

**Testimony of Geraldine Kelpin
Director, Air, Noise Policy and Permitting
New York City Department of Environmental Protection
(DEP)**

**before the Council of the City of New York
Committee on Governmental Operations
concerning Intro. 899 - Use of ULSD and BAT in Generators Used in Street Fairs and
Other Events
Committee Room, City Hall
10:00 A.M.
January 8, 2009**

Good morning, Chairman Felder and Members of the Committee. I am Gerry Kelpin, Director, Air, Noise Policy and Permitting of the Bureau of Environmental Compliance at the New York City Department of Environmental Protection.

On behalf of Acting Commissioner Steven Lawitts, thank you for the opportunity to testify on the use of ultra-low sulfur diesel fuel and best available technology in diesel generators used in street fairs and other events. Mayor Bloomberg's *PlaNYC 2030* outlines initiatives on many fronts to improve air quality, and a number of them focus on reducing emissions from on-road and off-road vehicles in an effort to ameliorate diesel fuel's negative impacts on public health and the environment. New Yorkers live in a dense urban environment where there is increasing recognition that localized pollution effects from various types of equipment, such as at construction sites or even power plants, can disproportionately affect those living and working nearby. Mandating emissions reductions from generators used on the streets may potentially reduce such effects and in the interest of achieving those benefits we offer the following comments on the proposed legislation.

The bill requires best available technology (BAT) for retrofitting generators. Diesel particulate filters (DPF) rely on a certain exhaust temperature, below which they are ineffective. If the generator does not run long enough under load, it may not reach the temperature at which the retrofit will work properly. Diesel oxidation catalysts (DOC)

perform at lower temperatures but capture only 25% of particulates versus 85% for DPFs. Selective catalytic reduction technology (SCR) contains catalysts that capture oxides of nitrogen (NO_x), which help reduce the emission of NO_x produced when diesel engines run at low temperatures. The retrofit equipment must be properly tailored both to the size of the generator and the use to which it will be put. One solution would be to exempt generators under 50 horsepower, which is the case in Local Law 77; however, this may not capture some diesel generators used in street fairs. While these issues could possibly be addressed in the rulemaking, experience with implementing other retrofit legislation suggests that reasonable compliance on the part of the legislated populations required reasonable lead times for purchase and installation. Given that much of this equipment is provided by rental companies, it is very likely the same principle applies here.

In order for there to be effective enforcement, issuance of the permit would ideally be tied to some type of proof of fuel use and BAT compliance. This might include proof from the rental company or a receipt from a gas station that the tank was filled with ULSD. If the generator is to be used for multiple days, proof of purchase must include enough fuel to power the generator at whatever the fuel consumption rate is per hour. Although it is possible to see whether BAT has been installed on the generator, testing fuel on site is unworkable.

Another approach to ensuring the use of ULSD and BAT would be to modify the existing permit regime for storage of fuel on site found in the Fire Code. A Fire Department of New York (FDNY) permit is required if ten gallons or more of diesel fuel are to be stored on site. In this case the storage is in the fuel tank of the generator. The Street Activity Permit application asks whether generators will be used at the event, and FDNY contacts the sponsor regarding the permit requirement. If this bill were to include an amendment of the Fire Code granting authority to require the use of ULSD as a condition of the permit, and the requirement of BAT would be in place as a condition of the permit pursuant to the

amendment of DEP's Title 24, the event sponsor will have notice and the permit process will foster compliance.

Regarding the drafting of the bill, it might be advisable to move the definition of BAT from subdivision (c) and include it as a defined term, which would be consistent with other local laws requiring the use of best available technology. Second, there should be a provision that a BAT retrofit is good for three years; then, in the rulemaking, an authorized sticker can show the date on which the retrofit expires. The three-year provision also occurs in other laws requiring BAT.

Finally, effective enforcement depends on a shared database of permits. The significant technological progress the Office of Citywide Events Coordination and Management has made in making data regarding permits accessible should greatly facilitate this aspect of enforcement.

The Administration looks forward to working with the Committee to craft workable and enforceable legislation on generators used in street events. Thank you for the opportunity to testify. I will be glad to answer any questions.

**TESTIMONY OF
MICHAEL BELLEW, CHIEF OF CLEANING
NEW YORK CITY DEPARTMENT OF SANITATION**

**HEARING BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON GOVERNMENT OPERATIONS
THURSDAY, JANUARY 8, 2009 – 10:00 A.M.
COMMITTEE ROOM – CITY HALL**

RE: Intro No. 908: In relation to street cleaning and the collection and removal of recyclable materials and refuse materials at street events

Good morning Chairperson Felder and members of the Committee on Governmental Operations. I am Michael Bellew, Chief of Cleaning for the New York City Department of Sanitation. I am here this morning to comment on Intro No. 908 under consideration by the Committee.

Intro No. 908 proposes to add a new Subchapter 8 to Title 16 of the Administrative Code by setting forth requirements for the collection and disposal of refuse and recyclable materials at street events. Among these provisions include a requirement that sponsors of street events provide separate receptacles into which the public can deposit recyclable materials separately from the regular trash. Additionally, vendors participating in street events would be required to source separate certain recyclable materials they generate, including metal, glass, and plastic recyclables.

The Department supports the intent of this legislation. Fifteen years ago the Department implemented identical requirements for sponsors and vendors at street events through the enactment of comprehensive rules addressing cleaning and collection requirements during and after street events. These rules are enumerated under Chapter 14 of Title 16 of the Rules of the City of New York.

Consistent with the Department's current rules, sponsors of street fair events throughout the City arrange for the strategic placement of separate receptacles for trash and recyclable materials at appropriate sites at the event. The receptacles are monitored, and all materials are separately bagged and later placed out for collection at a designated location either by a private carter or by the Department at the end of the night. For the smaller residential block parties, residents must properly package and place out at curbside all refuse and recyclable materials generated at the block party in front of their building no earlier than the night before their regularly-scheduled refuse or recycling collection day. Until the time for residential collection, residents must keep their receptacles stored within the building or at the rear or side of their premises.

Municipal recycling is a major component of the City's solid waste management system. As the Department seeks to divert material away from the solid waste stream, enhancing recycling awareness and public participation is an important component of the City's overall waste management strategy. Realistically we recognize that funding for new recycling programs is likely to be restricted due to the significant fiscal crisis experienced at all levels of government. However, the provisions of this proposed legislation, that are already consistent with the underlying policies of

the Department's current rules, can help to improve the diversion rate by targeting designated recyclables that may otherwise be discarded in trash receptacles by the general public -- both New Yorkers and outside visitors -- at street events. The Department supports the underlying intent of Intro 908 as a key measure to promote increased recycling and awareness among the public.

That said, we ask the Council to consider a few issues regarding this legislation and its enforcement. First, the proposed penalty scale disproportionately penalizes small property owners who host block parties. Compared with the current \$25 fine against property owners and commercial businesses who fail to recycle under Local Law 19, the \$250 penalty for failing to recycle at a street event seems inconsistent. There is a bill currently before the City Council, Intro No. 668, which includes provisions for increasing the fine amounts against property owners who do not recycle. That bill would increase the civil fine from \$25 to \$50 for owners of residential buildings under six dwelling units, and from \$25 to \$250 for owners of residential buildings containing six or more dwelling units, as well as commercial, manufacturing and industrial buildings.

Second, it is difficult to issue premises-based fines against individual vendors that do not have the address information necessary to appropriately issue a summons.

Again, we would be happy to discuss this legislation further with the Council and promote its laudable goals. I welcome the opportunity to answer any questions you might have.



BROOKLYN COMMUNITY BOARD 14
FLATBUSH-MIDWOOD COMMUNITY DISTRICT
810 East 16th Street
Brooklyn, New York 11230

MARTY MARKOWITZ
Borough President

ALVIN M. BERK
Chairman

DORIS ORTÍZ
District Manager

**TESTIMONY TO THE COMMITTEE ON GOVERNMENTAL OPERATIONS OF
THE NEW YORK CITY COUNCIL REGARDING STREET ACTIVITY EVENTS**

Thursday, January 8, 2009

Good morning, Chairman Felder, and members of the Governmental Operations Committee.

My name is Jonathan Judge, Community Coordinator at Brooklyn Community Board 14, and I am here today representing Board Chairman Alvin Berk and District Manager Doris Ortíz to testify on the proposed legislation and the Community Board's role in the street activity permit process with regard to this proposed legislation.

Firstly, concerning Intro. 899, sponsored by Council Member Gerson, Community Board 14 supports the merits of the legislation and sees such an effort towards creating a cleaner environment as an extremely worthwhile endeavor. We do not believe that the requirements proposed would create an unnecessary burden on the sponsors of the street activity events that keep our communities of Flatbush and Midwood dynamic and thriving.

The Board, however, does take issue with the second proposed legislation, introduced by Council Member Mealy, primarily on three key points:

1. The role of Community Boards, designed to bring cost-effective and efficient coordination of services at the local level, are non-existent in this legislation;
2. These particular requirements, should they be made law, would present, in our opinion, a wasteful and unproductive burden on both the City and the sponsors of *block parties*, and
3. The legislation appears redundant in light of similar standing Rules of the City of New York for the Department of Sanitation.

Firstly, on the matter of its redundancy, it would be helpful for the Intro's sponsor or the Committee to elucidate the reasons for proposing that these requirements become law, despite their existence in the Department of Sanitation's rules.

Secondly, the important and cost-effective role of the Community Boards in the coordination of City services appears to have been ignored in the drafting of these requirements. According to Chapter 70 of the New York City Charter, City agencies and Community Boards must work together in the coordination of all services affecting the welfare of its communities and residents in any respect. Furthermore, District Managers

and their staffs are empowered to perform this coordination of services on a day-to-day basis. Therefore, it clearly follows that Community Boards do have a direct role in the coordination of any and all City services relating to street events within their community districts.

This is why the Community Boards have been designated as the first step in the street activity permit process, and that is why Brooklyn Community Board 14, in fulfilling its Charter mandates, has always directly coordinated those City services. In the course of the permit process, we discern which block parties require special attention from Police, Fire, Sanitation, Parks or any other agency. We work together with the sponsors and the local agency chiefs to ensure that the sponsors and the agencies respond accordingly. For our Board, this has always included a discussion and strategy on clean-up after a street event. In doing so, we provide a tremendous service to the sponsor, who, in most cases, has to meet with our District Manager only once to resolve most of these matters. Occasionally, we request that the sponsor work closely with a particular agency to ensure a certain set of issues are resolved, but, again, that is assessed on a case-by-case basis as determined by our Board's experience with the block and the sponsor. Ultimately, our Board's recommendation to the Mayor's Office on any permit application is derived from our previous experiences with the location, the sponsor and the sponsor's cooperation with City agencies.

Finally, in looking at the scope of this legislation, it would be inappropriate not to recognize that Sanitation's role is only one part of a complex intermeshing of City agencies that arises through the issuance of street activity permits. To devise this requirement only for Sanitation is a bit short-sighted; Police, Fire, Parks, and Transportation, for instance, should have a more hands-on role in each street event as it may be necessary. Yet, in a time of fiscal crisis such as this, to mandate such a role for each agency would prove to be an exceptional burden on the sponsors as well as the agencies, who would have to devote extra resources to coordinate independently with the nearly 100 sponsors from our district alone, never mind the other 58 community districts. That is why the most logical and cost-effective agents for coordinating sponsors and agencies to resolve the needs and problems of any particular street event, particularly in this instance regarding Sanitation requirements for a block party, are the Community Boards.

We are just as interested as everyone else in ensuring the smooth operation of safe, clean and neighbor-friendly street events in our district, and because of our first-hand knowledge of our communities, our residents, and our local agency chiefs, we as the Community Board are the best situated to coordinating that outcome. Therefore, we respectfully request that the committee consider amending this legislation to improve it in the following ways:

1. Require that sponsors meet with the local Community Board District Manager, rather than solely with a local sanitation district officer, to ensure that any service-related issues are coordinated and resolved in advance of the street event taking place, regardless of whether those issues concern Sanitation, Police, Fire, Parks or another agency; and

2. Because block parties are typically organized by small, volunteer-based block associations—and in our district, many times by elderly community organizers looking to provide youth with a safe and fun street event during the summer—the legislation should permit the Department of Sanitation to exempt single-day, single-block street events from these burdensome requirements after consultation with the local Community Board. Otherwise, we have no objection to such requirements being applied to larger multi-day and/or multi-block street events, as long as there is consultation with the local Community Board.

On behalf of Brooklyn Community Board 14, we thank you for this opportunity to speak on this very important matter for our communities.

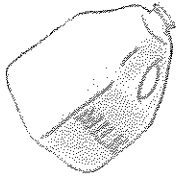
Having a Block Party?

Enjoy yourself, but please remember to

clean up and recycle.

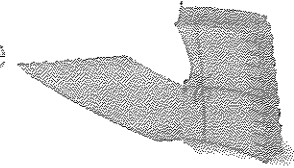


Block parties are a great New York tradition and a fabulous way for friends and neighbors to get together, have fun and enjoy each other's hospitality.



But remember – you should always join with your neighbors after the fun to help keep your neighborhood clean by sweeping up any litter and debris. And equally important, please make certain that before, during and after your block party that everyone recycles, since many of the items associated with a block party are recyclable.

Here are some important things to remember to make your block party a real success:



REFUSE and RECYCLABLES:

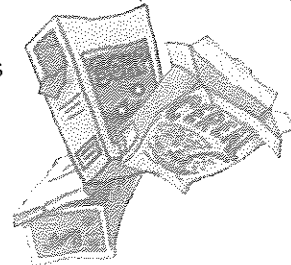
After your block party, refuse and recyclables must be properly packaged and placed out at curbside in front of your residence the night before your regularly scheduled refuse or recycling collection day. Until the time of collection, receptacles must be kept within the building or at the rear of the premises. Failure to store receptacles carries a fine starting at \$100.

RECEPTACLES: For Refuse -- Only use metal or heavy duty plastic refuse cans with tight-fitting lids or securely tied, heavy-duty opaque plastic refuse bags, available at most retail stores. Using an improper receptacle carries fines starting at \$100.



For Recyclables -- The City recycles paper, metal, plastic and glass. These materials must be separated as follows:

- >> Mixed paper must be placed in clear plastic recycling bags or in properly labeled containers, preferably green. Corrugated cardboard must be bundled and tied separately, unless broken down into small pieces, in which case it can be placed out for recycling as mixed paper. Cardboard boxes are not the proper receptacles for recyclables.
- >> Plastic (bottles and jugs), metal and glass (bottles and jars), along with aluminum foil, juice boxes and juice cartons, etc. must be placed in clear plastic recycling bags or in properly labeled containers, preferably blue.



For more information, call 311 or visit DSNY's web site at www.nyc.gov/santitation



Department of Sanitation
City of New York



Mayor's Community
Affairs Unit



ENVIRONMENTAL DEFENSE FUND

finding the ways that work

**Testimony on Int. 899 On The Use of Ultra Low Sulfur Diesel Fuel And
Best Available Retrofit Technology For Generators Used In Street Fairs
(Title 24, Section 24-163.8)**

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**Presented by Isabelle B. Silverman
Legal Fellow**

January 8, 2009

City Council Hearing Of The Committee On Governmental Operations

Good morning. My name is Isabelle Silverman. Thank you for the opportunity to testify today. I am testifying on behalf of Environmental Defense Fund, a non-profit, non-governmental and non-partisan environmental organization with more than 400,000 members nationwide. Since 1967, our organization has linked science, economics, and law in tackling environmental problems.

Introduction

Environmental Defense Fund (EDF) is strongly supportive of Int. 899 as this bill is moving us in the right direction of reducing harmful diesel pollution. As you probably know, New York City passed similar diesel laws in 2003 and 2005 for off-road and on-road vehicles respectively. The off-road construction equipment law was passed first to bring cleaner air to the already overburdened community of lower Manhattan during the rebuilding of Ground Zero.

Later in 2005, five on-road laws were modeled after the off-road law to increase air quality benefits all over the City. EDF was involved in drafting these laws and their implementing regulations. EDF has been working closely with some of the agencies that have been in charge of implementing these diesel laws. I have been one of the people at EDF who have been working on reducing diesel emissions with diesel retrofits since 2003.

The Technologies Exist To Reduce Over 85% of PM Emissions On All Generators
In 2004, EDF put together the Cleaner Diesel Handbook (www.cleandieselandbook.org) that listed different diesel retrofit technologies, their applications and their effectiveness. Since then, new diesel retrofit technologies have become available and have been tested successfully. The most commonly used diesel retrofit products are diesel oxidation catalysts (DOCs) and diesel particulate filters (DPFs). Both reduce particulate matter (PM), hydrocarbons and carbon monoxide but not nitrogen oxides (NOx).

However, the big difference between a DOC and a DPF is the PM reduction and of course the costs. DPFs reduce over 85% of PM emissions while DOCs reduce about 25% of PM emissions. DPFs trap PM emissions while DOCs facilitate a chemical reaction that strips off the soluble organic fraction (SOF) from the PM emissions but the fine particles (PM_{2.5}) of the PM emissions can still escape into the air. As discussed below, fine particles (PM_{2.5}) are particularly harmful to our health and should therefore be trapped in a DPF for maximum health protection. This is why EDF always advocates for the installation of DPFs whenever possible.

When the laws were drafted in 2003 and 2005, diesel retrofits had been tested on limited applications. For example, diesel particulate filters reducing over 85% of particulate matter (soot) emissions had hardly been installed on off-road equipment. This is why the laws allowed for less effective retrofit technologies as well in case DPFs did not work for certain applications. The laws' goals were to test these DPF technologies and create new markets for more diesel retrofit products.

This is exactly what happened. New DPFs have come onto the market so that now pretty much every diesel vehicle, off-road and on-road can install a DPF. The redevelopment of lower Manhattan, the Croton Water Filtration Plant and Columbia University expansion have almost exclusively installed DPFs (active and passive DPFs). So far the DPFs have been performing very well reducing over 85% of particulate matter pollution which includes PM_{2.5}. The affected communities and the construction workers have responded enthusiastically to the air quality improvements.

Suggested Changes To Int. 899

Because active and passive¹ DPFs are now a proven technology that works for pretty much every application, Int. should require an 85% PM reduction for all diesel generators used for street fairs. This would also make implementing rules issued by the commissioner obsolete. Now that we have tested DPFs and they work, it is no longer necessary to have the commissioner publish a list (i.e. implementing rules) as to the best available technology for reducing the emission of pollutants to be used for each type of

¹ Passive DPFs are less expensive than active DPFs. Passive DPFs can be used when the exhaust gas temperature of the diesel vehicle reaches a certain level so that the heat from the exhaust gas temperature can burn off (regenerate) the soot trapped in the filter. If the exhaust gas temperature of a certain vehicle is too low, only an active DPF can work. An active DPF uses either electricity (by plugging in over night) or a little bit of fuel to burn off the soot trapped in the filter.

diesel-powered generator. Therefore, EDF is recommending that paragraph c. be removed from Int. 899 and the reference to the rule in §2. be removed as well. If there are uncertainties whether DPFs work for the generators used in street fairs, EDF could get a written confirmation from DPF retrofit manufacturers that these type of generators can indeed be retrofitted with a DPF reducing at least 85% of harmful particulate matter emissions.

Consequently, we also recommend that references to “best available technology” in the beginning and (5)b. are replaced with “shall utilize EPA or CARB verified retrofit technology reducing at least 85% of particulate matter pollution.” If this is already written into the law, the City Council prevents the generators from being retrofitted with diesel oxidation catalysts only that reduce merely 25% of particulate matter pollution and fail to trap harmful PM_{2.5} emissions.

The Health Case

EPA studies have shown that every dollar invested in diesel retrofits yields several dollars in health benefits. We all know that diesel emissions and especially PM_{2.5} emissions have been linked to a slew of health problems such as lung cancer, cardiopulmonary disease and stroke. In children, PM_{2.5} has been associated with asthma attacks, asthma onset and impaired brain and lung development.

Since 1996 when EPA last updated the NAAQS for particulate air pollution, more than 2,000 peer-reviewed scientific studies have been published. These studies:

- Validate earlier epidemiologic studies linking both acute and chronic fine particle pollution with serious morbidity and mortality,
- Expand the list of health effects associated with PM, and
- Identify health effects at lower exposure levels than previously reported.

Particulate pollution is a mixture of soot, smoke and tiny particles formed in the atmosphere, and it is associated with heart attacks, irregular heartbeat, asthma attacks, reduced lung function and bronchitis. These impacts result in tens of thousands of premature deaths from heart and lung disease annually, as well as hospital admissions, emergency room visits, absences from school or work, and restricted activities related to asthma attacks.

Because only DPFs trap PM_{2.5} emissions, we are urging the City Council to require the installations of 85% effective retrofit technology already in the law.

Thank you for the opportunity to testify.

For questions, please feel free to contact me at 212-616-1337 or isilverman@edf.org

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 899 Res. No. _____

in favor in opposition

Date: _____

Name: Isabelle Silverman (PLEASE PRINT)

Address: 257 PAS

I represent: EDF

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THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: 1/8/09

Name: Jonathan Judge Community Coordinator Bk CB14 (PLEASE PRINT)

Address: 810 East 16 street, Bklyn, NY 11230

I represent: 23rd Council Alvin Beck + DM Don's Ortiz

Address: _____ street Bklyn NY 11230

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Date: _____

Name: Andrea Ciccone (PLEASE PRINT)

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I represent: DSNY

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Date: _____

(PLEASE PRINT)

Name: Michael Bellow

Address: _____

I represent: NYC - Sanitation

Address: _____

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Gerry Kelpin

Address: _____

I represent: DEP

Address: _____

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