of detention tanks at Flushing Meadows Park and Paerdegat Basin that will capture over two billion gallons of CSOs per year when completed, the upgrade of several pumping stations, and the construction of additional and larger sewers. The full infrastructure buildout currently envisioned in DEP's Long Term Control Plans will increase CSO capture rates to 75 percent. To implement complementary approaches to intercept runoff before it reaches

sewers, PlaNYC launched an Interagency BMP Task Force in May 2007. The Task Force had the benefit of considering the October 2007 Jamaica Bay Watershed Protection Plan created by DEP under Local Law 71, which assessed the cost and benefits of source controls and proposed several pilot projects. Other, related initiatives in PlaNYC include the Million Tree initiative, the promotion of green, permeable open spaces across the city, the expansion of Bluebelts, and the adoption of a green roof tax credit.

My testimony today will cover two broad topics. First, I will discuss the Sustainable Stormwater Management Plan's comprehensive analysis of the citywide feasibility of source controls. This analysis is the Plan's principal contribution to the recent and nationwide effort to adopt green infrastructure. Second, I will discuss the Plan's framework for citywide implementation of source controls and the next steps that we are taking.

The Plan's analysis established that source controls may be a cost-effective stormwater solution, even in New York City's ultra-urban environment where we lack space for suburban style solutions and or even the ability to infiltrate groundwater in areas of dense underground infrastructure. Exhaustive details of our analysis are available in the online appendix, so I will only recite only the major points.

To direct our efforts, we conducted a land use analysis to determine where source controls could be placed. The major opportunities are provided on buildings and lots (46% of our impervious area), the right of way (37% of our impervious area), and open space (only 5% of our impervious area but 13% of our land area and a possible place to absorb stormwater from surrounding roadways and buildings). The

development of these land use calculations required extensive adjustments of available electronic maps. Refined analysis, placement, and design of source controls will depend upon access to more accurate and detailed electronic maps of landscape features.

We next determined which source controls matched up best with these geographic areas, given other physical limitations such as depth to groundwater or bedrock. The specific techniques considered include “blue roofs” or rooftop detention systems, green roofs, rain barrels, cisterns, permeable pavements, and vegetated controls such as tree pits, swales, and Greenstreets. We developed costs for different source controls based on engineering estimates of components, installation costs, and maintenance requirements. These were corroborated by a thorough, nationwide literature search, which is memorialized in our appendix. Our cost estimates varied widely, from a low of \$0.16 per gallon of stormwater retained or detained by blue roofs under a two-inch standard, to a high of \$3.33 per gallon for green roofs on a lifecycle basis that includes annual maintenance costs. It may be that a consideration of non-stormwater benefits will change these conclusions. There are many ongoing research projects to obtain data about those benefits to complete existing research. The plan’s overall conclusion, however, is that source controls may be more cost effective than hard infrastructure solutions, particularly storage tunnels that will require deep excavation if they are built. In addition, buried, end-of-pipe installations provide no benefit to the public when not in use, unlike Greenstreets or other vegetated installations.

Finally, we analyzed the costs and benefits of various networks of source controls under different scenarios. In the buildings and lots category, we assessed

performance standards for new development, performance standards for existing buildings, and low- and medium-density residential controls, such as rain barrels and cisterns. In the right of way, we assessed certain road reconstruction design standards, sidewalk design standards, and a right of way “buildout.” The technological source controls that we assessed included permeable concrete sidewalks, permeable paving in the travel lane of one way streets, and sidewalk rain gardens in two-way streets. Logistical or operational concerns, particularly the presence of underground structures and maintenance, may limit the feasibility or location of these technologies. In the open space category we assessed modified Greenstreets and drainage swales. Of necessity we limited our analysis to 24 separate watersheds in combined sewer areas. We developed estimates of stormwater capture rates from the storage capacity of each source control under certain assumptions about the frequency and quality of maintenance, as well as critical assumptions about the aggregate landscape penetration under each scenario. On a citywide basis, our estimates of the cost effectiveness of each scenario ranged from \$0.09 per gallon for performance standards in new development to over \$0.80 per gallon for retrofitting half of the right of way. The exact relationship between gallons of stormwater runoff retained or detained and the corresponding reduction in CSOs is not yet established.

Based on this analysis, the Plan adopted an implementation framework with the goal of enacting policies that will create a network of source controls to detain or capture over one billion additional gallons of stormwater annually when fully implemented.

First, the City is to implement the most cost effective and feasible source controls. the benefits of ongoing PlaNYC green initiatives, including additional street trees, open space and park trees, Greenstreets, a green roof tax abatement, parking lots with drainage requirements, the Plaza Program, expansion of the Bluebelt, converting asphalt playgrounds to turf fields with drainage features, converting schoolyards to playgrounds with planted areas and drainage features, and protecting wetlands. We will continue implementation of ongoing source control efforts such as public design standards, zoning regulations for planted yards and public plazas, a fixture rebate program, and coordination of construction specifications. We will also establish new design guidelines for public projects. We will change our sewer regulations and codes to adopt performance standards for new construction, work that is ongoing right now. Finally, we will improve public notification of CSOs by installing 433 new, redesigned signs and using the internet and other methods to provide alerts.

Second, the City will resolve the feasibility of promising technologies. We will complete demonstration projects that will establish the costs and benefits of source controls under rigorous testing in real world applications. We are launching over 20 different source control pilots. We will continue planning efforts to revolve outstanding issues regarding long-term maintenance obligations, sidewalk source controls, performance standards on existing buildings, and protocols for public projects.

Third, the City will explore funding options for source controls. These include Federal stimulus monies this year as well as other grant programs. In addition, the City is undertaking a water and wastewater rate study and will assess pricing for stormwater services.

To fully implement the plan, we will have to track, monitor, and report on the performance of green infrastructure. This will involve continued public outreach, and possibly public-private partnerships for the maintenance of green infrastructure in public areas.

In short, there is much to do before our next report under Local Law 5 is due to the Council in 2010.

Thank you for the opportunity to testify about this Sustainable Stormwater Management Plan and to share the Administration's planned next steps to address stormwater issues. We would be happy to answer any questions.

**TESTIMONY OF THE QUEENS AND BRONX BUILDING ASSOCIATION
APRIL 7, 2009
BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON ENVIRONMENTAL PROTECTION**

GOOD AFTERNOON, MY NAME IS LAWRENCE ROSANO AND I AM THE VICE PRESIDENT OF THE QUEENS & BRONX BUILDING ASSOCIATION. I WOULD LIKE TO THANK THE COMMITTEE FOR THIS OPPORTUNITY TO TESTIFY ON STORM WATER MANAGEMENT.

OUR CONCERNS MIRROR THE CONCERNS OF THE BUILDING INDUSTRY ASSOCIATION OF NEW YORK CITY. MEMBERS OF OUR ASSOCIATION HAVE FOUND THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OBSTRUCTIONIST AND PROBLEMATIC IN NOT ALLOWING FOR BUILDERS TO USE DRYWELLS IN EVEN THE MOST OBVIOUS SITUATIONS. WHILE IT IS THE CITY'S RESPONSIBILITY TO PROVIDE ACCESS TO THE STORM WATER SEWER SYSTEM, MOST OFTEN IT IS SLOW TO DO SO. THUS, WHERE EXTENSION OF THE CURRENT SYSTEM IS MINOR, WE WILL DO IT OURSELVES TAKING IT UPON OURSELVES TO PAY THE EXPENSE.

HOWEVER, IN MANY SITUATIONS, WE SHOULD NOT HAVE TO DO SO. ON SITE DISPOSAL OF STORM WATER THROUGH THE USE OF DRYWELLS IS BOTH BETTER LESS EXPENSIVE, AND THE PREFERRED ENVIRONMENTAL METHOD. MOREOVER, IN CASES WHERE THE STORM WATER SEWER IS A SIGNIFICANT DISTANCE FROM THE NEW HOMES, THE USE OF DRYWELLS IS SIGNIFICANTLY MORE COST EFFECTIVE, OFTEN SAVING AN AMOUNT OF OVER \$50,000 PER UNIT OF HOUSING.

DESPITE THIS, EVEN WITH AFFORDABLE HOUSING PROJECTS, DEP HAS SEEN FIT TO FORCE BUILDERS TO EXTEND THE STORM SEWERS. IN MANY AREAS OF THE CITY, THE CLOSEST STORM SEWER MAY BE A SIGNIFICANT DISTANCE AWAY. IT IS ONE THING IF THE STORM SEWER NEEDS TO BE MOVED ONE HOUSE DOWN. IT IS ANOTHER IF THE CONNECTION NEEDS TO EXTEND FOR A QUARTER MILE OR MORE. FRANKLY, DEP DOES NOT CARE.

BUT JUST AS DISTURBING AS DEP'S FLAGRANT REFUSAL TO SUPPORT THE ENVIRONMENTALLY PROPER METHOD OF STORM WATER DISPOSAL IS ITS LACK OF JURISDICTION OVER THE MATTER TO BEGIN WITH. AS HAS BEEN DISCUSSED, DEP LOST JURISDICTION OVER THE USE OF DRYWELLS IN MANY SITUATIONS BACK IN 1996 IN ORDER TO ALLOW FOR ONE STOP APPROVALS. NOW IT IS EXERCISING NOT JUST VETO POWER OVER DRYWELLS, BUT ACTUAL APPROVAL AUTHORITY WHERE IT HAS NO LEGAL AUTHORITY FOR EITHER.

AS AN ASSOCIATION, WE WONDER WHY THE COUNCIL ALLOWS DEP TO BREAK THE LAW. WE WONDER WHY THE MAYOR'S OFFICE DOES NOT REIN IN THIS RUNAWAY AGENCY. WE WONDER WHY THERE IS A DISCONNECT BETWEEN PLANYC AND THE POLICIES OF THIS CITY AGENCY. WE WONDER WHY THE CITY WANTS TO ADD TO THE COST OF CONSTRUCTION, MAKING IT HARDER FOR PEOPLE TO AFFORD A HOME. AND WE WONDER WHY THE CITY WANTS TO FLOUT A LAW AND MAKE IT HARDER TO DO BUSINESS WHEN THE PURPOSE OF THE 1996 LAW WAS TO MAKE IT EASIER TO DO BUSINESS.

**TESTIMONY OF THE BUILDING INDUSTRY ASSOCIATION OF NEW YORK CITY
APRIL 7, 2009
BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON ENVIRONMENTAL PROTECTION**

Good day. My name is R. Randy Lee, a home builder for over 40 years and the Chairman of the Board of the Building Industry Association of New York City. Additionally, I am on the Board of the NYS Builders Association and the Executive Committee of the National Association of Homebuilders.

I would like to thank you all for having this hearing and Council Member Gennaro for his efforts in assisting the industry in its trials and tribulations with DEP.

Aside from being the Chairman of BIANYC, I have served as the Chairman of its DEP Committee for at least 25 years, if not more. I am embarrassed to say that in all that time, all of my efforts and that of the industry have met with little, if any, success in resolving its' issues with DEP.. In order to understand the issues of the industry, I am attaching a letter written to then Commissioner Emily Lloyd, January 2, 2008. Suffice it to say, we never met with Commissioner Lloyd as promised and the meetings the industry had with her staff were less than fulfilling. In fact, DEP's treatment of the industry representatives in many respects was rude and insulting to the intelligence of many present.

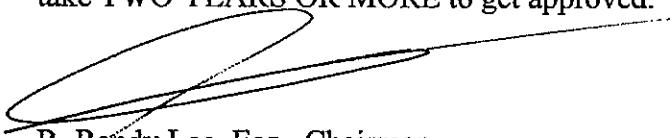
The best I can say for DEP is that their headquarters in Queens are cleaner and better maintained than those occupied by City Planning at Reade Street. Beyond that, from the Industry's point of view, there is nothing they have done or tried to do in the last 25 years that has improved their performance in any way, concerning those matters that pertain to the Building Industry and that in spite of many efforts by the industry and several mayoral administrations to reform the cultural dysfunctionality of DEP, no one is able to say that they have made any headway.

The current situation, where their antipathy against the use of drywells has led them to act against the word and spirit of the law is not atypical. They give lip service to the environment and clean water technology in this regard. The concept of "Low Impact Development" is not one that has achieved any purchase at DEP, but is the standard in the rest of the USA.

In closing, I would like to say this testimony is not directed at any staff person in DEP, many of whom are dedicated, well intentioned and hard working, but rather clearly directed at those Commissioners who have tried and failed to administer and those Assistant and Deputy Commissioners who seem dedicated to maintain the antediluvian status quo.

Finally, I would like to point to the Department of Buildings, under Commissioner Lancaster and now Commissioner LiMandri who both demonstrated a willingness to listen and showed an understanding that their agency was in a state of deterioration and disrepair and who, over the

last 8 years have made their agency into a shining star in the City's firmament. At DOB, a 100 story building can be conceived, designed, filed, approved and permitted within 6-9 months. At DEP a 100' extension of a sewer in an existing street, where there are NO ISSUES, can often take TWO YEARS OR MORE to get approved. Do I need to say more?



R. Randy Lee, Esq., Chairman

Building Industry Association of NYC

BUILDING INDUSTRY ASSOCIATION OF NEW YORK CITY

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January 2, 2008

Hon. Emily Lloyd, Commissioner
New York City Department of Environmental Protection
59-17 Junction Boulevard
Flushing, New York 11373

Dear Commissioner Lloyd:

We are coming together for another in a long line of DEP meetings about Building Industry issues, that started decades ago and continued in the current administration for almost two years. It is clear to the industry that the agency has made no real progress in all of that time. In fact, it had regressed in many aspects. For this reason we believe that the problems are structural and cultural, rather than attributable to individuals. There are many good and professional staffers at DEP that want to help, but they find that they just can't. Over the years, many ideas were floated and they were thought to have found purchase with DEP staffers and some DEP lawyers, only to have them shot down at subsequent meetings, for no good reason stated. The industry sayings most used in applying it to DEP, in the areas it deals with is: "DEP has a reason why every reasonable solution or suggestion won't/can't work" or "progress and change are dirty words at DEP."

There is no effort to change or to be transparent or to accept new ideas and run with them or to accept modest industry proposals to make the DEP experience more tolerable (less intolerable).

We have been hearing the same "blame the victim" reasons for years and have been listening to the same "we have to protect the city" mantra for even more years, yet when asked for facts and figures and to see the basis for these tales, perhaps excuses is a better word, we are always met with blank stares. The culture at DEP in our areas is clearly not in tune with the Mayor's idea of how to run a business or a city. The actions of staff are for the most part seen as serendipitous and based on anecdotal historical information, much of which is best categorized as Urban Legend.

Opposed to DEP's retreat to the past, we must point out DOB's leap to the future. They listened and learned from the industry and undertook professional investigation and studies and in the years that have passed since Mayor Bloomberg took power, things have not only turned around, but the transparency and user friendliness and operation of DOB has exceed all expectations and they are, in fact, well into the 21st Century. In that time DEP in the areas the building industry is concerned with has moved closer to the 19th Century, than the 21st.

We have listed below some of the areas where there are problems (it is by means all inclusive or as extensive as it could be), but real reform has to be systemic and come from the top down and have teeth and stated goals and milestones and be put on a fast track . Otherwise, we will have to wait for 2010 or intervening City Council driven reform legislation, with the knowledge that everyone who buys a home in NYC will pay for DEP's inadequacies and inefficiencies for the next 30 years with interest.

1. Local Law 103 of 1989 and Local 65 of 1996.
Local Law 103 of 1989 clearly allows the use of drywells for the disposal of storm water run off in all residential projects not fronted by existed storm or combined sewers. If a residential site is fronted by a storm sewer or combined sewer of limited capacity, the law allows the use of on-site drywells to dispose of the excess amount of developed site run off. Local Law 65 of 1996 altered Local Law 103 of 1989 by specifically changing the responsibility for determining storm water disposal issues from DEP to DOB. Yet, DEP continues to exercise *jurisdiction interfering with already approved DOB plans*.
2. The process for getting storm and sanitary sewer drain extension plans approved takes too long. The reviews have gotten more time consuming and often the filing engineer is asked to provide items beyond the requirements listed in Chapter 23 of Title 15 of the Rules of the City of New York. BIANYC has proposed several changes to streamline the process including a peer review pilot program, but little to no progress has been made.
3. The process of getting site connection proposals approved is becoming too lengthy. Part of this is directly caused by item 1. Because access to the plan examiners has been limited by policy, it is harder to clear up easy requests because most contact is in the form of letters. This further slows the approval process.
4. The issue of private water main versus internal water main remains an issue. The review of private water mains was much simpler in the past. There is concern over proposed private water main regulations which will lengthen the process making it akin to a private sewer plan. (This was one of the issues discussed with Roberts.)
5. In the construction of multiple dwellings as rentals DEP has no requirement to have the builder or ultimate owner agree to maintain the house storm and sanitary sewer connections as a prerequisite to issuing a sewer permit to connect to the City sewer. When the identical building is built as a coop or condo, or HOA, DEP insists upon the No Action letter or Offering Plan being filed with specific language to have the coop, condo or HOA maintain the sewer connections. To make matters worse this is a prerequisite to issuing the sewer connection permit.

As a result you are forced to wait until the AG approves the plan which can take 12 months from filing to hook up sewers. During construction this is a nuisance and health hazard as there is no place to remove storm water and sewage from the project site until the sewers are hooked up. DEP upon special permission has issue a conditional permit when they are shown that the HOA or Plan is submitted to the AG however it is a laborious process and is subjective and not guaranteed. A better alternative is to remove the requirement altogether as they have no right to discriminate in the issuance of permits based upon the ultimate management *regime of the building*. *Less attractive but still acceptable, DEP should not condition permits to hook up sewers and only hold back on final sign off pending their receiving the HOA, Offering Plan etc.*

Beyond these areas, there are more issues to address, but we do not wish to present an overbearing list that would simply result in DEP making no headway in any direction. We hope that you can work with us to address these matters, in a way that will serve the interests of the City as well as the industry..

Very truly yours,



R. Randy Lee, Chairman

**TESTIMONY OF ROBERT ALTMAN
LEGISLATIVE CONSULTANT TO THE QBBA AND BIANYC
APRIL 7, 2009
BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON ENVIRONMENTAL PROTECTION**

GOOD AFTERNOON, MY NAME IS ROBERT ALTMAN AND I AM THE LEGISLATIVE CONSULTANT TO THE QUEENS & BRONX BUILDING ASSOCIATION AND THE BUILDING INDUSTRY ASSOCIATION OF NEW YORK CITY. I WOULD LIKE TO THANK THE COMMITTEE FOR HOLDING THIS HEARING AND COUNCIL MEMBER GENNARO FOR HIS ASSISTANCE IN TRYING TO GET THE DEPARTMENT OF ENVIRONMENTAL PROTECTION TO STOP BREAKING A LAW PASSED BY THE CITY COUNCIL.

IN 1996, THE COUNCIL PASSED LOCAL LAW 65 ALLOWING FOR THE DEPARTMENT OF BUILDINGS TO PROVIDE APPROVALS FOR THE USE OF DRYWELLS IN CERTAIN SITUATIONS. THIS LAW CLEARLY TRANSFERRED JURISDICTION FROM DEP TO DOB BY LITERALLY LIFTING THE LANGUAGE OUT OF DEP'S CHARTER SECTION AND MOVING IT INTO DOB'S CHARTER SECTION. THE LOCAL LAW ALLOWED DEP TO CONSULT WITH DOB ON CERTAIN REGULATORY MATTERS, BUT APPROVALS WERE ONLY WITHIN THE JURISDICTION OF DOB. THIS LAW STREAMLINED A PROCESS ALLOWING SMALLER PROJECTS TO GO TO ONE SHOP FOR APPROVAL. AND SINCE STREAMLINING GOVERNMENT SEEMED TO BE A GOOD THING, THIS WAS HAILED BY THE COUNCIL AND MAYOR ALIKE AS A GOOD GOVERNMENT MEASURE.

AND IT SHOULD HAVE BEEN HAILED AS SUCH BECAUSE THE USE OF DRYWELLS WHEN ALLOWED BY CURRENT REGULATION HAS THREE ADVANTAGES OVER CONNECTING TO A STORM SEWER. FIRST, ON SITE DISPOSAL OF STORM WATER IS NOW THE PREFERRED ENVIRONMENTAL METHOD. SECOND, IT IS USUALLY THE LEAST EXPENSIVE METHOD OF DISPOSAL ON STORM WATER. THIRD, AS WE HEAR FROM ENVIRONMENTALISTS, IT HELPS ENSURE THAT IN CASES OF SEVERE STORMS, RAW SEWAGE DOES NOT FLOW INTO ENVIRONMENTALLY SENSITIVE

AREAS OF NEW YORK CITY. AND THESE ARE THE EXACT REASONS THE MAYOR AND PLANYC HAS SUPPORTED ON SITE DISPOSAL OF STORM WATER. FOR SOME REASON, DEP DOES NOT SEEM TO GET THE MESSAGE. IT IS WITH SOME AMAZEMENT THAT WE FIND DEP DECIDING TO TAKE THE EXACT OPPOSITE POSITION OF WHAT IS LEGAL AND ENVIRONMENTALLY SOUND POLICY. ISN'T PLANYC DESIGNED TO MAKE NEW YORK CITY MORE ENVIRONMENTALLY FRIENDLY? DESPITE THESE OBVIOUS BENEFITS, DEPARTMENT OF ENVIRONMENTAL PROTECTION HAS DECIDED TO VIOLATE LAW AND GOOD POLICY ON TWO FRONTS.

FIRST, EVEN AFTER THE BUILDINGS DEPARTMENT HAS APPROVED THE USE OF A DRYWELL, DEP HAS DECIDED TO SEE IF IT CAN OBSTRUCT THE USE OF DRYWELLS. IT DOES THIS WHEN BUILDERS COME TO DEP TO GET APPROVALS FOR SD-1 & 2'S (OR THE PERMIT FOR SD-1 & 2'S THAT WERE APPROVED BY THE BUILDINGS DEPARTMENT) AND REJECTS THOSE PLANS (OR REFUSES TO ISSUE A PERMIT) UNTIL SUCH TIME AS DEP APPROVES EITHER A CONNECTION TO A STORM DRAIN OR DEP ITSELF APPROVES A DRYWELL. AND DEP RARELY APPROVES THE USE OF DRYWELLS AND APPROVAL OF ANY TYPE AT DEP SIMPLY TAKES TOO LONG.

SECOND, DEP'S ACTIONS FLY IN THE FACE OF LOCAL LAW 65. UNDER LOCAL LAW 65, AFTER DOB HAS APPROVED THE USE OF A DRYWELL, DEP HAS NO LEGAL ROLE IN VETOING THE BUILDINGS DEPARTMENT'S APPROVAL OR EVEN IN APPROVING OR DISAPPROVING A DRYWELL PROPOSAL PRESENTED TO IT.

AND MAKE NO MISTAKE, DEP CANNOT BE TRUSTED TO PROPERLY DETERMINE WHETHER A DRYWELL IS REQUIRED. FOR EXAMPLE, IT HAS STOOD IN THE WAY OF THE USE OF DRYWELLS IN AN AREA THAT IS THE POSTER CHILD FOR THE USE OF DRYWELLS – THE ROCKAWAYS. DEP HAS REQUIRED CONNECTION TO A STORM SEWER IN THIS MOST OBVIOUS OF LOCATIONS, EVEN IN AFFORDABLE HOUSING PROJECTS.

WE HAVE MET WITH DEP ON THIS AND CANNOT FOR THE LIFE OF US DETERMINE WHY IT WANTS TO BOTH BREAK THE LAW AND TAKE A POLICY WHICH DIRECTLY CONTRADICTS THEIR OWN MANDATE AND THE GOALS OF PLANYC. WHAT IS EVEN MORE SHOCKING IS THAT AT SOME OF THESE MEETINGS REPRESENTATIVES FROM THE MAYOR'S OFFICE HAVE BEEN PRESENT.

THE FACT IS DOB SHOULD HAVE JURISDICTION, DOB DOES HAVE JURISDICTION AND DOB HAS TAKEN THE CORRECT POLICY. WE WOULD LIKE TO ASK THE COUNCIL TO GET DEP TO OBEY THE LAW. TO DO THIS WE RECOMMEND CUTTING THE BUDGET AT DEP IN THE UNIT THAT ADDRESSES THESE ISSUES. OBVIOUSLY, IF THEY HAVE TIME TO REVIEW THINGS THAT ARE NOT WITHIN THEIR JURISDICTION, THEY HAVE TOO MUCH STAFF.



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**TESTIMONY SUBMITTED BY
LAWRENCE M. LEVINE OF THE
NATURAL RESOURCES DEFENSE COUNCIL (NRDC)**

**OVERSIGHT HEARING ON IMPLEMENTATION OF THE
SUSTAINABLE STORMWATER MANAGEMENT PLAN
BEFORE THE COMMITTEE ON ENVIRONMENTAL PROTECTION OF THE
COUNCIL OF THE CITY OF NEW YORK**

APRIL 7, 2009

Thank you for the opportunity to testify today on behalf of NRDC and our nearly 20,000 New York City members. I am Larry Levine, a Project Attorney with NRDC's NY/NJ Harbor-Bight Project. NRDC also offers this testimony as a member of S.W.I.M., or "Storm Water Infrastructure Matters," a coalition of nearly 50 organizations, including community and environmental groups, environmental justice organizations, architects, water engineers, community development corporations, and others that are dedicated to ensuring swimmable waters around New York City through natural, sustainable storm water management practices that retain stormwater runoff for beneficial reuse and/or allow it to infiltrate it into the soil before it reaches storm sewers. These techniques are often referred to collectively as "green infrastructure."

With the new Sustainable Stormwater Management Plan ("Plan"), issued pursuant to Local Law 5 of 2008, New York City is now joining the growing ranks of cities around the country – as well as the U.S. Environmental Protection Agency¹ and National Academy of Sciences² – that have

¹ See generally, Managing Wet Weather With Green Infrastructure, http://cfpub.epa.gov/npdes/home.cfm?program_id=298.

found that green infrastructure approaches should be prioritized in efforts to reduce combined sewer overflows (CSOs) and stormwater pollution. The Plan presents an impressive amount of analysis to show that green infrastructure techniques are cost-effective solutions to CSO and stormwater pollution – often more so than traditional end-of-pipe solutions – and highlights their widespread additional benefits, such as improving energy efficiency, cooling and cleansing outdoor air, and neighborhood beautification, that make them a valuable investment in the City’s overall sustainability.

The Plan also marks the start of what we hope will be a new era of coordination among city agencies – ranging from the Department of Environmental Protection (“DEP”) to the Departments of Transportation, Parks, Buildings, and many others – working together to ensure that our roadways, rooftops, sidewalks, yards, and other features of the urban landscape maximize their potential for on-site stormwater management. Many agencies are responsible under the Plan for a wide array of pilot projects, intended to support future policy decisions on stormwater retention and infiltration standards and designs for both public and private property. We urge the City Council to ensure the agencies have the resources they need to do so, and to hold them accountable for moving as expeditiously as possible from pilot projects to broad, bold policy changes.

While there is much to say about the Plan – and many of our SWIM Coalition partners will also share thoughts on various aspects of the Plan today – I would like to use the remainder of my testimony to briefly discuss funding issues relating to implementation of the Plan. First, as the Council well knows, the federal economic stimulus package has sent literally hundreds of millions of dollars to New York State to fund water infrastructure projects. While this will meet only a small portion of the state’s – and the city’s – overall infrastructure needs, it is notable that Congress directed that 20% of the total be dedicated to projects that address green infrastructure, water or

² See National Research Council, Urban Stormwater Management in the United States (Oct. 15, 2008).

energy efficiency improvements, or other environmentally innovative water infrastructure projects. In New York State, this set-aside amounts to \$86 million. The state Environmental Facilities Corporation has issued a call for project proposals through May 1, 2008. We urge the City to seize this opportunity to seek significant funding for green infrastructure – and green jobs – and urge members of the Council to voice their support in Albany for the award of stimulus funding to worthy green infrastructure projects in the City.

Second, one of the major potential funding sources the Plan identifies is a restructuring of water rates to establish a separate stormwater charge, which would vary based on the amount of impervious surface on a given property. This would more equitably distribute the costs of stormwater management according to the amount of runoff generated from a site, provide a financial incentive for private property owners to use green infrastructure for on-site stormwater management, and provide a dedicated revenue stream for green infrastructure improvements in the public right-of-way. Last year, the Water Board authorized DEP to retain a consultant to study options for rate restructuring, including the creation of separate stormwater charge. The study was to have been completed this spring and the Plan stated that DEP would present its preliminary findings at the April meeting of the Water Board. However, at the Water Board meeting on April 3rd, DEP stated that the study had been delayed and gave no indication of when it would be prepared to present its findings. It is critical that this study be completed in a timely fashion, and we urge this Committee to seek regular updates from DEP on its progress.

Third, as noted in the Plan, successful, widespread implementation of green infrastructure should alleviate (though not eliminate entirely) the need for end-of-pipe, hard infrastructure construction projects – including storage tunnels in Newtown Creek and Flushing Bay that carry a price tag in the billions of dollars. Thus, money shifted from hard infrastructure spending can be a significant source of funding for green infrastructure, if the City can further develop the details of the Plan and make firm commitments to its implementation. This would yield net savings to ratepayers,

since green infrastructure is far more cost-effective than tunnels. But, ultimately, this can only happen if the City moves to integrate the green infrastructure planning process with the development of CSO Long Term Control Plans under the Clean Water Act. We urge the City to continue moving in that direction, as are other CSO communities cities on the cutting edge of stormwater management, such as Philadelphia, Portland, Kansas City, Cincinnati, Louisville, Indianapolis, and, here in New York State, Syracuse.

Finally, the Council should provide sufficient funding in agency budgets to allow for the incorporation of green infrastructure features into new City capital projects, including roads, sidewalks, schools, parks, and many others. City agencies must begin to routinely incorporate sustainable stormwater management into the design and budgets of all of the projects they oversee – *i.e.*, to “build it into the way [they] do business,” as the director of the mayor’s Office of Long Term Planning and Sustainability recently said, speaking of the need to design capital projects to accommodate the anticipated effects of climate change (which, in fact, include more CSOs due to increased precipitation).³

Thank you for the opportunity to testify today. NRDC looks forward to the Committee’s continued engagement in this issue. I would be pleased to answer any questions.

³ Mireya Navarro, New York Must Prepare for Global Warming, Mayor’s Panel Says, New York Times (Feb. 17, 2009).

Riverkeeper's Testimony:
The Implementation of PlaNYC's Sustainable Stormwater Management Plan
Committee on Environmental Protection
April 7, 2009

Good afternoon and thank you for the opportunity to speak here today. My name is Rebecca Troutman and I am an attorney for Riverkeeper.¹ I am also here today as a representative of the S.W.I.M. Coalition. We applaud the City's efforts to move forward with a progressive environmental agenda, most specifically concerning storm water and water quality, and we offer our support in the endeavors. We do have concerns however: The topics I will address include first, the need to consider and plan for the impacts of Climate Change within the Plan, and second, the integration of the development of the City's LTCPs with the Plan.

On Climate Change: As the report by the NYC Panel on Climate Change just described, climate induced changes will cause a variety of impacts to NYC Infrastructure. The projected impacts due to changes in precipitation patterns include an *increase in CSO events and a corresponding increase in pollution of coastal waterways*.² The Plan itself states that most climate change models predict that average regional precipitation will increase by 5.7 % by the 2050s and 8.6% by the 2080s,³ and the models predict an increase in the intensity of rainfall which will lead to increased runoff and flooding. Thus, it is critical for the City's planning and methodologies to account for the projected precipitation levels and patterns, rather than rely on historical averages. This will also be helpful in terms of finance and budgeting: By designing public works projects to account for the anticipated changes, the City will better be able to anticipate and meet the costs of the necessary controls and modifications.

Additional aspects of Climate Change which should be expeditiously folded into the planning and implementation are sea level rise and storm surge related issues. In response to public comments submitted on this issue, the Administration responded: "The City has a separate initiative to address sea-level changes and storm surge management. This Plan is focused on storm water management."⁴ We note that the Plan does recognize these issues,⁵ but given the increasingly dire projections from the scientific community -- the NYC Panel itself states that sea level rise could be as much as 10 inches by the 2020s, and 55 inches by 2080s,⁶ (resulting in increased inflow of sea water to sewers and wastewater plants, and a reduced ability of CSO and wastewater plant functioning) -- we urge that any applicable data and considerations from the existing projections be incorporated into the Plan now, and on an ongoing basis as more information becomes available.

¹ Riverkeeper, Inc., contact: rtroutman@riverkeeper.org.

² Climate Risk Information, New York City Panel on Climate Change (February 2009), at 27, Table 4.

³ PlaNYC, Sustainable Stormwater Management Plan, (2008), at 23.

⁴ Id. at 377.

⁵ Id. at 23.

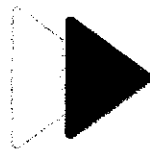
⁶ Climate Risk Information, New York City Panel on Climate Change (February 2009), at 17.

Concerning the Long Term Control Plans: Although the Administration states that in “the future... these distinct planning efforts will be more closely interrelated,”⁷ we urge a “sooner rather than later” approach to the integration of the two processes. We understand that the task of developing the LTCPs for NYC is not the simplest one... nor is it inexpensive. Thus it is all the more critical that the two planning efforts be integrated to most cost-effectively achieve the desired results (by allowing savings on the hard infrastructure measures for example, when Green Infrastructure is utilized), to minimize redundant analyses and, to maximize interagency coordination and data sharing. Similarly, we support a Green Infrastructure approach by the City to meet the requirements of the MS4 program (the Municipal Separate Stormwater Sewer System) for those portions of the city with separate sewer portions.

Finally, a quick comment on the water quality monitoring: The Plan states that DEP’s Marine Sciences Section tests NY Harbor waters at 47 locations, on a year round basis, with weekly sampling in the summer, and monthly sampling in the winter.⁸ Riverkeeper has embarked on a water quality sampling program in partnership with scientists from Lamont-Doherty Earth Observatory of Columbia. We would be pleased to discuss any possible synergies and cooperation so as to best use available resources to accomplish our shared goals, and to keep the public informed as to the actual conditions and the progress occurring. Thank you.

⁷ PlaNYC, Sustainable Stormwater Management Plan, (2008), at 358.

⁸ Id. at 84.



SUSTAINABLE SOUTH BRONX

April 7, 2009

Testimony to the New York City Council Environmental Protection Committee

Re: Local Law 5

Thank you to the Environmental Protection Committee for the opportunity to share our thoughts on the Local Law 5 Sustainable Stormwater Management Plan (the "Plan"). My name is Adam Batnick and I am here to speak on behalf of Sustainable South Bronx with respect to the Plan. Sustainable South Bronx is an equity organization dedicated to improving the environmental and economic well-being of the South Bronx through implementing projects and policies that are informed by community needs. We are a member of the S.W.I.M. coalition.

Green Roofs

First, with respect to green roofs, we are encouraged by the tax incentive that passed with SWIM and the City's support last year, an initiative of PlaNYC and a component of the Local Law 5 Plan. This tax abatement, worth \$4.50/square foot (approximately ¼ the total cost), provides a meaningful incentive for building owners to apply for the tax abatement. We commend the Department of Buildings and Department of Long Term Planning and Sustainability for implementing rules that are reasonable and relevant to green roofs. Tremendous support from the public was demonstrated in the process of finalizing the rules: over one hundred New Yorkers signed on to letters of support with respect to ensuring that the tax abatement meets the need of the City, green roof professionals, and building owners. The City is now presented with a tremendous opportunity to encourage the private sector to green their buildings. One question that we now have is: how will the City use the momentum from the rule making process to educate the public and encourage them to apply for the tax abatement? We offer our support for

1 of 2

initiatives that help buildings owners and professionals become aware of and apply for the tax abatement; the S.W.I.M. coalition has connections to the green roof industry that could help to facilitate such initiatives. Such initiatives could include public information sessions, notices on water bills advertising the tax abatement, and tours of existing green roofs in New York City that could qualify for the tax abatement.

Green Jobs

Second, we are pleased that green jobs is a component of the LL5 plan. Initiatives that support the Plan, and PlaNYC in general, include the Million Trees Initiative green jobs training program. Green jobs can improve the City's economy and tax base, for example, by encouraging local employment and maintenance for urban forestry programs, such as the Million Trees Initiative (MTI). Outstanding questions that we would like answered include: How is the City's Green Sector Study, which the Plan notes is evaluating potential green jobs in New York City, considering the role of small businesses and locally trained labor within the landscaping sector? And, how is the city planning for jobs created by LL5 – and PlaNYC more generally through vegetated infrastructure – to create pathways out of poverty?

High Performance Guidelines

Third, the Plan recognizes the important role of best practice guidelines that are being developed by various city agencies, such as the *Park Design for the 21st Century: High Performance Landscape Guidelines*. SSBx's Policy Director is a peer reviewer of these guidelines, which are being developed by the NYC Department of Parks and Recreation and Design Trust for Public Space. We are in support of the principles that permeate these guidelines (which are currently in draft form) including the use of water as a resource through implementing vegetative, source control infrastructure, water reuse, and professional environmental stewardship. Once completed, these guidelines will provide a framework for, where appropriate, providing additional education, incentives and regulation for widely recognized best practices.

Thank you once again for the opportunity to testify. We look forwards to working with the New York City Council and the Office of Long Term Planning and Sustainability to further our shared goals of making New York City a greener and greater city through improving water quality in our communities.

North Brooklyn Compost Project
Comments on the implementation of the Sustainable Stormwater Management Plan
April 7, 2009

Thank you for the opportunity to submit comments on the implementation of the Sustainable Stormwater Management Plan. I want to start with voicing my appreciation for the efforts of the Mayor's Office of Long Term Planning and Sustainability, which has raised the bar for environmental work citywide.

I am writing today as a founding member of the S.W.I.M. Coalition and as Environmental Planner dedicated to building ecological infrastructure that works for New York City. I represent my home organization, the North Brooklyn Compost Project, a volunteer-based initiative based in McCarren Park that seeks to reduce solid waste while generating a stewardship base focused on increasing the ecological function of North Brooklyn parks and streetscape. Since our founding in 2004, we have amassed a base of hundreds of volunteers and area businesses, diverted tons of putrecible waste from the transfer stations that are concentrated in our community, and spearheaded stewardship efforts that have beautified a once-shabby corner of our park.

The NBCP project of importance to those gathered here today is a street tree retrofit that we are piloting this spring. Using our own compost and volunteers, we will be adopting a stretch of tree lawn along the south edge of McCarren Park and planting a rain garden in a 40ft stretch of vegetation between two existing street trees that will receive stormwater from the adjacent roadway. The goal of this project is to manage stormwater from the street in a sustainable manner while actually improving the survivorship of trees struggling in the public right of way.

As one project the impact of our retrofit will be small and largely educational. It is our hope, however, that moving forward, stormwater BMPs in the public right of way can be coordinated and implemented on a citywide scale. There are presently numerous projects by Greenstreets, a DEP-led project in design phase along the Belt Parkway, and the work on newly planted street trees in the Bronx by YMPJ in addition to our retrofit in North Brooklyn that – if viewed cohesively – could provide the foundation of a research agenda to deal with roughly 20% of the city's land – its streetscape – in a manner that is cost effective, ecologically sane and engages communities. Currently these projects are bureaucratically isolated from each other, with informal lines of communication as the only link.

Finally, the interagency coordination component of this work – an extremely daunting task! – currently rests on the shoulders of the same folks who are coordinating stewardship, monitoring, site design and funding. The interagency aspect of these projects is in dire need of support from the Interagency BMP Task Force. We continue to meet with DOT, DEP and Dept of Parks separately, untangling the red tape between agencies with seemingly competing priorities. The interagency relationships built during the implementation of these pilots will be the foundation for all future work in the public right of way.

Thank you again for the opportunity to provide these comments.
Kate Zidar
northbrooklyncompost@gmail.com

**THE COUNCIL
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Appearance Card

I intend to appear and speak on Int. No. 5 Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Paul Mankiewicz

Address: 99 Bay Street, Bx. NX 10464

I represent: The Labor Trust NYCSWCO SWTM

Address: 440 City Island Ave Bx. NX 10464

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Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 4/7/09

(PLEASE PRINT)

Name: Adaron Koch

Address: _____

I represent: Mayor's Office of LTPS

Address: _____

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Date: _____

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Name: Randy Lee Larry Rosano + Robert Altman

Address: 27 Whitehall St, 4th Fl NYC 10004

I represent: BIANYC + Q BBA

Address: _____

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Date: 4-7-09

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Name: Rebecca Trodman

Address: _____

I represent: Riverkeeper / SWIM

Address: 828 South Broadway, Tarrytown, NY

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Date: 4-7-09

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Name: Dawn Henning

Address: _____

I represent: Youth Ministries for Peace & Justice, SWIM

Address: _____

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Name: ANGELA LICATA

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I represent: DEPUTY COMMISSIONER NYC DEP

Address: _____

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THE CITY OF NEW YORK**

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I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: April 7, 2009

(PLEASE PRINT)

Name: Lawrence Rosano

Address: 213-09 41st Avenue, Bayside, N.Y.

I represent: Queens' Bronx Building Assoc.

Address: _____

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Name: R. RANDY LEE

Address: 260 CHRISTOPHER LANE SINY

I represent: TSIANIC

Address: SINY

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Date: _____

(PLEASE PRINT)

Name: Adam Botnick

Address: 1752 John Street Merrick, NY 11566

I represent: Sustainable South Bronx

Address: 890 Garrison Ave, 4th Floor Bronx, NY 10474

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Date: 4/7/09

Name: Angela Licata (PLEASE PRINT)

Address: _____

I represent: DEP

Address: _____

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Date: 4/7/09

Name: Carter Strickland, III (PLEASE PRINT)

Address: _____

I represent: Mayor's Office of Long-Term Planning and

Address: Sustainability

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Name: Lawrence Levine

Address: 309 W 109th St, H65, NY, NY, 10025

I represent: Natural Resources Defense Council

Address: 40 W 20th St, NY, NY 10011

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I intend to appear and speak on Int. No. _____ Res. No. _____

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(PLEASE PRINT)

Name: KATE ZIDAR

Address: _____

I represent: S.W.I.M. Coalition and NORTH BROOKLYN COMPOST

Address: katezidar@gmail.com PROTECT!

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