

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON CIVIL SERVICE AND LABOR

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May 2, 2012
Start: 1:30 p.m.
Recess: 4:35 p.m.

HELD AT: 250 Broadway
Committee Room, 16th Floor

B E F O R E:
JAMES SANDERS, JR.
Chairperson

COUNCIL MEMBERS:
Melissa Mark-Viverito
Eric Ulrich
Domenic M. Recchia, Jr.
Michael C. Nelson
Ruben Wills
Inez E. Dickens
James F. Gennaro
Larry B. Seabrook

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

Mark Lanaghan
Assistant Commissioner
New York City Department of Environmental Protection

Adan Nicolas
Car wash worker

Heriberto Hernandez
Car wash worker

Freddy Antonio Nunes Trujillo
Car wash worker

Magdalena Barbosa
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Make the Road New York

Eduardo Arroyo
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Raul Perez
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Stephen Mooser
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New York Committee for Occupational Safety and Health

Joel Shufro
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Research Analyst
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Sarah Meyer
Director of Research
Retail, Wholesale and Department Store Union

Stephen Cha-Kim
Staff Attorney
Make the Road New York

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2 CHAIRPERSON SANDERS: Good
3 afternoon, this Committee will now to come
4 hearing--to order. Good afternoon and thank you
5 for coming, my name is Council Member James
6 Sanders Jr. and I am the Chair of the Committee on
7 Civil Service and Labor.

8 First, I need to make an
9 announcement. This is a very historic time we're
10 living in, we have recently upgraded our
11 technology, and this hearing is being webcast live
12 and will be archived forever on the Council's
13 website shortly after it is broadcast. I don't
14 expect anything to happen differently as most of
15 hearings have been recorded for a long time, but I
16 wanted everyone to know that we are going out live
17 over the Web. So if you know anyone out there,
18 wave when it's appropriate.

19 We will be talking this afternoon
20 about the surprisingly dirty business of washing
21 cars in New York City. It is relatively a small
22 number of businesses and employees in the grand
23 scheme of things. There are about 200 car washes
24 in this city employing about 1,600 workers. Today
25 we will hear the truth about how these workers are

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paid and treated.

Many of these workers do not always get the minimum wage, forget about overtime. Sometimes they are sent home in the middle of the shift because business is slow. And they are lucky if they get all their tips, which are frequently quote unquote shared with the managers or used to pay off consumers with complaints about damages to their vehicles.

These low-paid workers are given harsh, noxious chemicals to clean and degrease cars usually without any protective gear provided, which is a violation of federal law. I expect we will hear from workers today who have been harmed on the job, which, of course, do not provide health care plans. It concerns me that this industry's practice for dealing with a consumer complaint is to pay for damages out of the pockets of low paid employees. If customers are being harmed, it should be up to the business to compensate customers, not one of putting money into the tip--I stand corrected. If customers are being harmed, it should be up to the business to compensate businesses. No one is putting money in

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2 the jar thinking that it's going to anyone but the
3 workers.

4 And finally, there's the
5 environment. This is an unregulated industry that
6 deals with only God knows what chemicals and
7 thousands in gallons of wastewater a day. We
8 don't know whether these chemicals are getting
9 into the environment in neighborhoods where they
10 operate.

11 There's some good news, however,
12 the New York Department of Labor recently obtained
13 a multimillion dollar settlement against a car
14 wash in Manhattan for back pay, and there is talk
15 of some car washes unionizing in the city, perhaps
16 we'll hear more of that. So, hopefully, this city
17 is moving in the right direction to clean up this
18 industry, pun intended.

19 Thank you for coming. We have been
20 joined by Council Members, to my left Melissa
21 Mark-Viverito, Council Member Ulrich of Queens,
22 and Council Member Recchia of Brooklyn. I would
23 like to thank Committee staff Matthew Carlin, our
24 counsel, and Faith Corbett, our policy analyst.

25 Let's see, I would like you, Madam,

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2 to make a--do you have a first statement that you
3 would like to make?

4 COUNCIL MEMBER MARK-VIVERITO: Yes,
5 thank you, Mr. Chair, for this hearing on
6 legislation that I am sponsoring and that have so
7 far close to 20 Council Members that are co-
8 sponsoring.

9 The bill we are hearing today, the
10 Car Wash Accountability Act of 2012, would require
11 car washes to be licensed by the Department of
12 Consumer Affairs so the City can provide greater
13 oversight of this industry's labor and
14 environmental practices. The timing of this
15 hearing could not be better in light of
16 yesterday's May Day marches, where tens of
17 thousands of New Yorkers took to the streets to
18 stand up for workers' rights.

19 As many of you know, car wash
20 employees work under notoriously difficult
21 conditions. Not only are wage and hour violations
22 rampant in the industry, but these workers face
23 exposure to dangerous chemicals on a daily basis.
24 According to a 2008 New York State Department of
25 Labor investigation, nearly 80% of city car washes

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2 were in violation of minimum wage and overtime
3 laws. In 2009, the U.S. Department of Labor
4 reached \$3.4 million back wage settlement with
5 Lage Management, one of the city's largest chain
6 operators. As of this month, the very same chain
7 is again under investigation by the Office of the
8 Attorney General for alleged ongoing wage theft.

9 Furthermore, there are concerns
10 regarding the car wash industry's practices when
11 it comes to wastewater discharge. Many do not
12 disclose the chemicals they use, violating both
13 the Occupational Safety and Health Act and the
14 Clean Water Act, and potentially contaminating our
15 water supply.

16 I have a car wash in my district
17 that is organizing right now against repeated
18 worker violations and it is owned by Lage, which
19 is the owner previously mentioned. I have met
20 with these workers and I have heard firsthand of
21 the abuses they face every day while they are
22 struggling to feed their families.

23 We will hear directly from car wash
24 workers today, all of whom are showing incredible
25 courage by being here and speaking out.

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2 Unfortunately, we're hearing that the employers
3 are resisting their efforts to organize. We will
4 not tolerate any kind of retaliation or union-
5 busting tactics against these workers.

6 The Car Wash Accountability Act
7 would require that car washes join a number of
8 industries throughout our city, like car garages
9 and laundries, that must be licensed. This would
10 allow consumers to make complaints about car
11 washes and look up complaints to have a sense of
12 the quality of work the car wash performs. This
13 would also ensure that car washes comply with the
14 Clean Water Act and have permits from the
15 Department of Environmental Protection and Health
16 and Mental Hygiene for their use--their discharge
17 of groundwater. Car washes would need to obtain
18 liability insurance and a surety bond of at least
19 300,000 to cover any unpaid fines, penalties, or
20 other liabilities. Car washes will also need to
21 protect their workers by paying their disability
22 and unemployment insurance. These measures will
23 protect workers from harm and ensure that
24 consumers receive a car wash at a standard they
25 can count on.

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2 So I want to thank again the WASH
3 New York campaign, Make the Road New York, New
4 York Communities for Change, and the Retail,
5 Wholesale, and Department Store Union for their
6 great work on this campaign. [Foreign language]
7 Thank you, Mr. Chair.

8 CHAIRPERSON SANDERS: Thank you.
9 We also have been joined by Council Member Nelson,
10 Nelson. I did see Council Member Wills a moment
11 ago, I'm not sure if he is here also.

12 I also want to, right before we
13 call the panel, I want to praise the workers who
14 have come out today for their bravery to come to
15 the City Council, which is daunting in and of
16 itself, but also the bravery of not being a silent
17 victim, of coming out and looking for justice.
18 And with that, we will call our first panel.

19 MATTHEW CARLIN: From the New York
20 City Department of Environmental Protection, Mark
21 Lanaghan.

22 [Pause]

23 CHAIRPERSON SANDERS: Good to see
24 you again, sir.

25 [Off mic]

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2 CHAIRPERSON SANDERS: If you cut
3 that mic on.

4 MARK LANAGHAN: Hi, good afternoon,
5 Chairman and Members, my name's Mark Lanaghan, and
6 I'm an Assistant Commissioner over at the New York
7 City Department of Environmental Protection.
8 Thank you for the opportunity to testify this
9 afternoon.

10 DEP regulations and requirements
11 intersect with the car wash industry in a few
12 areas: Potable water use, wastewater discharges,
13 hazardous substances, and noise. I will briefly
14 summarize in my prepared statement how these
15 regulations and requirements affect the industry
16 in these areas. Potable water first. Car washes
17 are subject to a requirement in Section 20-04 of
18 Title 15 of the City's rules. That section
19 prohibits use of city water at car washes unless
20 they are recycling at least 75% of the water by
21 means of a recirculating system or using coin
22 operated automatic high pressure systems. This
23 provision, along with a drought-related provision
24 that isn't in effect all the time, has led many,
25 if not all, car washes to provide for their water

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needs through a well.

In our billing database, an initial search generated over 200 facilities that we have identified as car washes and are only being charged for sewer use because their water use is through a well. Most of these facilities are using well water and are not, therefore, charged for potable water use, unless they have bathrooms or other fixtures onsite that use city water. Car washes that are using well water have meters on those wells which we use to generate the cost of the sewer charge that we bill those facilities for.

To protect the potable water system from contamination, car washes are required under the relevant State Sanitary Code provision to install what we call a backflow prevention device. These devices prevent highly pressurized water generated at the car wash often through a well, in most cases through a well, from overcoming the pressure in the city main and backwashing into the city system. Our backflow prevention data indicates approximately 200 facilities with improved and inspected backflow prevention

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2 devices.

3 In terms of wastewater discharges,
4 all car washes are subject to provisions in our
5 sewer use regulations that set parameters, such
6 pH, temperature, and chemical content, for
7 example, that wastewater must comply with prior to
8 discharge to the public sewer system. Wash water
9 generated at car washes often contains sediment,
10 oils, sand, or grit that has to be settled out of
11 the wash water before it can be discharged to our
12 sewer system. Exterior car washes are subject to
13 a very specific requirement they install a sand
14 interceptor, which is essentially a chamber in
15 which the heavier sand particles physically
16 separate from the water column and sink to the
17 bottom of the chamber. Car washes, vehicle repair
18 shops, and similar facilities may also be subject
19 to a requirement that they install an oil
20 separator, which, like the sand interceptor,
21 allows oils to physical separate from wastewater
22 that is then discharged to the sewer system.

23 Although DEP does not specifically
24 permit, we do not issue operating permits to car
25 washes, they are a type of business at which our

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2 sewer regulations often require some type of pre-
3 treatment before the wastewater can be discharged
4 to the sewer system.

5 Car washes are also prohibited from
6 allowing wash water generated onsite from
7 overflowing onto the adjacent streets or sidewalks
8 and entering nearby catch basins. Last year, we
9 received approximately five complaints of
10 discharge from a car wash. Where our inspector
11 observes a violation, a Notice of Violation will
12 be issued. If no NOV is issued, an inspector may
13 also issue a generic commissioner's order, in
14 effect reminding the business of the relevant
15 prohibitions on the use of the sewer.

16 Hazardous substances. Car washes
17 often have onsite some of the following substance
18 which, in certain quantities, make them subject to
19 the annual filing requirements of the New York
20 City Right to Know Law, which Title 24, Chapter 7
21 of the Administrative Code. These substances
22 include liquid car wash cleaners, motor oil, anti-
23 freeze, waste oil, liquid car wash cleaners, and
24 car polish wax. The information provided to DEP
25 from the facilities pursuant to the Right To Know

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2 filings is contained in a citywide database that's
3 made available to emergency responders and to the
4 public upon request. There are 72 car washes who
5 have at their site substances that were reportable
6 under law above the quantities that triggered the
7 reporting, we have about 72 in the Right to Know
8 database.

9 Noise. Depending on the location
10 and design of the equipment in use at a car wash,
11 the pumps and air blowers used at car washes can
12 make enough noise to make them a concern to
13 neighbors. Because there is no specific code or
14 label on these type of complaints, it's very
15 difficult to distinguish noise complaints from car
16 washes from other noise complaints, so it's not
17 possible to know with any certainty how many noise
18 complaints have come in from car washes, although
19 my belief is that number is very low. When DEP
20 does get a 311 complaint about noise from a car
21 wash, there is one provision in the Noise Code,
22 Section 227, which creates restriction on the
23 sound from circulation devices, that's often been
24 applicable in investigating noise from car washes.
25 That provision was recently been used at a

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2 Brooklyn car wash that re-opened last year and,
3 because of a change in the site configuration,
4 began generating extraordinary amount of noise
5 complaints from its neighbors.

6 So that's a brief summary of the
7 areas in which DEP has regulatory involvement with
8 car washes. Thank you for the opportunity to
9 share this information with you. I'd be happy to
10 answer questions or provide additional information
11 and follow up wherever I can.

12 CHAIRPERSON SANDERS: Thank you for
13 your testimony. I also want to acknowledge that--
14 this has nothing to do with you, sir--that the
15 Department of Consumer Affairs is not coming to
16 this hearing, and I want to publicly express my
17 disappointment with they're not coming. Sounds
18 that they have a major role to play here and I
19 certainly had some questions for them.

20 But as for you, sir, have we ever--
21 has the DEP ever exposed any facility that has
22 posed a potential hazard to the city's water
23 supply? How often does this happen?

24 MARK LANAGHAN: All car washes are
25 classified under the State sanitary codes as high

1 risk facilities and so they all have to have
2 approved backflow prevention devices and they have
3 to be--those devices have to be annually tested.
4 The risk posed from car washes is, generally
5 speaking, from the untreated well water that they
6 use, which, if it's untreated well water, it is
7 probably not of quality to drink. It's
8 pressurized onsite and used to wash cars, and
9 where they're not--in the event that there were
10 any inappropriate cross connection between their
11 interior drainage system and the city's potable
12 water system, this pressurized untreated well
13 water could potentially get backwashed into the
14 city system. So car washes, like many other
15 facilities--hospitals, large industrial
16 facilities--they are required under--it's
17 essentially a state health requirement that DEP
18 administers, they're required to have certain
19 types of plumbing devices, which are generally
20 called backflow prevention devices. Where those
21 are not in place or they're not operating or their
22 bypassed, those facilities could pose a threat to
23 the city's water supply system.

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25 CHAIRPERSON SANDERS: Have we ever

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identified or caught anyone doing these things?

MARK LANAGHAN: In your district, you may remember going--this is going back 2008, I believe, there was a perc issue where we picked up trace levels of perchlorethylene in the water supply system, and after a fair amount of groundwork and inspections, we discovered a car wash that was near the intersection of--actually, I don't remember the actual location, in the area of Springfield and Lindon that did not have an approved cross connection control program, did not have an approved backflow prevention device in use, they'd actually bypassed the system. So that is the only one in the last couple of years that comes to memory where we discovered a car wash that was not conducting their interior plumbing according to code.

CHAIRPERSON SANDERS: In your testimony, did you give a number of how often these facilities are inspected?

MARK LANAGHAN: Annually. The backflow prevention device--there's a couple different requirements that I'm talking about in my testimony so I may have made it confusing, but

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2 the backflow prevention device one is of
3 significant interest to the city's potable water
4 system and those devices are inspected annually.
5 There are also--you don't install one until you
6 have an approved plan from DEP, the device is
7 inspected before it goes into service, and then
8 there's an annual inspection requirement--a
9 certification and testing requirement from the
10 facility itself.

11 CHAIRPERSON SANDERS: I have a
12 neighbor--an anecdotal story--I have a neighbor
13 who wanted to use well water on his lawn and he
14 used it and next thing he knows, the lawn started
15 turning red, turns out, that there was a high
16 level of sulfur in that water that was being used.
17 Is there any device that we're requiring that
18 separates out any of these, I'll call them,
19 impurities in the water?

20 MARK LANAGHAN: DEP does not permit
21 groundwater wells. They're generally subject to a
22 permitting requirement from the New York State
23 Department of Health, and to some extent that
24 requirement may be delegated to City Health, I'm
25 not fuzzy--but I'm a little fuzzy on that. DEP

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2 does not itself permit groundwater wells. The
3 kind of treatment that would be required--the City
4 has in the past, however, operated wells that were
5 at times used for the drinking water system, and
6 as some of the committee members know, we're
7 contemplating reusing some of those wells in the
8 future for the potable water system. Depending
9 upon which level of groundwater you're drawing
10 from and the characteristics of that groundwater,
11 some treatment or a lot of treatment may require
12 before it's potable. I don't know what treatment
13 requirements would require for lawn or watering or
14 for irrigating edible crops, I'm not familiar with
15 those treatment requirements.

16 CHAIRPERSON SANDERS: I must press
17 you, and then I'm going to stop so that my
18 colleagues can get in here also. I thought I
19 heard in your statement that car washes could use
20 well water. Did I hear that or was I--

21 MARK LANAGHAN: Yes, most car
22 washes, to the best of our knowledge, all car
23 washes in New York City do not use well water--

24 CHAIRPERSON SANDERS: Do not.

25 MARK LANAGHAN: --but most do.

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2 CHAIRPERSON SANDERS: But most do,
3 okay.

4 MARK LANAGHAN: Because they're
5 subject to certain restrictions at all times on
6 city water use, that was the 75% recirculation
7 requirement that I mentioned in my testimony. And
8 then in a drought, in the event that we enter a
9 stage one drought, we prohibit the use of city
10 water for any commercial car washing. So for
11 those reasons, it's my belief that most car washes
12 in the city are using well water. And those wells
13 are not approved or permitted by New York City
14 DEP.

15 CHAIRPERSON SANDERS: Is anyone
16 permitting?

17 MARK LANAGHAN: New York State
18 Health I believe is either itself or through
19 delegation to City Health permitting the use of
20 wells that are used for potable water. Wells that
21 are used for ground--wells that are used for
22 irrigation or car washing, I'm not familiar with
23 the permitting regime that applies to them.

24 CHAIRPERSON SANDERS: Wow. I will,
25 if my colleagues don't go into that line of

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thought, I will return to it later.

We have been joined by Council Members from Manhattan Inez Dickens; from Queens, Jim Gennaro, I think I did it. Council Member Mark-Viverito.

COUNCIL MEMBER MARK-VIVERITO:

Thank you, Mr. Chair. I want to thank you for being here representative of one of our city agencies. And, you know, in your testimony, you spoke about the intersection, right, of all these different issues and that--and how your agency interacts or interrelates with car wash.

Now you mention here, though, in your testimony at the portable water section, you talked about your billing database, an initial search generated over 200 facilities that we have identified as car washes. When you say in your billing database, is it because of the sewer charges? How do you know that they're car--I mean, what's the--

MARK LANAGHAN: [Interposing]

'Cause we've categorized them as car washes, and I asked for a search of facilities that are paying only sewer charges---

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COUNCIL MEMBER MARK-VIVERITO:

Okay.

MARK LANAGHAN: --which made me the figure that you're interested in, I could also fashion other searches. I was interested in the number of facilities in the billing database that we have categorized as car washes and that are using wells, therefore, only subject to a sewer discharge, so the number I got was roughly 200.

COUNCIL MEMBER MARK-VIVERITO: I mean, a question and, you know, maybe, I don't know, are you the right person to ask this question, but, you know, one of the things that the legislation calls for, obviously, is having car washes receive a permit from the Department of Consumer Affairs. Understanding that they don't get a permit right now and you did talk about sewer backflow and the mechanisms that have to be installed and you have to give them a permit, DEP does, in order to do that.

MARK LANAGHAN: It's--

COUNCIL MEMBER MARK-VIVERITO: I'm just trying to figure out, like, when an operator decides to open a car wash, okay, you're saying

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2 that you're searching through your database and
3 you've, kind of, self-identified them as car
4 washes based on, you know, whatever, your own
5 internal--

6 MARK LANAGHAN: Inspections or--

7 COUNCIL MEMBER MARK-VIVERITO: --
8 inspections and stuff, but if somebody opens up
9 shop, is there any way, of just curious, I mean,
10 it's kind of not--it's hard to not, you know, to
11 miss a car wash, they're pretty obvious, but, I
12 mean, is it possible for them to operate without
13 having to interact with any city agency?

14 MARK LANAGHAN: Not for long, it
15 wouldn't be, not a commercial car wash. What you
16 are required to do if you're building a new
17 facility or connecting to the water and sewer
18 system--

19 COUNCIL MEMBER MARK-VIVERITO:
20 [Interposing] Permits from DOB, et cetera.

21 MARK LANAGHAN: You have to get--a
22 plumber has to file an application, permits from
23 DOB, the permit from DEP contains a requirement
24 that you submit a site connection plan which is
25 then, in some cases, reviewed by DEP, in some

1 cases self-certified. So that's one point of
2 connection. If you dodge that altogether--

3 COUNCIL MEMBER MARK-VIVERITO:

4 Okay.

5 MARK LANAGHAN: --and illegally
6 connected to the water and sewer system, it's
7 unlikely that that would go unobserved for very
8 long..

9 COUNCIL MEMBER MARK-VIVERITO:

10 Understood.

11 MARK LANAGHAN: There's in
12 addition, because some car washes by virtue of the
13 amount of substances that trigger filing
14 requirements, are also subject to what we call a
15 Right to Know filing, and so we also have a fairly
16 comprehensive involving 5,000 inspections a year
17 at various facilities that fit the kind of
18 industrial categories that, I mean, they probably
19 might have onsite the hazardous substances that
20 generate filing. We do around 5,000 inspections a
21 year to try and make sure that everybody that
22 should be filing is filing. So--

23 COUNCIL MEMBER MARK-VIVERITO:

24 [Interposing] And that actually leads me to my
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2 second question, which is that, because you
3 indicate in your testimony that only 72--you've
4 identified 200 as car washes, yet only 72 are in
5 your Right to Know database, so has DEP taken an
6 opportunity to inspect those others? I mean, it's
7 more likely than not that a lot of these car
8 washes are using these materials, these hazardous
9 materials.

10 MARK LANAGHAN: Right, the Right to
11 Know database, the inspections that we do, the
12 Right to Know inspectors have certain targets for
13 inspections, some of the inspections are
14 facilities that are already in our database and we
15 want to make sure that they're filing correctly.
16 Other inspections are related to facilities that
17 aren't compliant now, but should be compliant, so
18 those inspections are often generated by a Right
19 to Know inspector calling the gentleman who
20 prepared the billing database or prepared the
21 billing list that I generated for use in my
22 testimony, they would go visit those facilities,
23 they would look for anyone in the Department of
24 Labor, standard industrial classifications that
25 involve businesses that often have hazardous

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2 substances, we would go to various state and city
3 health department databases. So that--

4 COUNCIL MEMBER MARK-VIVERITO:

5 [Interposing] And I guess, my question, my
6 question though is, because you've identified 200
7 as car washes, only 72 are in your Right to Know
8 database, so have you done any sort of internal,
9 like an audit of those additional 128 that don't?
10 Because, I mean, I would think that they would be
11 mandated to have to file if they're using these
12 materials in--

13 [Crosstalk]

14 MARK LANAGHAN: [Interposing] I
15 don't have a spreadsheet that shows when all the
16 128 were inspected last or audited last.

17 COUNCIL MEMBER MARK-VIVERITO: Well
18 you would follow-up with--

19 MARK LANAGHAN: Yes.

20 COUNCIL MEMBER MARK-VIVERITO: --
21 them in some way.

22 MARK LANAGHAN: Yes, we would--

23 COUNCIL MEMBER MARK-VIVERITO:
24 Okay.

25 MARK LANAGHAN: --and the 72, I

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2 believe, are captured in the database only because
3 they have above 500 pounds of any one of those
4 substance. I think the reporting requirements
5 for--and I apologize for not knowing this exactly,
6 but I'll certainly get back to the Committee--I
7 believe the threshold reporting quantity for all
8 the substances that are enumerated in my
9 legislation is high, in the range of 500 pounds or
10 so. So I think there's many car washes that don't
11 have--

12 COUNCIL MEMBER MARK-VIVERITO:

13 [Interposing] To meet that threshold?

14 MARK LANAGHAN: Right, so they're
15 not subject to the reporting requirements.

16 COUNCIL MEMBER MARK-VIVERITO: I
17 appreciate that. So the last thing I would just
18 ask is with regards to something that the chair
19 was asking earlier, that you're saying the
20 majority of them do use a well system, but are you
21 able to give any sort of percentages or amounts?
22 Like what would be those that don't and have you
23 been able to--

24 MARK LANAGHAN: [Interposing] I
25 could get that number for you, I think it's in the

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range of 40 or 50 at most.

COUNCIL MEMBER MARK-VIVERITO: Out
of 200.

MARK LANAGHAN: No, in addition to.
The 200 is, if I did my search criteria correctly
is those facilities--

COUNCIL MEMBER MARK-VIVERITO:
[Interposing] Are using the well water.

MARK LANAGHAN: Yes, yes.

COUNCIL MEMBER MARK-VIVERITO:
Okay. And so--

[Crosstalk]

MARK LANAGHAN: And it's our belief
that, furthermore, that most facilities use well
water just based on their anecdotes.

COUNCIL MEMBER MARK-VIVERITO: So
in the case of those that are not, they're being
billed or charged water charges as well?

MARK LANAGHAN: Correct.

COUNCIL MEMBER MARK-VIVERITO:
Okay.

MARK LANAGHAN: And I could try and
obtain that number as well.

COUNCIL MEMBER MARK-VIVERITO: All

1
2 right, so and then just with regards to the
3 hazardous substances that are used, would that be
4 DOH, for instance, does your office have any sort-
5 -or agency have any sort of responsibility or
6 oversight with regards to the well-being of the
7 employees in terms of how these materials affect
8 them?

9 MARK LANAGHAN: Not--

10 COUNCIL MEMBER MARK-VIVERITO: Or
11 the conditions created in the work site? That
12 would be OSHA or that would be Department of
13 Health?

14 MARK LANAGHAN: The most relevant
15 requirements would not be DEP's and I believe that
16 what you said is correct, that they would be
17 OSHA's. I'm not even familiar with city health
18 requirements that would pertain to worker safety
19 or occupational health conditions at this type of
20 facilities.

21 COUNCIL MEMBER MARK-VIVERITO: Well
22 these are the kinds of questions that we're
23 raising, that there needs to be greater
24 transparency and openness because, not only in
25 terms of the employee and the salaries and wages

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2 issue, which is very important, but in terms of
3 the health and safety of the workers, if these
4 toxins, which you're saying, you know, a lot of
5 them use, are being used and the impact it has on
6 the work environment.

7 I'll leave it there, Mr. Chair. I
8 appreciate, again, you being here, there's a lot
9 of other agencies that I guess we have questions
10 for as well that aren't here today. Thank you.

11 CHAIRPERSON SANDERS: Thank you.
12 Council Member Recchia.

13 COUNCIL MEMBER RECCHIA: Thank you,
14 Mr. Chair. Good afternoon, Mr. Lanaghan, thank
15 you for being here today.

16 I just want to make sure I
17 understand you correctly, are you saying that
18 there's only 200 car washes in New York City?

19 MARK LANAGHAN: Approximately.

20 COUNCIL MEMBER RECCHIA: Only 200,
21 I find that very hard to believe, but is there a
22 special permit that they have to take out from the
23 DEP in order to...

24 MARK LANAGHAN: No, there's no
25 special permit, there's no car wash permit from

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2 DEP. There are pretreatment requirements that a
3 facility like a car wash may need to comply with
4 and those pretreatment requirements are typically
5 physical pretreatment requirements like oil or
6 sand separators, and that pretreatment requirement
7 is in the building permit when they're constructed
8 and then we audit as well many industrial
9 facilities to make sure that they have the various
10 types of pretreatment requirements that are
11 applicable to whatever they are doing on that
12 site.

13 COUNCIL MEMBER RECCHIA: So do you
14 ever look at what type of car wash it is? You
15 know, whether it's a machine car wash or the type
16 of machines that they're using?

17 MARK LANAGHAN: In some
18 circumstances, recently, actually, we've had a
19 couple of noise inspections at this car wash that
20 I actually believe in your district.

21 COUNCIL MEMBER RECCHIA: They're
22 all in my district.

23 MARK LANAGHAN: Right. And--

24 COUNCIL MEMBER RECCHIA: That's why
25 I'm--

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[Crosstalk]

MARK LANAGHAN: --this one's generated a significant number of noise complaints and the configuration of their equipment within the site, the hours of operation, the placement of various walls or other noise interceptors has all been discussed by our inspectors 'cause it affects the level of sound that's annoying the neighbors. So in that noise complaint environment, definitely there's people that are concerned with what the type of machines are operating, how they work. In terms of monitoring what wastewater discharge or preventing backflow prevention, there may be some concern with this type of machinery used at a car wash or that type of machinery, I can't answer that question with any great certainty.

COUNCIL MEMBER RECCHIA: At least 200 car washes throughout New York City, a majority of them use well water, is that correct?

MARK LANAGHAN: Correct.

COUNCIL MEMBER RECCHIA: Okay. How often do you check that water?

MARK LANAGHAN: We check the quality of the water, we would not check the

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2 quality of the water at all, we're concerned with
3 the wastewater discharge and that a device is in
4 place where it's needed to clean that wastewater,
5 so to speak, and we're concerned with having a
6 plumbing device on the facility that prevents
7 backwash from the well, essentially, into the
8 potable water system in the street.

9 COUNCIL MEMBER RECCHIA: Well, you
10 know, I think that you should draw your attention
11 to being concerned about the water coming out of
12 these wells and nobody's checking these wells
13 because there are car washes today that are taking
14 the machinery out and they have human beings
15 washing cars and people are doing, you know, where
16 a machine--a different part of machine to wash a
17 different part of the car, they have people, okay?
18 And if no one's checking this water out, we have
19 human beings washing cars like they have and they
20 took out the machines, then we don't know if these
21 people are being protected and whether we're
22 protecting them if no one's checking the water
23 'cause the water's coming out from the well. So
24 it's of great concern to me. You know, and I
25 wonder what you plan on doing about that. And if

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you want, I can give you the car wash.

MARK LANAGHAN: Give me the car wash. I--

COUNCIL MEMBER RECCHIA:
[Interposing] The car wash is on Avenue X and I'll give you the--

[Crosstalk]

MARK LANAGHAN: [Interposing] Is it Best car wash, or Z car wash?

COUNCIL MEMBER RECCHIA: Yeah, something like that, it's right behind the old gas station on Avenue X, right off by--Avenue X and McDonald Avenue, there's a car wash right there, they have human beings washing the car and there's no one checking that water coming out from the well and that's a great concern. That's number one.

Number two, I really believe that, you know, DEP should really look at the--check the water quality coming out of these wells 'cause we don't know what affect it has on people working at these car washes. And so I believe that something should be done about that.

And since DEP is not permitting

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2 these car washes and Consumer Affairs--have you
3 had a conversation with Consumer Affairs about
4 permits for car washes, why they don't have
5 permits if they--

6 MARK LANAGHAN: [Interposing] And
7 if I have, it was a very long time ago.

8 COUNCIL MEMBER RECCHIA: Okay.

9 MARK LANAGHAN: Not recently.

10 COUNCIL MEMBER RECCHIA: So coming
11 here today, you didn't prepare or speak to
12 Consumer Affairs about this issue.

13 MARK LANAGHAN: I did not.

14 COUNCIL MEMBER RECCHIA: Mr.
15 Chairman, this is a very concern to me, I have a
16 large number of car washes in my district and it's
17 just not right, and so I'm really upset that the
18 Commissioner of Consumer Affairs is not here to
19 join us today. 'Cause I really believe that, for
20 some reason, he finds it more important to go
21 after funeral parlors, to go after the dead, than
22 to go after to helping the actual human beings
23 that are living today, and so I would really call
24 for that we write a strong letter, that we should
25 have a second hearing on this and have him come

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2 and testify and explain to us why he's not having
3 permits for this, not investigating car washes,
4 and because what's going on is really not right to
5 the people that are work there and we, as elected
6 officials, must step up to the plate.

7 CHAIRPERSON SANDERS: I share your
8 great concern, sir, on this. I will draw
9 attention that, as Mr. Lanaghan knows well, that
10 in Queens, we no longer use the well water because
11 we found carcinogens in the wells out in Queens,
12 so we found that it was not fit to be used by
13 human beings. It is most disturbing that there
14 seems to be no one in charge of the first just
15 seeing that the water can be worked with by
16 humans.

17 I am very glad that the next
18 questioner is perhaps the Council's foremost
19 authority on the environmental issues, Jim
20 Gennaro, and we certainly will write this letter
21 that you speak. I also agree, I want to have the
22 Commissioner of the Department of Consumer Affairs
23 and the Department of Health in so that they can
24 answer the questions that we simply can't get
25 answered yet.

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Council Member Gennaro.

COUNCIL MEMBER GENNARO: Thank you, Mr. Chairman, thank you for that very nice introduction. I feel like I should be wearing a tie in order to deserve that kind of introduction. But thank you for holding this hearing and I'm quite fascinated. And always good to see you, Mark; I'll call you Mark, call me Jim, we--Mark comes before my Committee so many times that, yeah, he's got a lot of frequent flier miles built up with my committee and it's always a pleasure to see you, Mark.

And let me just kind of go through some of these issues. With regard to the issue that was raised by Council Member Recchia regarding, you know, people washing cars by hand with well water, I mean, you know, this is water from the Brooklyn/Queens aquifer and which we drank from, you know, years and, you know, through a network of devices that are going to be put in place, once they fix the Delaware aqueduct, those are going back online again, but there will be treatment for that, you know, to make sure that the water meets all the standards.

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2 And I think the biggest concern is
3 were so much consume that water and that is sort
4 of the ultimate test. But, you know, working with
5 it, that, you know, may or may not be an issue,
6 but certainly I'm curious. And I think Council
7 Member Recchia's point is and also the Chairman's
8 point is well taken and we should see these
9 workers are working with and see if there are any
10 health issues from that.

11 Which kind of gets me to my
12 question for you, Mark, whether or not this maybe
13 a Department of Health issue or do you see worker
14 safety with regard to people using well water, is
15 that an issue that's technically under DEP's
16 purview or would this be more a Department of
17 Health issue or some sort of mixture of both
18 agencies looking at this issue of worker safety,
19 you know, using well water?

20 MARK LANAGHAN: Human health risks
21 associated with using water from various sources
22 is definitely not my expertise to talk about, and
23 I would only agree with your suggestion that it's
24 a city health or other health expert that you
25 would rely on for advice about what type of

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exposure is harmful and what type of exposure is not.

The initial information about the source of the water and what's in--

COUNCIL MEMBER GENNARO: Right.

MARK LANAGHAN: --the water, that may be contained in their well permit. Most well permits, I suspect, would have some requirements to provide data on the composition or characteristics of the water that's being used.

COUNCIL MEMBER GENNARO: And that well permit comes from the state through a city agency?

MARK LANAGHAN: I'm going to say the New York State Department of Health, although I believe in some cases that's delegated in New York City to City Health for any wells used for potable water.

COUNCIL MEMBER GENNARO: You said potable water, but--

MARK LANAGHAN: Right, so for non-potable--

COUNCIL MEMBER GENNARO: --if these are not--

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[Crosstalk]

MARK LANAGHAN: --for non-potable well water permits, I'm not clear whether city health is involved or not.

COUNCIL MEMBER GENNARO: But certainly DEP--

MARK LANAGHAN: State health would be.

COUNCIL MEMBER GENNARO: --city DEP is not involved with people wanting to use wells for non-potable purposes.

MARK LANAGHAN: Correct, except in all the other ways that I--

[Crosstalk]

COUNCIL MEMBER GENNARO:
[Interposing] Right, right, right.

MARK LANAGHAN: --prevention and pretreatment of wastewater--

COUNCIL MEMBER GENNARO: Right.

MARK LANAGHAN: --discharge.

COUNCIL MEMBER GENNARO: And also I feel compelled to add that, notwithstanding the fact that I just indicated that, you know, people in the city of New York, you know, drank water

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2 from the Brooklyn/Queens aquifer for decades and
3 will do so again when the Delaware Aqueduct is
4 fixed and we have to get water from all, you know,
5 possible sources, folks, you know that when DEP
6 drills a well, it's very, very deep and like the
7 deeper you go, the cleaner the water is, and
8 certainly the people using car wash wells are just
9 going down to like the top of the water table,
10 which would be the most polluted water in that
11 underground aquifer and the pollutants tend to be
12 lighter than the surrounding water and they tend
13 to kind of float on top of that, you know, water
14 column. And so there could be quite an
15 accumulation of pollutants at the very top of an
16 aquifer that people are being directly exposed to.
17 And I would have to agree with Council Member
18 Recchia and also with the chairman that this, you
19 know, merits some kind of inquiry and, you know,
20 some kind of health assessment as to what people
21 are using and what they're working with.

22 And but DEP, as you mentioned, is
23 not really in the business of monitoring water
24 from the top of the Brooklyn/Queens aquifer that's
25 used for non-potable purposes and, you know,

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2 certainly you have an interest in making sure what
3 goes into the sewer system once it's used and I
4 think DEP is filling its role in that regard, but,
5 Mr. Chairman and Council Member Recchia, I mean,
6 this--I'm not saying that this doesn't need to be
7 done, it certainly does need to be done, but we
8 just have to find the right entity to do that and
9 it may very well be the city health department,
10 which may even have a role in the permitting of
11 these wells, you know, based on Mr. Lanaghan' s
12 testimony, but certainly it's not DEP that even
13 permits the wells. So we have to, I think, find
14 the right entity to kind of go to and say this is
15 a compelling need and we have to figure out some
16 way to do this. So that's one thing that I wanted
17 to mention.

18 And with regard to the DEP meters
19 on the wells, so DEP would know of the existence
20 of the wells because they have to meter the amount
21 of water coming out of the well so that it can
22 apply sewer charges, and DEP comes to know of
23 these wells by virtue of the permitting of the
24 facility and all that, and comes to place the
25 meter on there. And why don't you just walk us

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through that a little bit, just briefly?

MARK LANAGHAN: The database of accounts in our billing system comes from a variety of sources generally speaking, many of them were preexisting, but in order to connect to the water and sewer system or to reconnect to the water and sewer system, you have to take a couple of steps, one of which involves a DEP connection permit. So anyone that's lawfully connecting to either the sewer system or the water system or both has to have some type of approval or a connection permit from DEP.

COUNCIL MEMBER GENNARO: And these meters are read by hand or are they now in your remote--

MARK LANAGHAN: [Interposing]
That's a good question actually.

COUNCIL MEMBER GENNARO: --with your remote, I don't know if there had been--

MARK LANAGHAN: [Interposing] I believe that they're all remote.

COUNCIL MEMBER GENNARO: --updated along, so they're remote read.

MARK LANAGHAN: I believe that

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2 they're all remote, I should check to make certain
3 my answer is correct.

4 COUNCIL MEMBER GENNARO: Okay. And
5 this will be my last question then, with regard to
6 the annual inspections or whatever periodic basis
7 there are, the types of things that are looked at--
8 -I'm sure this was probably mentioned before and
9 I'm trying to keep track of all the testimony--so
10 when DEP goes to make an inspection, presumably
11 you'll be checking the backflow devices and the
12 pretreatment equipment which has been put in there
13 for the industrial pretreatment to make sure that
14 that hasn't been bypassed. Are these the two
15 things that DEP comes to look at when it goes to
16 these facilities?

17 MARK LANAGHAN: They're not both a
18 firm--we don't proactively do the pretreatment, we
19 don't proactively inspect these facilities'
20 pretreatment systems, they would be complaint
21 generated. That's different than other types of
22 industries that we consider to be--and I believe
23 this is the department of--or a USCPA
24 classification significant industrial users--

25 COUNCIL MEMBER GENNARO: Right.

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2 MARK LANAGHAN: --people that meet
3 the requirements of significant industrial users,
4 we affirmatively inspect their pretreatment
5 devices on a regular cycle, I believe it's annual.
6 Car washes, I believe, is not considered
7 significant industrial users so their pretreatment
8 systems would be inspected at installation or upon
9 complaint, or possibly for some other reasons if
10 water quality data or wastewater monitoring data
11 at a treatment plant--

12 COUNCIL MEMBER GENNARO: Right.

13 MARK LANAGHAN: --showed a change
14 that somehow indicated there was some--

15 [Crosstalk]

16 COUNCIL MEMBER GENNARO:
17 [Interposing] Some kind of industrial chemical.

18 MARK LANAGHAN: --or some
19 industrial chemical, and if we thought the
20 industrial chemical the source of it could be.
21 And, again, under other circumstances we might go
22 to car washes to randomly investigate their
23 pretreatment systems or their plumbing connection
24 systems.

25 COUNCIL MEMBER GENNARO: Right, and

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2 so we just talked about the pretreatment equipment
3 and with regard to the backflow devices, that's a
4 similar kind of thing, it's complaint driven, not
5 on a regular schedule--

6 MARK LANAGHAN: [Interposing] No,
7 backflow devices are--there's a more aggressive
8 regime, we inspect all significant users much more
9 frequently than, say, residential buildings that
10 don't have any treatment--

11 COUNCIL MEMBER GENNARO: Right.

12 MARK LANAGHAN: --but may have a
13 water tower, and the owners of building where
14 backflow prevention device is installed have the
15 requirement to inspect them annually and to
16 certify to the Department of Buildings that the
17 backflow prevention device. So it's not a DEP
18 inspection--

19 COUNCIL MEMBER GENNARO: Right,
20 right.

21 MARK LANAGHAN: --that's done
22 annually.

23 COUNCIL MEMBER GENNARO: It's an
24 annual certification.

25 MARK LANAGHAN: It's an annual

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certification.

COUNCIL MEMBER GENNARO: By like a licensed master plumber who has to do that or--

[Crosstalk]

MARK LANAGHAN: [Interposing] I believe it's a licensed master plumber--

COUNCIL MEMBER GENNARO: Right.

MARK LANAGHAN: --that has to do that. In addition, our inspection regime is focused on capturing facilities that don't have a backflow prevention device already.

COUNCIL MEMBER GENNARO: Right, right, right. And I also just the last things that a question was stated, that I tend to concur with your assessment regarding the Right to Know of 500 pounds 'cause we, you know, worked on that years ago and there is a threshold that is--it's a pretty beefy threshold that you have to meet.

MARK LANAGHAN: [Interposing] For these types of substances.

COUNCIL MEMBER GENNARO: Yeah. And so I would say that I would tend to concur with your testimony on why some are left out of the Right to Know database just 'cause they don't meet

1
2 the threshold, like, that would be my hunch as
3 well.

4 And with that said, I thank you,
5 Mr. Chairman.

6 CHAIRPERSON SANDERS: Thank you,
7 sir. Council Member Nelson.

8 COUNCIL MEMBER NELSON: Thank you,
9 Mr. Chair. Hi, Mark, good to see you again. Just
10 skim a little Sheepshead Bay, just keep that in
11 the back of your mind, please.

12 MARK LANAGHAN: Oh, should say,
13 that's another subject, but I did follow up on
14 that and we did an--I don't want to take up the
15 committee's time with this issue, but I'll--

16 [Crosstalk]

17 COUNCIL MEMBER NELSON:
18 [Interposing] The chair would appreciate that, I
19 can tell.

20 [Crosstalk]

21 CHAIRPERSON SANDERS: Yes, I would
22 appreciate. Many of these workers are saying that
23 they have to go back to work. Great.

24 COUNCIL MEMBER NELSON: Okay.
25 Yeah. The noise code, Section 227, circulation

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devices, have you found some to be much noisier than others?

MARK LANAGHAN: Actually, in my experience at DEP, which is a long time, there's very, very few instances when I even knew of noise from car washes. Recently, a car wash, which I believe is in Councilman Recchia's district--

COUNCIL MEMBER NELSON:

[Interposing] Cornell Avenue or the one on Avenue X?

MARK LANAGHAN: The one on Avenue

X--

COUNCIL MEMBER NELSON: Oh, that's

his--

MARK LANAGHAN: --Z Car Wash.

COUNCIL MEMBER NELSON: Yeah, his mother's got to worry about that, not mine.

MARK LANAGHAN: Well it was a reopened facility that in its original incarnation did not seem to generate noise complaints. So I have very limited experience with why one particular car wash is of concern to the neighbors or the next, but it's the circulation devices, the HVAC equipment that typically generate the kind of

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2 noise, certainly at Z Car Wash that's been of
3 interest to the neighbors.

4 COUNCIL MEMBER NELSON: Well that
5 goes to my other questions, we just don't know
6 have any car washes been closed due to this,
7 approximate cost to replace. 'Cause we have to
8 strike a balance, obviously, between the workers'
9 rights, the environment, and of course, the
10 business, which pays, you know, everybody's salary
11 as far as with taxes go, as far as government
12 people go. So there's got to be, you know--just
13 rush in and close down the car wash--which you
14 have not done, I'm not pointing the finger at you,
15 but that's why I'm glad the chair felt that we
16 needed to have this hearing today to work out
17 where everybody's livelihoods, the workers and
18 everybody else's, should be considered and I'm
19 glad that you're here. I appreciate it. Thank
20 you, Mr.--

21 [Crosstalk]

22 MARK LANAGHAN: [Interposing] I
23 would just add, I don't want--at the car wash that
24 I've been talking about in terms of noise
25 complaints, I believe it's called Z Car Wash, and-

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[Crosstalk]

MARK LANAGHAN: --we are--the community has requested a cease and desist at that based on noise and, like you said accurately, we have not shut down that car wash. We have shut down car washes in the past for failure to be--

COUNCIL MEMBER NELSON: Good neighbors.

MARK LANAGHAN: --compliant with backflow prevention requirements. And I don't have a clear memory of this, but possibly we've shut down ones that didn't have pretreatment requirements in effect. Either of those have generated, certainly with respect to backflow prevention requirements because there can be an imminent threat to the potable water system if the devices aren't in place and if they're not active. So we have shut down car washes in the past.

COUNCIL MEMBER NELSON: When necessary, that's good, and--

MARK LANAGHAN: [Interposing] When there was a threat to--a human health threat that we were aware of.

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2 COUNCIL MEMBER NELSON: I'm sure my
3 colleague, Domenic Recchia, has got a good reason
4 for this. Thank you very much.

5 CHAIRPERSON SANDERS: Thank you,
6 sir. We've been joined by Council Member
7 Seabrook. Would you be kind enough, Mr. Carlin,
8 to call the--thank you, Mr. Lanaghan, and we're
9 going to call the next panel.

10 MATTHEW CARLIN: Adan Nicolas
11 Flores, a car wash worker; Heriberto Hernandez,
12 car wash worker; Freddy Antonio Nunes Trujillo,
13 another car wash worker; and Magdalena Barbosa
14 from Make the Road New York.

15 [Long pause]

16 CHAIRPERSON SANDERS: As you are
17 seated, you may begin.

18 [Long pause]

19 [Foreign language]

20 FEMALE VOICE: Hi, good afternoon,
21 I'll be translating Adan Nicolas's testimony into
22 English. Good morning, my name is Adan Nicolas.
23 I'm from Veracruz, Mexico, but I have lived in
24 this country for 12 years now. I live in an
25 apartment in Astoria, Queens. The rest of my

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family is in Mexico.

I started working at the LMC Car Wash located at 36-21 21st Street in Astoria in January of 2000 and I'm still working there now. I usually work there 12 hours a day, six or seven days a week, and I usually make 5.50 an hour. Even though I work for 60 or 70 hours a week, I don't get paid time and a half for overtime hours.

Twice a week, every week, they make us sign a piece of paper that says that we make \$20 or \$25 every day in tips, but that's not true, we don't always make that much. Sometimes we only make \$5 or \$10 dollars a day in tips. On days that we don't earn much tips, we're earning less than the minimum wage, but the owners of the car wash don't pay us the difference. We have to sign a document to make it look like we're earning the minimum wage, but it's not true. They don't have any system to make sure we're actually being paid the minimum wage or to pay us the difference.

On rainy days, like today, we are sent home and make no tips at all. Life can be very stressful working there and not making a good wage. There are times where I can't pay my bills

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or send money to my family.

Another problem is that they're always rushing us and not respecting our breaks. They try to make us work faster and it's more dangerous with the machines if we work too fast. They make us rush through our lunch and bathroom breaks because there's so much work to do. The manager is always telling us to hurry.

If anything on our breaks like a mirror--if anything on a car breaks, like a mirror, they take the cost of the damage out of our tips, even when it wasn't our fault. When they take these expenses out of our tips, it makes a big difference in what we take home that week. I didn't know that this was illegal until I began talking to the organizers at Make the Road New York. Now I know more about my rights as a worker.

We want to be paid a legal wage and we want to be respected as workers. I want to thank all the members of the City Council who are here today. Thank you for taking the time to listen to us. We're asking you to please do everything you can to make sure that the owners of

1
2 the car washes in New York City are representing
3 the law and also paying the workers a fair wage.

4 Thank you.

5 [Foreign language]

6 HERIBERTO HERNANDEZ: My name is
7 Heriberto Hernandez, I'm from Veracruz, Mexico.
8 In 1997, I decided to come to the United States
9 because there was not enough economic opportunity
10 in Mexico. I had a wife and a 3-year old daughter
11 who lives in Mexico. My daughter will be starting
12 school next year.

13 Since I came to the U.S. more than
14 12 years ago, I have worked at several different
15 car washes in New York City and have seen the same
16 problems over and over at every car wash where I
17 have worked at. At all these different car
18 washes, my co-workers and I experience the same
19 kinds of problems. We work long hours, but are
20 hardly ever paid overtime. Our tips are supposed
21 to make up the difference between our wages and
22 the minimum wage, but the owners and managers
23 usually don't have any system in place to make
24 sure that we're earning the minimum wage, so when
25 we don't earn very much in tips, what we take home

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is less than the minimum wage.

I'll give you an example. At Metro Car Wash, where I work until recently, on the weekends I might have made \$25 to \$35 in tips, but during the week it was much less. We never had a regular schedule and the manager always had the authority to send us home, so it was very common for us to make less than the minimum wage during the week. We were only allowed to take 10 to 15 minute lunch breaks, but the company deducted half an hour every day from our paychecks.

Another common problem is that if any breaks, we have to pay for it out of our tips, even if it's not our fault. Sometimes clients claim that we broke an antenna or a mirror, even if it was already broken, and then we have to pay for it. Sometimes we don't make tip money all week because a carpet was stained, for example.

Having worked at several different car washes, I can tell you from my own experience that if my coworkers, that there is a serious problem with wage violations in the car wash industry throughout New York City. It's not just a problem at one particular car wash or with one

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particular owner.

I'm hoping that this proposed legislation will help ensure better working conditions and legal wages for car wash workers. The car washes are making a lot of money thanks to our hard work and the owners keep opening new car washes, meanwhile, we are often being paid less than the minimum wage and are struggling to survive and support our families.

I want to thank the members of City Council who are here already supporting us and I'd like to ask you to please do everything you can to make sure that the owners of the car washes in New York City are respecting the law and paying the workers a fair wage. Thank you.

[Foreign language]

FREDDY ANTONIO NUNES: Okay. My name is Freddy Antonio Nunes, my family's from El Salvador. I work at X-Cellent Car Wash, I work 13 hours a days. We usually work overtime and we're not being paid for those overtime. If something breaks, it comes out of our pockets. We had several, for example, I have different situations, one time a mirror broke and it came out of our

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2 paid, it was like \$660. We also had another
3 situation where a worker was working and there was
4 a mirror broke and now they're deducting from his
5 paycheck until he's done paying off the mirror.
6 And we also had another situation where I didn't
7 get paid, myself, because a customer has said that
8 there was something wrong with the carpet and it
9 came out of my pay too.

10 We don't have any uniforms, like,
11 for example, we don't have gloves, they promise us
12 they were going to provide us with uniforms, that
13 hasn't been the situation. We, of course, don't
14 have no paid sick days, we have no vacation.
15 We're also demanding that they raise us the
16 minimum wage, pay us a decent salary.

17 We also as workers are demanding,
18 like, for example, if we're working sometimes five
19 hours and then they send us back home. You know,
20 this employer keeps making more and more money off
21 of us and, you know, we're not getting no benefit
22 from this.

23 We would like to see their working
24 conditions improve at this car wash.

25 CHAIRPERSON SANDERS: I will defer

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to Council Member Viverito.

COUNCIL MEMBER MARK-VIVERITO:

Thank you, Mr. Chair.

CHAIRPERSON SANDERS: We have one more, I stand corrected, there's one more witness.

[Foreign language]

MAGDALENA BARBOSA: Hi, good afternoon, my name is Magdalena Barbosa and I'm an attorney with the organization Make the Road New York. For the past six months, I've been meeting with car wash workers throughout the city.

Workers in the car wash industry are some of the most exploited. Most are Latin American immigrants, with little or no English fluency and little or no knowledge of minimum wage laws or workplace safety laws. Wage theft and egregiously unsafe working conditions are the rule, not the exception. Because the jobs are relatively low skill, car wash work is a point of entry for many immigrants new to the city, and, in particular, immigrants from Latin America. Newly arrived, many assume, incorrectly that the laws do not protect workers who lack immigration status. High unemployment, fear of retaliation, and lack

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2 of knowledge of the law keep many from speaking
3 out. An exploitative, dangerous job seems better
4 than no job at all, especially when you must send
5 money home to support your family.

6 Most car wash workers earn less
7 than the New York State minimum wage of \$7.25.
8 Car wash employers justify paying their workers
9 this hourly rate because most workers also receive
10 tips in addition to their hourly pay. New York
11 law permits car wash employers to pay workers
12 below the minimum wage, but not below \$5.50 when
13 workers also receive at least \$1.75 per hour in
14 tips. Under New York law, employers must follow
15 certain rules in order to take this credit.
16 However, many employers break the rules intended
17 to protect tipped workers. Common violations
18 include employers' failure to ensure that workers
19 earn a sufficient amount in tips and the
20 misappropriation of workers' tips to pay
21 managerial staff, who many times are salaried
22 workers and do not provide a direct service to
23 customers and under New York State law cannot
24 share in workers' tips.

25 Car wash workers, like many low

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2 income immigrant workers, work very long hours.
3 Most workers I have spoken to work 10 to 12 hours
4 a day, six days per week, for a total of between
5 60 to 72 hours per week. Few of these workers
6 receive overtime at time and a half for hours
7 worked beyond 40 hours in one week.

8 Although the right to receive
9 overtime was first codified under the New Deal
10 legislation after the Great Depression over 60
11 years ago, employers of immigrant workers fail to
12 overlook this basic protection designed to protect
13 the country's most vulnerable workers. Employers
14 often concoct schemes to avoid paying overtime and
15 commonly pay 40 hours of work on the books in
16 check and the additional hours in cash. Under New
17 York State law, which goes further than federal
18 employment law to protect workers who work long
19 hours, employers must also pay workers an
20 additional hour of pay to those who work over ten
21 hours per day, this is termed spread of hours pay.
22 I have yet to meet with a car wash worker in New
23 York City who has received this pay.

24 Violations of the minimum wage and
25 overtime laws are par for course for most

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2 immigrant workers in New York City. There are
3 certain violations, however, that are particular
4 to the city car wash workers. For example, almost
5 every car wash worker I have spoken to has
6 reported that it is common practice for their
7 managers to skim from the workers' tips or deduct
8 from workers' pay whenever a customer complains
9 about damage to their car, most often due to the
10 car wash machinery.

11 Additionally, a car wash worker's
12 hours, and ultimately their take home pay at the
13 end of the week, is oftentimes dependent upon
14 changes of the weather and how busy the car wash
15 is on any particular day. It is common for
16 workers to report to work, work an hour or two,
17 and then to be sent home if it is cloudy, raining,
18 or business is slow. Under New York Labor law, an
19 employer must pay a worker who reports to work and
20 works less than four hours for at least four hours
21 of work to compensate the individual who may have
22 had to pay for transportation fees, child care, or
23 forego other employment opportunities that day to
24 report to work only to be sent home early. Again,
25 throughout my six months meeting with car wash

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2 workers in New York City, I have yet to meet with
3 one car wash worker who was ever compensated with
4 this pay.

5 Many of the car washeros, as they
6 commonly refer to themselves, have had experience
7 with government agencies, such as the Department
8 of Labor, that have investigated their employers
9 throughout the years. For example, in 2008, the
10 New York Department of Labor did a targeted
11 investigation of several car washes in New York
12 City and found incredible high rates of nonpayment
13 or underpayment of wages. Investigators
14 interviewed 400 employees in 84 car washes in New
15 York City. Within the car washes in New York
16 City, 78.5% were not paid the minimum wage; 78.5%
17 of individuals interviewed were also not paid
18 overtime; and at over 40% of car washes, they
19 found managers stealing an employees' tips.

20 Although most car washeros have had
21 some interaction with the Department of Labor at
22 some time, violations often continue even after
23 the Department of Labor have investigated car
24 washes and issued orders and levied fines for
25 violations against the car wash employer for

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2 violations of the labor law. Employers become
3 adept at changing their practices to avoid further
4 detection of unlawful practices by the government
5 and workers continue to suffer under the same
6 violations.

7 In my years of work as an
8 employment attorney, I have met with hundreds of
9 low wage workers across dozens of industries. I
10 have seen my share of unscrupulous employers, but
11 have been particularly shocked at how unresponsive
12 car wash operators in the city have been by the
13 Department of Labor's efforts to halt illegal pay
14 practices. Even after multi-million dollar
15 settlements in back wages and penalties, they go
16 right back to stealing wages. It is clear that
17 more comprehensive legal framework is necessary to
18 police this industry.

19 Thank you.

20 CHAIRPERSON SANDERS: Council
21 Member.

22 COUNCIL MEMBER MARK-VIVERITO:
23 Thank you, Mr. Chair. I'm just going to briefly
24 speak in Spanish and then I'll translate for
25 myself. [Foreign language] So I was just saying

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2 that I really want to thank Adan, Heriberto, and
3 Freddy in particular for being here today to share
4 their personal experiences. That, as legislators,
5 it's important that we really hear as a firsthand
6 experience of workers to know how we can better
7 improve work conditions and ensure that employers
8 are not exploiting workers and really, you know,
9 there's a low wage workers as we know, primarily
10 immigrants, and these are, unfortunately, the
11 communities and the individuals that these
12 employers really go after. And so it's really
13 important.

14 [Foreign language]

15 I wanted to just also say that I
16 apologize, but I am going to have to step out
17 because I have to catch a flight at 5 that I have
18 to run and get to go to a conference that I was
19 expected to go to that and was programmed before
20 this hearing, so I'm sorry, and it's no disrespect
21 to all of you that have taken time to be here.
22 And, again, I want to thank everybody, and in
23 particular, Mr. Chair, I want to thank you very
24 much for expediting this hearing, we didn't want
25 to delay this hearing any further 'cause I think

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2 it's an important issue that we wanted to raise
3 awareness about and look at possibly legislation
4 as a way of correcting this behavior and
5 regulating this industry so the experiences of all
6 of you and sharing them today is critical to that.

7 [Foreign language]

8 Thank you very much, Mr. Chair.

9 CHAIRPERSON SANDERS: Thank you,
10 and thank you for bringing this very critical
11 issue to our attention. Question for the panel,
12 can anyone tell me what happens when the
13 Department of Labor comes to the site? What
14 exactly happens?

15 [Foreign language]

16 CHAIRPERSON SANDERS: That's your
17 answer. And identify yourself for the record.

18 [Foreign language]

19 FREDDY ANTONIO NUNES: About four
20 months ago, I worked with an owner that, when the
21 Department of Labor came to our place of work, he
22 asked about six of us to go hide while the
23 inspection was going on and so seven people were,
24 he claimed it's only seven people are working with
25 him and the rest of us had to go and hide. And he

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2 asked me to go to a corner until they were asked
3 for our names and only those people that were
4 there and were not hiding were paid for that day.
5 This owner that I worked with, he was Argentinian,
6 his name is Othgard [phonetic], and then the
7 business was sold to a Korean guy, but this guy,
8 Othgard, he exploited us very much. He gave us
9 only \$4 an hour for pay and I was working about 17
10 hours a day and my check would only come out to
11 about \$325 a week. He would take out taxes from
12 my check and he continues to pay in check in that
13 way. And when we asked for an increase for our
14 work, he would just give us more and more work and
15 never increase any of our salaries.

16 [Foreign language]

17 FREDDY ANTONIO NUNES: So the
18 business was sold and the employer, whenever we
19 asked for an increase, he would never give us an
20 increase, and when it was sold, he gave some
21 workers severance, about \$500 but to me, he never
22 gave me anything.

23 CHAIRPERSON SANDERS: What is it
24 like to try to raise a family on your income?

25 [Foreign language]

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2 FREDDY ANTONIO NUNES: To pay rent,
3 it's not enough, we have families that we support
4 back home and we can't send it sometimes.
5 Everything here in the city is very expensive,
6 imagine working a salary just of \$300 a week or up
7 to \$320 a week. I never have enough to send back
8 home.

9 [Foreign language]

10 FREDDY ANTONIO NUNES: And in terms
11 of tips, it's very little what I earn, it's about
12 maybe 8 to \$12 a day.

13 [Foreign language]

14 FREDDY ANTONIO NUNES: And another
15 thing is that they never give us even gloves or
16 masks to work in terms of protection.

17 [Foreign language]

18 FREDDY ANTONIO NUNES: And they
19 want us to just work really fast, the fastest that
20 we can.

21 [Foreign language]

22 FREDDY ANTONIO NUNES: That's the
23 only words I have for you all.

24 [Foreign language]

25 ADAN NICOLAS: So where I

1
2 previously worked, the problem that we had was
3 when the DOE came to do an inspection, he would
4 select one person to speak to the DOL and the
5 manager would tell him exactly what to say.

6 [Foreign language]

7 FEMALE VOICE: So I'm just asking
8 if any of the other--

9 [Off mic]

10 CHAIRPERSON SANDERS: The question
11 during the hearing we seem to have stumbled into a
12 question of water quality, water quality. Has
13 anyone bumped into this problem of just dealing
14 with the water and seeing that there is something
15 with the water?

16 [Foreign language]

17 HERIBERTO HERNANDEZ: In terms of
18 the water quality in my case, I haven't had to
19 deal with that as much, but what a problem that I
20 do live with is the chemicals and I've seen co-
21 workers that spots appear on their skin because of
22 due to the use of chemicals, but for me, I haven't
23 lived that specifically.

24 CHAIRPERSON SANDERS: Council
25 Member Dickens.

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COUNCIL MEMBER DICKENS: Thank you.
I didn't hear that last response?

FEMALE VOICE: He said that
chemicals, because of the use of chemicals,
there's spots that come on the skin, that appear
on the skin, but he hasn't lived that, but co-
workers, he's seen many co-workers with that
problem.

COUNCIL MEMBER DICKENS: Which car
wash does he work at?

[Foreign language]

HERIBERTO HERNANDEZ: Currently, I
work with Hi Tek Car Wash, but I've worked in five
different car washes all in Queens and mostly in
Astoria and the one where I work at right now is
83rd and Astoria Boulevard.

COUNCIL MEMBER DICKENS: And has he
had a instance to use hazardous chemicals without
proper equipment?

[Foreign language]

HERIBERTO HERNANDEZ: So yes, in my
job, I've worked with chemicals. I specifically
work in creating the shampoo for the cleaning of
the cars and for, unfortunately, many folks need

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2 experience to do that so they designate one person
3 to do that. And if there isn't the adequate
4 chemicals, they make us use the ones that are
5 there because, obviously, the owners are waiting
6 for their cars, and so we just use what we have
7 and what we get.

8 COUNCIL MEMBER DICKENS: What are
9 the hazardous chemicals in a shampoo? If he
10 knows, he may not know.

11 [Foreign language]

12 HERIBERTO HERNANDEZ: So
13 unfortunately, I don't know exactly because I've
14 worked in five different car washes and they all
15 use very different chemicals and have different
16 distributors and so they use various ones, but
17 they use acidic ones and paint thinner, like,
18 chemicals that have--

19 COUNCIL MEMBER DICKENS:
20 [Interposing] Paint thinner is used in a shampoo?

21 MAGDALENA BARBOSA: Yeah, I was
22 just going to mention that I think the next panel
23 is going to be speaking specifically to some of
24 the health and safety issues and we'll have
25 probably a little bit more information about what,

1
2 you know, components are used in the chemicals
3 that the car washers handle.

4 COUNCIL MEMBER DICKENS: Yes, thank
5 you, thank you, Mr. Chair.

6 CHAIRPERSON SANDERS: I want to
7 thank this panel and we will call our next panel.
8 Thank you very much.

9 MATTHEW CARLIN: Eduardo Arroyo, a
10 car wash worker; Raul Perez from Make the Road New
11 York; Joel Shufro from New York Community for
12 Occupational Safety and Health; and Stephen Mooser
13 from RWDSU.

14 SERGEANT-AT-ARMS: If you have
15 copies of your testimony, we'll take them now.

16 CHAIRPERSON SANDERS: I'm sorry,
17 you can begin.

18 HILLARY: And we go in the order
19 you called, right? Eduardo was the first person
20 you called?

21 CHAIRPERSON SANDERS: Yes, he looks
22 like a man who would go first, let him go first.

23 [Foreign language]

24 EDUARDO ARROYO: So my name is
25 Eduardo Arroyo. Thank you for inviting me to

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2 speak here today. I'm from Mexico and my family
3 lives in Mexico still, my wife and my children.
4 My father has passed away, so my mother is still
5 in Mexico, and I support all of them financially.

6 I came to this country in the year
7 2000, I began to work in Magic Car Wash, which is
8 in Brooklyn. I worked at Magic Car Wash for ten
9 years, so for those whole ten years, the owners
10 and managers exploited us, and I don't know why
11 the owners allow the managers to treat us this way
12 because the managers treat us really poorly. They
13 make us rush through the whole day, they don't
14 give us time to eat, we don't even have time to
15 stop and drink coffee. The salary we're earning
16 is oftentimes less than the minimum wage, we're
17 not paid overtime, and we're oftentimes paid less
18 than the minimum wage, which is \$7.25.

19 So there was a time recently when
20 it was raining all week, it was raining throughout
21 the whole week, there wasn't any work, and then
22 around 2 o'clock on a Friday, they called me and
23 they said you need to come in right now, and we're
24 going to open the car wash 'cause it stopped
25 raining, but I was far away in that particular

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2 moment and so I couldn't show up. And when I
3 showed up the next day, they let me go, they said,
4 you know, we're sorry, we have no work for you.
5 And I asked the owner why he was letting me go and
6 he said, you know, he just didn't have any work
7 for me.

8 I'm going to come back and explain
9 this more later, but so the work that--during that
10 whole time that I worked in the car wash, I was
11 working, my job was to help fix the machines, I
12 sold tickets, I was a driver, and, you know, I
13 said to him why are you firing me and he said, you
14 know, 'cause you weren't here yesterday, but I
15 don't think that's actually what happened. What I
16 think what happened was related to an accident
17 that I had a couple years ago when there was a
18 time I was trying to change an old machine for a
19 newer machine and I had the bad luck of having an
20 accident. The machinery was very sharp and so it
21 fell and it cut my hand in three different places.
22 So because of that accident, I went and I told the
23 owner, you know, I need help, I might need to go
24 see a doctor, and he said, no, no, it's nothing,
25 you know, you can just wipe some alcohol on there,

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2 you'll be fine, keep working. So I kept working
3 that day, my hand actually was infected, the next
4 day I came back and it was swollen, I told him I
5 couldn't work because of the pain and he said, you
6 know, that's okay, you need to just keep working,
7 so I had to keep working. I would have liked to
8 have taken time off but I couldn't take time off
9 because I needed the money and, since we don't
10 have paid sick days, I wouldn't have been paid, I
11 needed to pay the rent, I needed to support my
12 family, and what we were earning wasn't enough to--
13 --it's barely enough to scrape by anyway, much less
14 take time off when something like this happens to
15 us. So I actually believe that it was related to
16 that was why I was let go that day at the end of
17 that week of rain.

18 In any case, another thing that
19 happens at that car wash is that when it rains and
20 there's no--they say that we're going to open the
21 car wash, we have work for you, but what they do
22 is they just four or five people cleaning out
23 these holes, these like pits in the ground, they
24 give us a box of black trash bags and they send us
25 into this pit where there's all this mud

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2 accumulated that's basically the dirty water and
3 all the grime and the dirt that's come off of the
4 car washes, plus the chemicals, all this which
5 gets mixed up and ends up in these pits and we're
6 told to go in there and clean them out. So we
7 have to climb into these holes, we're not given
8 any type of protection, we're not given any type
9 of, like a poncho or something to cover our
10 clothes, so we get completely dirty, the smell in
11 there, it's like a stench, it's really it's
12 unbearable how strong it is, and then by the time
13 we come out, you know, we're all dirty, we have a
14 headache, we have a stomachache because the smell
15 is so strong of all the chemicals and all the
16 filth. So that's one other thing I wanted to tell
17 you.

18 Then I also wanted to respond
19 quickly, we heard a lot earlier about this
20 question of where the water comes from, whether it
21 comes from potable water system or the city and I
22 just want to say that my experience, the owners,
23 what they do in order not to pay for water from
24 the city, they recycle the water, they keep
25 reusing the same water over and over so it's, you

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2 know, the soap is mixed up with the dirty water
3 with the chemicals and they keep using it. And
4 one time there was--our machinery broke and it
5 broke sort of on top of where the cars were being
6 washed so they couldn't move the car and we had to
7 go in and deal with it, but they didn't even turn
8 the water off, so that water was falling on us and
9 I could tell just by the impact of that water that
10 that water was not clean and it has a negative
11 impact on our health.

12 So then again, just returning to
13 the question of not having time to eat, you know,
14 a lot of times we don't have time--especially when
15 the car wash is busy, we don't have time to have
16 coffee, we don't have time to eat. If I go into
17 work with an empty stomach, I leave exactly the
18 same--on an empty stomach. And I believe the
19 reason why is because the owners care more about
20 making money than caring about the health and
21 well-being of their staff people, their employees.

22 And so one time, just as an example
23 of the poor treatment, the owner said to me, you
24 need to speak English and I said well I don't
25 speak English, but I do know how to do the work

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2 and he said, you know--I said, do you know how to
3 clean a car better than I do, and he said, no,
4 that's why I pay you, and so I said okay. So
5 that's why I'm working here, but I'm doing the
6 work, but I'm doing the work exploited so I'm
7 being exploited as I do the work.

8 And so then just returning really
9 quickly to where I was fired, when he let me go,
10 he said I want you to sign this pieces of paper
11 that says I'm quitting and I said no, I'm not
12 quitting so I'm not going to sign that piece of
13 paper and he said well if you don't sign it, I'm
14 not going to give the first week of work, which is
15 like a deposit, so then I never got that and I
16 never got paid the last few hours that I worked
17 that week that it was very rainy, so I never got
18 paid that last piece of work on top of being
19 exploited and on top of all the poor health and
20 safety conditions that we face at this car wash.
21 So that's it.

22 CHAIRPERSON SANDERS: Next speaker,
23 please.

24 [background noise]

25 [Foreign language]

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RAUL PEREZ: So good afternoon.
First of all, I just wanted to thank all the Council Members who are here today and it really means a lot to us that you want to listen to us, hear our experiences as car wash workers. And I also want to thank Julissa and the lawyer from Make the Road who've, you know, helped us get to this place. So I'm going to read, you know, my testimony is the following.

So my name is Raul Pech Perez and I'm from Mexico, from the state of Tabasco. My first job when I came to this country in 2003 was at a car wash and I had to work very hard in poor conditions. I worked washing cars by hand, specifically, my job was to scrub the cars after they had been soaped. This was made more complicated because we had inadequate protective equipment and sometimes soap and water would fall on me. This soap was a special kind of soap used to clean cars and contained acids used to clean the tire rims. I could tell how strong this soap was because it made the hair on my legs fall off. One day, soap fell on my ear. A few hours later, it began to itch and burn and then became

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2 inflamed. I didn't say anything at the time
3 because I didn't know there were laws to protect
4 me, since I'm an immigrant, and I was also afraid
5 that I would lose my job. It wasn't until I went
6 to Make the Road New York that I found out that I
7 was protected under the law. And I still have the
8 scar on my ear from that accident.

9 Aside from that particular
10 incident, I had to endure other poor working
11 conditions. We did not have the right kind of
12 equipment for the work we were doing. We worked
13 outside, wet all day, and when it was cold
14 outside, the plastic gloves we used made us even
15 colder. The boots they required us to wear also
16 made us colder. We had old ponchos that were made
17 of nylon that were full of holes and did not
18 protect us from the chemicals at all.

19 The employers also treat us badly
20 and always pressured us to work harder. The
21 manager never said anything to us about taking a
22 break to eat or to rest, and when the manager did
23 see us eat, he would tell us to hurry up and get
24 back to work.

25 It's not right that workers in the

1
2 car wash industry are exposed to dangerous
3 chemicals. We're hardly ever given any
4 information about the chemicals we use on the job,
5 and they usually don't give us any protective
6 equipment.

7 I would like to ask the City
8 Council of New York to help us make sure that car
9 washes in New York City are a safe, healthy
10 workplace. Thank you.

11 STEPHEN MOOSER: Good afternoon,
12 Council Members.

13 CHAIRPERSON SANDERS: Good
14 afternoon.

15 STEPHEN MOOSER: My name is Stephen
16 Mooser, I'm Director of Health and Safety for the
17 Retail, Wholesale and Department Store Union,
18 UFCW. In this capacity I conduct worksite
19 inspections, hazard specific general health and
20 safety training classes, develop educational
21 materials on a wide variety of workplace hazards,
22 and provide other technical assistance as needed.
23 For the 20 years prior to joining the RWDSU, I was
24 Director of Education at Occupational Medicine
25 clinics at San Francisco General Hospital, the

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2 Yale Medical School, and the Mount Sinai Medical
3 Center here in Manhattan.

4 I am also a Board member of the New
5 York Committee for Occupational Safety and Health,
6 NYCOSH, a non-profit educational and advocacy
7 organization composed of over 150 local unions and
8 health and safety professionals, lawyers, doctors
9 and rank and file workers committed to the right
10 of all workers to a safe and healthy workplace. I
11 am speaking today on their behalf and I am joined
12 by the NYCOSH Executive Director, Joel Shufro,
13 who's to my left.

14 Based on interviews conducted with
15 workers in car wash facilities, we are very
16 concerned about their health. These workers are
17 exposed to a wide variety of cleaning and
18 degreasing substances. They complain of symptoms,
19 especially eye, nose, and skin irritation, and
20 respiratory ailments which are common exposure
21 effects from contact with cleaning and degreasing
22 agents. As a Queens car wash worker, Nelson
23 Hernandez, stated, we use chemical products that
24 are very strong and burn our skin. I have also
25 started to notice that when I work with certain

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2 chemicals, even after I leave work and go home, I
3 have a burning sensation in my eyes. What scares
4 me is that I have seen how my brother, who also
5 used to work in the car wash, has problems with
6 his vision even after he left the job.

7 Injuries and accidents occur when
8 workers are exposed to hazards. So to protect
9 workers, we want to reduce exposures as much as
10 possible. Ideally, this means enclosing a hazard
11 or improving ventilation so exposure is greatly
12 reduced. Often in car wash work, these
13 engineering controls are not feasible and we are
14 left to rely on the least effective method of
15 worker protection, that being personal protective
16 equipment, things like gloves, goggles, boots.
17 Yet very few car wash employers in New York City
18 are providing their employees this basic last line
19 of defense against the toxic chemicals they are
20 working with. As Carlos Garcia, a New York City
21 car wash worker, related, my lungs and throat hurt
22 from breathing in bad chemicals. The chemicals
23 that are used in the shampoo are especially
24 strong. I asked them if there was any different
25 kind of shampoo or protective gear we could use,

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2 but management said no. There is protective gear
3 that can be provided, and it should be provided at
4 no cost to employees, as well as training about
5 how to use and maintain the equipment, as mandated
6 under the OSHA law section 1910.132.

7 Car washing work involves several
8 different processes and each involves worker
9 exposure to hazardous substances--all utilize a
10 variety of hazardous chemicals. Workers have a
11 right to know what hazardous substances they are
12 exposed to, but the reality they currently face is
13 symbolized by the container I have with me.
14 Unmarked, unlabeled, super wash blue, you could
15 call it. What workers are often told is that use
16 the blue stuff, use the red stuff, or the green
17 stuff. The containers usually have no labels or
18 warnings about health effects, and this is
19 contrary to OSHA regulations. Under OSHA's Hazard
20 Communication Standard, employees must be trained
21 about the hazards of the materials with which they
22 are working and how to protect themselves and
23 their health. The employer must maintain and
24 provide ready access to Material Safety Data
25 Sheets for all toxic substances used.

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2 To protect workers' health, they
3 need to know what they are working with, and this
4 is simply not common practice in the car washing
5 industry in New York City in 2012. For example,
6 general purpose detergents are alkaline cleaners
7 and can cause severe eye irritation. Product
8 labels, which these workers rarely see, indicate
9 that skin exposure must be prevented. Waxes and
10 polishes, which are common in car detailing work,
11 frequently include Amino Functional Siloxane and
12 petroleum distillates which can severely dry and
13 irritate skin. Chemical agents utilized to clean
14 white wall tires and wheels are even more toxic.
15 A typical white wall tire cleaner used at one of
16 the larger car wash facilities is Zep Citrus
17 cleaner. It contains Sodium Metasilicate, 2-
18 Butoxyethanol, Trisodium, Phosphate, Potassium
19 Hydroxide, and 2-Amino Ethanol. These are caustic
20 substances which can cause serious eye, skin, and
21 respiratory irritation. The product label
22 cautions, quote, inhalation of spray mist or
23 vapors may cause respiratory tract irritation
24 and/or central nervous system depression
25 characterized by headaches, dizziness, nausea, or

1 stupor. Avoid breathing vapors or spray mist, end
2 quote. Degreasers are solvents which are known to
3 have serious long term, or chronic, adverse health
4 effects, primarily neurologic and liver damage.
5 The workers using these products have not received
6 Hazard Communication training at this facility,
7 nor have they been given proper protective
8 equipment.
9

10 Acids are a common ingredient in
11 wheel cleaning products, especially in detailing
12 work. One of the wheel cleaning product
13 ingredients of greatest concern is hydrofluoric
14 acid. It is present in less than 5% in a product
15 called Attack Acid Truck Cleaner. Its Material
16 Safety Data Sheet warns about skin contact,
17 stating that it is, quote, extremely irritating.
18 Penetrates the skin, rapidly destroying deeper
19 soft tissues and bone. Rapidly absorbed into
20 bloodstream to introduce fluoride poisoning, or
21 cardiac edema, end quote. As far as eye contact
22 it warns, quote, extremely irritating and
23 damaging. Rapidly destroys corneal tissue to
24 produce possible permanent visual disturbances
25 and/or blindness, end quote.

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2 A basic lesson we have learned in
3 occupational health is that toxics in the
4 workplace don't remain there, they are released to
5 the surrounding community and imperil the health
6 of residents. We know that car wash operations in
7 New York City utilize a wide variety of toxic
8 chemicals, including solvents and very corrosive
9 acids, and that poorly controlled exposure to
10 these substances is causing significant health
11 problems for workers. But there is too much about
12 the disposal of these chemicals that we don't
13 know. Are they diluted in accordance with the
14 manufacturers' recommendations or are they under
15 diluted to try and enhance their effectiveness?
16 Is contaminated water properly contained and
17 disposed of or is it released into our water
18 system and the neighborhoods surrounding these
19 facilities?

20 We know from our experience with
21 dry cleaning facilities that workplace toxic
22 chemicals in the urban environment can pose a
23 serious threat to health of our communities. We
24 must be committed to limit and control these
25 exposures in the workplace and beyond.

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2 CHAIRPERSON SANDERS: Thank you,
3 sir. Is your executive director [off mic].

4 JOEL SHUFRO: Yes, it is--let me
5 just say this, it is--

6 CHAIRPERSON SANDERS: [Interposing]
7 Identify yourself for the record.

8 JOEL SHUFRO: I'm sorry, my name is
9 Joel Shufro, I'm Executive Director for the New
10 York Committee for Occupational Safety and Health,
11 which provide training to literally thousands of
12 workers in the New York metropolitan--

13 CHAIRPERSON SANDERS: [Interposing]
14 A little louder and pull the mic towards you.

15 JOEL SHUFRO: I'm sorry. NYCOSH
16 provides training about workplace safety and
17 health hazards to thousands of workers, about
18 5,000 workers a year, in the metropolitan New York
19 metropolitan area. We're a nonprofit organization
20 dedicated to everybody's right to a safe and
21 healthy workplace.

22 It is very clear that workers who
23 we have heard from today are not provided with the
24 training and equipment that is required under the
25 law, and like with the wage theft issues, the

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2 hours issues, this is the same sorts of breakdown
3 of government enforcement occurs in the area of
4 safety and health. The City Council is not really
5 able to deal with the employer/employee
6 relationships, which is preempted by the OSHA act,
7 but frankly, what workers in this industry need--
8 the first thing that they need to protect their
9 safety and health is a union because without that
10 protection, their rights under the law are
11 meaningless because just to stand up for what they
12 are entitled to under the law is tantamount to
13 being asked to be fired.

14 The hazards that they face are very
15 real and are major health hazards, which can be
16 prevented, but will not--the illnesses of which we
17 hear about from these workers in terms of
18 respiratory problems, skin problems, are--can be
19 dealt with, but only if they have the backing of
20 both the enforcement agencies of the federal
21 government, as well as the ability to call the
22 agencies in and not have retaliation taken against
23 them.

24 CHAIRPERSON SANDERS: Thank you. A
25 question for the workers, a question for the

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2 workers. I know the answer, but I'm going to
3 raise a question. I'm hoping that I don't hear
4 the answer that I expect. What's it like to work
5 with this much water during wintertime? How do
6 you keep warm? Do you get any special clothing
7 from the employer to protect you from getting too
8 wet or to keep you warm?

9 [Foreign language]

10 EDUARDO ARROYO: So in the
11 wintertime, we have to just work with, you know,
12 in the cold temperatures, and there's not really
13 anything--we don't get any kind of help or
14 anything to do about it. Sometimes our feet will
15 go numb, like, will fall asleep from the cold
16 because we're so cold and they don't give us any
17 protective anything or any extra clothes or
18 anything like that. Sometimes when it snows, you
19 know, we're told to go shovel the snow and anyone
20 who doesn't, you know, in order to open the car
21 wash, we have to shovel the snow and anyone who
22 doesn't want to do that gets sent home and not
23 paid. But most of the time, we do what we're told
24 because we need to make sure we keep our jobs and
25 we're afraid to lose our jobs by standing up and

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saying anything that we don't want to do.

Another example in the winter is that the towels that we use, the cloths that we use are sometimes frozen solid and sometimes they scratch the cars and the cars are damaged and the clients come and complain to us, then we go tell the owner and the owner says--he'll hide basically and he says you go deal with it, you go deal with the client, it's not my problem. So they're using us, hiding behind us, and it's just really not fair if there's a problem at the car wash for them not to deal with it themselves.

Another example, in terms of the cold is that it's all cold water and we've asked before, you know, can't we get hot water in the winter and they say, no, it's too expensive, you know, we don't want to pay the gas to get hot water, and so it has a negative impact on us, you know, it's freezing cold to have cold water and then also the car themselves, you know, sometimes have the water freeze on them and, again, the client sometimes complain, but there's nothing we can do about it because the owner doesn't want to pay for hot water.

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[Foreign language]

RAUL PEREZ: So in the car wash where I worked, it was the same thing, there was no--we were given no particular equipment to help us deal with the cold, none of the necessary clothing or boots or anything like that. We were sometimes given ponchos, but they were torn, they were old, so they didn't keep us warm. The same things, the boots that we had to wear and actually, instead of making us warmer, made us colder 'cause they were like nylon rubber boots so our feet were always freezing. Same thing in the winter with our hands, our hands were always really cold, if we had gloves at all, they were like nylon gloves. So nothing to keep us warm and there was always a problem in the winter that we were very, very cold.

CHAIRPERSON SANDERS: Another question for the workers, and I'm doing this in part just to put it in the record, some of this just needs to go into the record of the City of New York. Do you get regular training on how to handle chemicals and other dangers on the job? How about gloves and mask and protection for you

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when you work with harsh or dangerous substances?

[Foreign language]

HILLARY: So I was just jumping in to kind of explain the question.

RAUL PEREZ: But so what Raul said is that no, we were never given any type of training to do this work, we were never given any type of training about the chemicals we were using or how to do the work, they basically just hired us, we started working, you know, they just put us to work. And so I asked him about the chemicals, like, were they told what the chemicals were and they were dangerous and he said, you know, we know that the chemicals are dangerous because of the effect that they had on us because, you know, as I mentioned in my testimony, and then he, you know, he showed you the scar that I still have on my ear from when the acid fell on me and it also made the hairs on my leg fall off, and so we know that these chemicals are dangerous and we were never given any protective equipment.

So, again, I just repeated the question of, you know, you know from your limited experience, but were you ever told and he said,

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2 no, no, no, we were never given any type of
3 explanation when we started working there about
4 what the chemicals were that we were using or how
5 dangerous they were, or, you know, what health
6 impacts they might have on us.

7 CHAIRPERSON SANDERS: I will yield
8 to my colleague, Council Member Dickens.

9 COUNCIL MEMBER DICKENS: Thank you,
10 thank you, Mr. Chair. With the last panel, and I
11 apologize, what is your name, again?

12 HILLARY: My name? Hillary.

13 COUNCIL MEMBER DICKENS: Hillary, I
14 apologize.

15 HILLARY: No, no.

16 COUNCIL MEMBER DICKENS: But in the
17 last panel, I asked about what were--did anyone
18 know what any of the chemicals that were put in
19 when one of the prior panelists said that he mixed
20 the shampoo and the answer was paint thinner and
21 also that this panel would be able to answer
22 better, so now I'm going to pose the same question
23 to this panel. What, if you know, are any of the
24 hazardous chemicals that are used in mixing the
25 shampoo that was referred to by the last

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panelists?

STEPHEN MOOSER: The shampoo would be a cleaner and also a degreaser. Degreasers are solvents, I don't know about paint thinner per se, but that is a solvent and those are the classes of chemicals that can cause neurologic and liver damage, alcohol is a solvent, as an example. So there may be some mixing of alkaline cleaners and solvents as well.

COUNCIL MEMBER DICKENS: When I referred to paint thinner, not from knowledge, but because the last panelist had said paint thinner, but I don't know from--

[Crosstalk]

COUNCIL MEMBER DICKENS: --so that's why I asked about--

STEPHEN MOOSER: Right.

COUNCIL MEMBER DICKENS: --paint thinner.

STEPHEN MOOSER: It's possible, we're trying to find out what all that they work with.

COUNCIL MEMBER DICKENS: That goes into the mixing of shampoo or whatever is used.

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2 STEPHEN MOOSER: Well usually
3 they'd use a straight product, but they're
4 supposed to dilute it, and that's very important
5 too with this acid and all these substances,
6 they're supposed to use a concentrate and then add
7 water to it. How well they do that, we don't
8 know, and that would--if they don't do it well, if
9 they don't dilute it enough, it's going to be a
10 more hazardous substance that they're working
11 with. And sometimes--

12 [Crosstalk]

13 STEPHEN MOOSER: --you know,
14 management would take the point we'll do it a
15 little less will be more effective later.

16 COUNCIL MEMBER DICKENS:

17 [Interposing] So we're talking about a commercial
18 shampoo.

19 STEPHEN MOOSER: Well it's for a
20 business, you know, a commercial product, right--

21 [Crosstalk]

22 COUNCIL MEMBER DICKENS:

23 [Interposing] That's what I mean--

24 STEPHEN MOOSER: --yeah.

25 COUNCIL MEMBER DICKENS: --a

1 commercial product. That requires mixing of water
2 or is there any other solvent that's supposed to
3 be mixed in it?
4

5 STEPHEN MOOSER: Well usually it'd
6 be water it would be diluting with, yeah.

7 COUNCIL MEMBER DICKENS: All right,
8 so but now there's another question because I
9 don't know, would the car washes dilute the
10 shampoo with something other than water, something
11 that costs, like paint thinner or any of the
12 others that you mentioned?

13 STEPHEN MOOSER: I don't know, I
14 mean, I assume they dilute it with water, but...

15 COUNCIL MEMBER DICKENS: But it has
16 to be a certain like--

17 [Crosstalk]

18 STEPHEN MOOSER: [Interposing]
19 Yeah, I mean, it's usually--it says on the product
20 dilute one part of this to 100 or 64, 128, parts
21 of water, there's a--

22 [Crosstalk]

23 STEPHEN MOOSER: --formula that
24 comes from the--

25 COUNCIL MEMBER DICKENS: Formula--

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[Crosstalk]

STEPHEN MOOSER: --manufacturer because if you're talking especially about the hydrofluoric acid, that's extremely toxic.

COUNCIL MEMBER DICKENS: So on the shampoo where you have to mix it, is the formula-- and I'm not asking about the reading of it now--is the formula on the container or whatever it comes in?

STEPHEN MOOSER: It should be on the container. Now an appropriate question that I'd like to know is whether--what the workers are told because they're probably doing the mixing and they probably don't have access to that label, so I'd be interested in finding out whether they mix the stuff--

COUNCIL MEMBER DICKENS:
[Interposing] In other words, Hillary, do they take the chemical or the shampoo or whatever it is, out of, say, they buy it in a big barrel, I don't know, and they take it out and put it in another kind of a container that would not have the mixing proponents on it, that's really what I'm trying to find out.

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[Foreign language]

COUNCIL MEMBER DICKENS: So, Hillary, does that mean that it is taken out of a larger container--

HILLARY: [Interposing] Yes, yes, yes, I'll translate one sec, if you don't mind, I just want to one more just quick clarification.

[Foreign language]

HILLARY: So he--oh my goodness, that wasn't me. All right, you're going to take it out of my tips?

COUNCIL MEMBER DICKENS: Don't worry about it--

[Crosstalk]

HILLARY: So Eduardo was saying the chemicals that we use, like the shampoo that you're talking about, it's sold to the car wash from a company in a really big plastic tub, so it's in that big plastic container and then it's given to us, and then this is what I just clarifying, was it given to you with a ticket, you know, with the instructions on the label and he said, no, no, no, it doesn't have any label on there at all, it comes to us like that in some

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2 kind of container. So we get it with no
3 instructions and the manager basically just says
4 mix this with some water, like he doesn't tell us
5 how much, he just says put a little bit of water
6 in it, so we put it in a bucket and then from the
7 bucket, we put it into a spray bottle, you know, a
8 bottle with spray and then that's how we work with
9 it.

10 So then, you know, these chemicals
11 are very, very strong, when we start to use them,
12 you know, we're using the spray bottle and that
13 spray that comes out kind of blows back in our
14 face, it blows in our face, it blows on our hands,
15 we can feel how intense the chemicals are, we have
16 no protective equipment, again, no gloves, you
17 know, nothing plastic to cover us. And so, you
18 know, we've asked before, we've asked and said
19 could we get some type of protection, some masks,
20 some goggles, some gloves, and the managers say,
21 no, you know, it's too much money. Especially if
22 they say, you know, there hasn't been enough sales
23 or, you know, work has been slow. But so they
24 basically aren't factoring in the cost of the
25 protective equipment into their business.

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2 Another thing is a chemical that's
3 used is the one that's used to clean the tires,
4 and the rims in particular, is a different
5 chemical that's used and that they put in like a
6 pump, they pump it out and then they put it into
7 the spray bottle, but it comes out like a hose,
8 like it comes out with a spray hose so we spray it
9 straight onto the tires and especially in the
10 summer, it's so hot, you can just imagine that
11 the--it's got an acid and so then that gets
12 sprayed back on us and it causes us to have sore
13 throats, other problems, other health problems,
14 and, again, this is an acid that's used
15 specifically for the tires and the rims. And you
16 can just imagine how strong it is if you think
17 about how dirty a tire is and the fact that once
18 this chemical is sprayed on it, it comes
19 completely clean, so that's just how intense the
20 chemical is and then think about us breathing in
21 the fumes and that chemical being sprayed on our
22 body, on our skin, that's the impact that it's
23 having on us and, again, with no type of
24 protective equipment.

25 COUNCIL MEMBER DICKENS: So, excuse

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2 me just a minute, so the chemical or the acid that
3 is used or whatever, made up of acid, whatever,
4 that's used for cleaning tires and the rim does
5 not take off the paint on a car?

6 [Foreign language]

7 HILLARY: He said no, but it does
8 sometimes stain it, like it makes it--it has a
9 stain on it.

10 COUNCIL MEMBER DICKENS: Like maybe
11 or something like that. And the last question is
12 on going back to the shampoo again, the shampoo is
13 mixed with a little bit of water, whatever, is
14 mixed in a smaller container in a spray bottle, if
15 I remember the testimony correctly, that it's put
16 in a spray bottle, so a car is washed with the
17 shampoo and a spray bottle?

18 [Foreign language]

19 HILLARY: That's right, that's
20 exactly right.

21 COUNCIL MEMBER DICKENS: All right,
22 thank you so much. Thank you.

23 CHAIRPERSON SANDERS: Oh, you're
24 more than welcome. Mr. Shufro, tell me about
25 OSHA. Surely the government is standing to

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2 protect the workers, aren't there OSHA and EPA
3 regulations that cover the car wash industry? How
4 intensive is the enforcement of these regulations?
5 And if any chance that it's not being enforced,
6 what's getting in the way of enforcement?

7 JOEL SHUFRO: Well OSHA does cover
8 the industry and have had what they call local
9 emphasis programs in this particular area where
10 they have gone out and looked at car washes
11 facilities and have found them in violation of
12 many of their standards. But what you have to
13 understand is that there are enough inspectors in
14 the state of New York under the Occupational
15 Safety and Health Administration to inspect every
16 workplace about once every 120 years. So the
17 placing your faith upon getting your workplace
18 inspected is, you know, not something I think is
19 sufficient to protect your safety and health.

20 And particularly if you are in a
21 shop where calling in OSHA to help you is
22 tantamount to asking to be fired with no
23 protection, OSHA's not going to come out and do
24 this sort of rigorous inspection. It will do the
25 inspection, and I used to work for OSHA for a

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2 little bit, so if they are called, they will come,
3 but unless workers know that they are covered,
4 that they have that right, that they--it is a weak
5 reed to rely on.

6 CHAIRPERSON SANDERS: And the EPA,
7 sir?

8 JOEL SHUFRO: Well the EPA covers,
9 as you heard from the gentleman from DEP, they
10 cover different and look at different sorts of
11 processes. They are not concerned with workplace
12 health, they are concerned with environmental
13 health and the concern of the community and the
14 public at large, and those are two very different
15 sorts of questions. And I, frankly, cannot speak
16 to EPA enforcement, it's not something that I am
17 familiar with.

18 STEPHEN MOOSER: I wanted to add a
19 couple more things about OSHA. They do have this
20 local emphasis program that has been going since
21 October of 2010, but keep in mind, we're part of
22 Region 2, and that's not just New York City,
23 that's all of New York state, Puerto Rico, and the
24 Virgin Islands, so they've conducted about, I
25 looked at their record, about 14 inspections in

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2 New York City. They have found all their
3 inspections at car wash facilities in the last
4 couple years, 45 serious violations, and those
5 are, you know, where they find conditions that
6 could lead to serious injury or death. And they
7 break down in four of the areas we've talked
8 about: The failure of employers to provide hazard
9 communication training, the failure of employers
10 to provide personal protective equipment,
11 electrical hazards, especially in wet
12 environments, and medical services, medical
13 services meaning that these facilities do not
14 provide or do not properly maintain eyewashes,
15 which are essential when they're working with the
16 kind of chemicals they are. So that accounts for
17 about 80% of the serious violations have been
18 found.

19 What would be helpful, I think,
20 would be, you know, this is the province of the
21 federal government, but any help from the City
22 Council in terms of urging OSHA to be more
23 involved and to, you know, pursue this program
24 would be helpful, and we certainly want to
25 identify those workplaces where there are

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2 particular problems and we are going to work on
3 trying to get OSHA out to those worksites.

4 CHAIRPERSON SANDERS: Why don't you
5 think that the--let me do it different. Do you
6 believe that the City's Department of Health can
7 play a role here?

8 STEPHEN MOOSER: Not in terms of
9 exposure to workers. If there are questions of
10 exposure to the public, that would be, I believe,
11 more of the province of the health department.

12 CHAIRPERSON SANDERS: Well we do
13 have another panel, so I will be kind to this
14 panel. Thank you very much for testifying--unless
15 you wanted to say--thank you very much for
16 testifying. Please call the next panel.

17 MATTHEW CARLIN: The last panel is
18 Jim Kane, RWDSU; Sarah Meyer, RWDSU; and Stephen
19 Cha-Kim from Make the Road New York.

20 CHAIRPERSON SANDERS: In the order
21 that you were called, if you will testify.

22 SARAH MEYER: Sorry.

23 JIM KANE: Good afternoon. I'd
24 like to thank the chair and the members of the
25 Committee for holding this hearing today. These

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2 hearings are an important part of the larger
3 process to protect the rights of car wash workers,
4 and your efforts here today are deeply
5 appreciated.

6 My name is Jim Kane, I'm a Research
7 Analyst for the Retail, Wholesale and Department
8 Store Union, UFCW. I'm here today to give the
9 members of the committee an idea of the scope of
10 the car wash industry in New York City.

11 In New York City, the car wash
12 industry is comprised of approximately 200
13 establishments and, based on field research
14 conducted by the coalition, as many as 5,000
15 workers. The industry includes both full and
16 self-service locations, as well as detailing
17 services. Additionally, firms have diversified
18 their offerings in recent years to include more
19 value-added services, such as waxes and interior
20 cleaning.

21 Individuals represent the largest
22 customer segment for the industry. However,
23 businesses with significant fleets, such as new
24 and used car dealers, taxi and limousine services,
25 delivery services, and property management firms

1
2 also represent major segments. Agencies and
3 offices of the city are also customers.

4 The industry is highly fragmented,
5 and most car washes are single-locations. A lack
6 of economies of scale, however, allows small
7 operators with good locations to compete
8 successfully. The industry is moderately capital
9 intensive, with conveyor and in-bay system
10 equipment often costing \$250,000 to 375,000 a
11 piece. Owning the property can easily push the
12 investment to well over a million dollars. This
13 represents a barrier to entry for those unable to
14 attain financing. Capital intensity in the
15 industry has been increasing in recent years and
16 it will likely continue to increase as more firms
17 move toward its conveyor systems to drive volume.

18 While single location operations
19 are common in the industry, we have found that a
20 number of loosely-knit chains exist within New
21 York City. While locations do not always share
22 common branding, and each location is incorporated
23 separately, there are common principles.

24 Additionally, we have found that
25 some principals, such as John Lage, also have

1
2 significant real estate holdings, including the
3 car wash properties. These self-rented properties
4 represent the principal with an opportunity to
5 take advantage of tax shields by paying rent to
6 the real property firm. Thank you.

7 SARAH MEYER: Good afternoon, I
8 would like to thank the chair and the members of
9 the committee for holding this hearing today, and
10 for their concern and interest about the welfare
11 of New York City's car wash workers.

12 In order to get a clearer picture
13 of the conditions faced by workers in the car wash
14 industry, organizers with the WASH New York
15 campaign conducted 89 in-depth interviews with car
16 wash workers employed at 29 car washes throughout
17 New York City--

18 CHAIRPERSON SANDERS: [Interposing]
19 Please identify yourself also.

20 SARAH MEYER: Absolutely. My name
21 is Sarah Meyer, I'm the Director of Research at
22 the RWDSU.

23 Employed at 29 different car washes
24 throughout New York City over the course of
25 several months--a statistically significant

1
2 sample. The interviews were conducted earlier
3 this year.

4 The interviews painted a picture of
5 conditions that were as disturbing as they were
6 widespread. Eighty-five percent of workers
7 surveyed reported working over 40 hours a week,
8 with 58% working over 60 hours a week. Some
9 reported working as many as 81 to 105 hours a
10 week. Despite those long hours, workers reported
11 that they rarely received legally mandated
12 overtime pay. In fact, 75% of those surveyed said
13 that they did not receive overtime for working
14 more than 40 hours in a week.

15 Workers reported taking home as
16 little as \$125 a week and 66% reported being paid
17 less than the legally required New York State
18 minimum wage of \$7.25 an hour. Not a single
19 interviewed car wash employee received paid sick
20 days, and only one was offered any kind of health
21 plan.

22 In addition, car wash employees
23 work in potentially hazardous environments dealing
24 with the heat, cold, exposure to wet environments,
25 and cleaning chemicals. Despite that, only three

1
2 of the workers reported that their employers
3 provided them with any kind of information on the
4 potentially hazardous chemicals they work with,
5 and only 23% of the workers interviewed were
6 provided with any kind of protective equipment at
7 all by their employers. OSHA standards clearly
8 call for personal protective equipment to be
9 provided at no cost when workers face injury or
10 impairment at the workplace. Workers reported
11 receiving little break time during a difficult day
12 of work, with 40% saying they receive 15 minutes
13 or less for lunch.

14 Workers also reported having to pay
15 for damaged cars and having tips withheld or
16 unfairly split with managers. Workers also
17 reported being yelled at, harassed, insulted, and
18 mistreated by management. One worker put it this
19 way, they yell at us, they disrespect us, and they
20 treat us as if we're not even human beings.

21 For further details on the findings
22 we have with us, as we handed out, full copies of
23 the report that we would like to make available to
24 the Committee. Thank you.

25 STEPHEN CHA-KIM: Mr. Chairman,

1
2 honorable Council Members, good afternoon, thank
3 you for the opportunity to talk about this low
4 wage workers, consumers, and how they're affected
5 by the car wash industry and what the City might
6 be able to do legally about the situation. My
7 name is Stephen Cha-Kim, I'm Staff Attorney with
8 Make the Road New York. I was the primary author
9 of the proposed Car Wash Accountability Act, which
10 was introduced before the City Council on April
11 30th.

12 For background, the Department of
13 Consumer Affairs enforces for over 71,000
14 businesses in nearly 60 industries license
15 obligations to conduct business in the city, that
16 includes restaurants, cafes, catering
17 establishments, cigarette dealers, electronics
18 stores, locksmiths, sightseeing buses, horse-drawn
19 cabs, used car dealerships, scrap metal
20 processors, laundries, garages, even thrift
21 stores, but not car washes. This is all part of
22 the City's power to protect the general welfare
23 and, according to City law, and as upheld by the
24 Court of Appeals, to prevent deceptive, unfair,
25 and unconscionable practices and to ensure

standards of integrity, honesty, and fair dealing.

As we have heard today, the New York City car wash industry is one whose practices are, indeed, rampantly unconscionable and where standards of integrity are sorely lacking. In addition to the lack of compliance with environmental and labor standards that have been outlined today, the City's consumers are particularly hurt by the lack of any oversight. The widespread practice we heard of today of car wash operators paying customers with complaints under the table by docking worker pay and taking from the tip pool, hurts consumers. The result is a complete lack of transparency, shifting what should be an accounted for cost of business unfairly and illegally onto workers, while also depriving future customers of an accurate portrait of which car washes are worthy of their trust and their business.

City licensing exists specifically to counter this problem. In other industries, for instance, there's a long-established requirement of obtaining a surety bond, which is a mechanism that ensures that businesses operate while

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2 complying with third-party obligations fairly,
3 transparently, and securely so that when there are
4 City fines or third-party claims, that these are
5 paid off. Other industries are required to submit
6 proof that they're in compliance with all federal,
7 state, and city regulations, including
8 environmental permits and insurance requirements.
9 These are all existing prerequisites in rules that
10 exist for other industries, and the law that's
11 been introduced wouldn't require anything new of
12 car washes.

13 So what can be done? Obviously, we
14 are for the Car Wash Accountability Act, which
15 introduced two days ago, which extends some of
16 these same requirements that exist for other
17 industries, we can also look to California which
18 passed a car wash bill in 2003 that addressed the
19 same types of rampant abuse. That law in
20 California was critical to cleaning up that
21 state's industry where there were also recent
22 prosecutions of owners who were in flagrant
23 violation of city-level environmental laws
24 regarding storage of chemicals, as well as repeat
25 violations of labor standards. That law has been

1
2 crucial in California to encouraging better
3 practices from a more engaged business community.

4 In fact, in a study carried out by
5 the UCLA School of Public Policy, more reputable
6 members of the trade association of car wash
7 owners in California were cited as saying that
8 they wished the law had even stronger enforcement
9 provisions because they found themselves
10 increasingly unable to keep up with unscrupulous
11 and noncompliant competitors. And this is an
12 important point, people will say that this law
13 will hurt small businesses, but that's a clichéd
14 response from unscrupulous cheaters who are not
15 able to compete unfairly with honest business
16 owners.

17 So what's in [off mic] is legal
18 action that will bring this industry to, that's up
19 to now, been anonymously evading oversight in
20 compliance with basic obligations that other
21 businesses across the city manage to follow while
22 successfully operating in the city and turning an
23 honest profit. The result will be a more fair and
24 competitive landscape, especially for honest
25 business owners who have been undercut by the

1
2 unscrupulous competitors, and a more transparent
3 marketplace for New Yorkers looking to get their
4 cars cleaned.

5 Thank you very much for your time.

6 CHAIRPERSON SANDERS: Thank you. A
7 couple of questions. You alluded to, in fact, you
8 said that there were honest owners and that some
9 unscrupulous people were taking advantage of them.
10 In your--let me get a guesstimate from you, not
11 even an estimate, a guesstimate, how many
12 responsible owners are out there?

13 STEPHEN CHA-KIM: In the car wash
14 industry?

15 CHAIRPERSON SANDERS: Yes, sir.

16 STEPHEN CHA-KIM: You know, very
17 few from the numbers that I've seen from some
18 studies. There are some who obviously have better
19 pay practice than others. I was alluding mostly,
20 I think, to the fact that honest business owners
21 throughout the city in other industries comply
22 with these same kind of licensing obligations that
23 car wash owners should. I think the one--I think
24 from our recent study, it was upwards of 80% who
25 were not compliant with wage laws, I think that's

1
2 correct. So there is a very small percentage of
3 car wash owners out there who do have better pay
4 practices, but unfortunately, they are few and far
5 between.

6 SARAH MEYERS: Yeah, if I may note,
7 in the report, it states on the first page and
8 you'll find that the New York State Department of
9 Labor actually found that close to 80% of New York
10 City's car washes were guilty of wage and hour
11 violations and our findings with our interviews
12 were consistent with that.

13 CHAIRPERSON SANDERS: Tell me of
14 California, how many businesses have gone
15 bankrupt, has the price increased with the
16 introduction of these laws?

17 STEPHEN CHA-KIM: It's very hard to
18 say. The issue with California is one of the
19 things they implemented was a registration
20 requirement so that an industry that as in New
21 York has sort of been under the radar has to
22 identify themselves. So the problem is there
23 since that registration requirement is new,
24 there's no real data set to compare it to
25 beforehand, so it would be difficult for me to say

1
2 how many have gone under. But what's clear though
3 is that it has thrown some light on the dynamics
4 in the industry and that there are more reputable
5 members who are coming forward to say, you know,
6 thank you for this law, you know, it's helping us
7 compete against these people who are undercutting
8 us illegally. But obviously, I mean, there are
9 enforcement provisions that they would wish had
10 gone further.

11 But to answer your question, it'd
12 be hard to say with an exact number how many have
13 actually closed or newcomers have come in since
14 the law is passed.

15 CHAIRPERSON SANDERS: It will be
16 very useful to us to have any information that we
17 can of the impact of these laws, antidotal
18 information or any other type, if New York City is
19 to explore any rules and regulations, laws, we
20 must ensure that the law of unintended
21 consequences does not overtake us.

22 I want to thank this panel for
23 putting a lot of facts and figures, I'm going to
24 study the report also even more, and let me take
25 some closing remarks here.

1
2 I want to thank the RWDSU, the New
3 York City Communities for Change, WASH New York,
4 and Make the Road for bringing this to our
5 attention. I especially want to thank the working
6 people who were kind enough to come up here and
7 just put themselves out. It's good that the
8 weather cooperated with us and there was rain, but
9 at the same time, I really want to thank you for
10 being kind enough and putting up with the
11 strangeness of government in one sense, that long
12 conversations, very passionate sometimes, on
13 things that we can question were the main concern.

14 But I do want to thank, I want to
15 thank my staff for really doing a good job and
16 putting us together. And of course, this is being
17 webcast and I think that this is a good technology
18 also, we should put this information out as far as
19 we can.

20 Now some may say that language was
21 a barrier here, that there were real problems and
22 things of this nature, but I would contend that
23 the power of the truth is larger than any language
24 barrier, that there's something called the ring of
25 truth, that when you hear it, it will overpower a

1
2 language barrier and make itself known. So I
3 appreciate that you were kind enough to come and
4 put it out, that you don't have to worry about
5 whether, you know, the words were found in 20
6 dictionaries, no, just tell the truth and let the
7 truth carry the situation.

8 I am reminded again and again in
9 this seat of a Serb saying that said heaven is
10 high and justice is far away. Heaven is high and
11 justice is far away, and it just reminds us that
12 sometimes we find ourselves being told by so many
13 people that there's nothing that can be done, that
14 if you're an undocumented worker, no one cares; if
15 you haven't mastered the Queen's English, no one
16 cares; if you don't have all of your papers
17 together, no one cares. And, my friends, that's
18 just not true. We in the people's house take a
19 strong position on these things.

20 The City Council, which has stood
21 up for the rights of the Irish people in their
22 troubles, stood up for the rights of the South
23 Africans in their troubles, and stood up for just
24 about every right that the American people have,
25 stand up again for all of the people who are in

1
2 New York City. We just take it upon ourselves and
3 we just refuse to believe that there's no place to
4 go for justice, that if everyplace else fails,
5 then we must not fail.

6 Now, you know, to me, it's just an
7 age-old question, a very age-old question, some
8 may say, well, Councilman, you know, the
9 differences between you and the people testifying
10 may be enormous, and I don't see it that way. I'm
11 just always reminded of that age-old question, are
12 we our brothers' and sisters' keeper. Are we our
13 brothers' and sisters' keeper? And to answer that
14 one wrong, you'll have an eternity to think of
15 this one. I say that we are. I say at the end of
16 the day that we have an obligation to one another,
17 that if we're ever going to be the New York that
18 we need to be, that we need to answer that
19 affirmatively, to that an attack on one is an
20 injury to all of us, and that we all may have come
21 over on different boats, but we are in the same
22 ship and we must make sure that this ship does not
23 sink. So I would say that we are our brothers'
24 and sisters' keeper.

25 I'll go a step further and alert

1
2 anyone who has heard about this or sees this on
3 the webcast and sees these brave workers who were
4 bold enough to testify and believe that they can
5 be penalized, that the Council will be very
6 displeased if people's exercising of their rights
7 is attacked. The Council will be very displeased
8 on these things.

9 Go a step further, I don't believe
10 that this one hearing is enough on this issue. I
11 think that the Department of Health needs to
12 speak, the Department of Consumer Affairs
13 absolutely needs to speak and speak of what they
14 have or have not done on this issue. We will
15 return to this issue and I can only encourage all
16 of us to remember that we have to turn to each
17 other and not on each other. That if we are going
18 to solve these problems, we can work it together.
19 That the price of a clean car is not a filthy
20 conscience. That we in New York City, we want it
21 both--we want a nice looking car, but even more
22 important, a nicer conscience.

23 I thank everyone for attending, I
24 look forward to struggling with you in the days to
25 come. God bless you all. This hearing is now

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ended.

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[Gavel]

C E R T I F I C A T E

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

Signature *Tammy Wittman*

Date May 17, 2012