

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON ENVIRONMENTAL PROTECTION

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December 10, 2009
Start: 1:24 pm
Recess: 2:10 pm

HELD AT: Council Chambers
City Hall

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

COUNCIL MEMBERS:
Council Member Elizabeth Crowley
Council Member Bill de Blasio
Council Member Mathieu Eugene
Council Member G. Oliver Koppell
Council Member Domenic M. Recchia,
Jr.
Council Member Eric A. Ulrich

A P P E A R A N C E S [CONTINUED]

G. Oliver Koppell
Opening Statement
Acting Chairperson
Committee on Environmental Protection

Catherine Garcia
Assistant Commissioner
Strategic Projects Division
Department of Environmental Protection

Mike Gilsenan
Acting Deputy Commissioner
Bureau of Environmental Compliance

Nancy Clark
Assistant Commissioner
Bureau of Environmental Disease Prevention
Department of Health and Mental Hygiene

James F. Gennaro
Closing Statement
Chairperson
Committee on Environmental Protection

2 [START 1001.MP3]

3 MR. JERRY STAFFIERI: We ready?
4 December 10, 2009, Committee on Environmental
5 Protection recorded by Jerry Staffieri.

6 [END 1001.MP3]

7 [START 1002.MP3]

8 ACTING CHAIRPERSON KOPPELL: --
9 member of the Committee, he is expected; his wife
10 had an important medical appointment that couldn't
11 be rescheduled. So we do expect Jim to be here
12 and I apologize for being late. I was in a
13 meeting for the last three hours, some of you may
14 have seen on the news that we're trying to
15 negotiate a development of the Kingsbridge Armory
16 in the Bronx and we're in negotiations with the
17 Deputy Mayor. It was difficult to leave. I left
18 as it is but that's why I'm late. So I was not
19 playing tennis or anything like that.

20 So today we expect to hear
21 testimony on Intro number 1062 which relates to
22 controlling emissions from certain businesses
23 located in mixed use buildings. New York City is
24 of course a city of mixed use buildings. Some
25 uses are more appropriate for locations in

1 residential buildings than others. Facilities
2 that emit air pollutants are of particular concern
3 because they can pose a significant health risk to
4 nearby sensitive receptors including residential
5 properties and vulnerable individuals.
6

7 Since 1993 New York State
8 Department of Health, state and local health
9 agencies and others have been aware of the public
10 health issue presented by co-location of dry
11 cleaners with residential apartments. Studies of
12 airborne tetra, huh, chlorethylene or PERK,
13 concentrations in residences co-located with dry
14 cleaners in Albany, New York area and found that
15 PERK concentrations were much higher in co-located
16 facilities than in the control residences.
17 Studies of co-located dry cleaners with residences
18 in New York City in 2002 and 2005 had similar
19 results. Other health studies have found
20 associations between exposure to PERK and its
21 presence in blood and urine of workers and
22 neighbors of dry cleaners, the offspring of dry
23 cleaners and predicted exposure levels in infants.

24 In a City--what did I miss
25 something? Yeah. [Chuckling] Okay. They

1 anticipate or they have found exposure to PERK
2 through ingestion of breast milk where mothers are
3 exposed. PERK is a reproductive toxin and a
4 carcinogen. Based on the research, EPA invited
5 state or local governments to consider whether co-
6 location of a dry cleaner in the same building is
7 appropriate. In 2006 when EPA amended the PERK
8 NESHAP, EPA went further than it had in the
9 initial PERK NESHAP by prohibiting new dry
10 cleaning facilities that use PERK from co-locating
11 in residential buildings and by phasing out on
12 site PERK use in existing co-located facilities
13 over the next 14 years.

14 PERK used by dry cleaners in
15 buildings also containing residences is now
16 regulated but PERK use above the zero limit set by
17 EPA for residential buildings in 2020 still
18 presents a health risk. The New York City
19 Department of Health and Mental Hygiene recognized
20 the need for additional public health protection
21 for children and residents living in buildings
22 that also house dry cleaners when it enacted
23 regulations earlier this year designed to improve
24 the public health protection provided for children
25

1
2 and residential facilities under those
3 circumstances.

4 Nonetheless there is strong
5 evidence that other commercial facilities that
6 also use chemicals that may present a public
7 health risk are permitted to co-locate in
8 residential buildings without assessing the risk
9 to residential tenants and without adequate
10 monitoring, regulation or enforcement. In
11 addition to use of PERK by dry cleaning
12 facilities, other commercial businesses that use
13 volatile organic compounds that can result in
14 unhealthy indoor quality in residential apartments
15 include furniture refinishing, upholstery shops,
16 beauty and acrylic nail salons, printers, machine
17 shops, funeral homes, automobile painting and auto
18 body repair shops.

19 In a city of mixed use buildings,
20 not all mixed uses present a public health risk
21 and not all potentially incompatible uses presents
22 a public health risk. The public health risk
23 results from inefficient operation of commercial
24 facilities that allow escape of hazardous,
25 fugitive emissions into residential portions in

1
2 mixed use buildings in excess of State Department
3 of Health indoor air quality guidelines.

4 The original research surrounding
5 the impacts of PERK in residential buildings was
6 prompted by an odor complaint in an apartment
7 occupied by a family with a small child. However
8 in many cases odors from volatile organic
9 compounds cannot be easily detected but the
10 chemical use can cause adverse health impacts
11 anyway. We can eliminate the risk from co-located
12 if incompatible uses with residential apartments
13 when the downstairs commercial facility is not
14 operated sustainably.

15 The proposed legislation is the
16 first step to make it safer to co-locate with
17 commercial businesses that use chemicals. Now we
18 look forward to hearing from the Department of
19 Environmental Protection on this groundbreaking
20 and innovative legislation. And let me thank the
21 staff, obviously for my awkward reading of this.
22 I didn't prepare it but I did want to make the
23 presentation on behalf of the Chairman and set
24 forth, I think, quite well the issue before us.

25 So why don't we now hear from our

1
2 first witnesses, Katherine Garcia, Assistant
3 Commissioner and Nancy Clark, Department of Health
4 and Mental Hygiene Assistant Commissioner and
5 Michael Gilsenan, it's hard to read, the DEP
6 Assistant Commissioner. Who's going to go first?

7 MS. CATHERINE GARCIA: I'm going to
8 go first.

9 ACTING CHAIRPERSON KOPPELL: Okay.

10 MS. GARCIA: Good afternoon Council
11 Member Koppell and members of the Committee. I am
12 Katherine Garcia, Assistant Commissioner for
13 Strategic Projects at the New York City Department
14 of Environmental Protection.

15 MR. STAFFIERI: Excuse me, talk
16 into the mic please.

17 MS. GARCIA: Sorry. Is that
18 better?

19 MR. STAFFIERI: Yeah, thank you.

20 MS. GARCIA: Okay. Thank you for
21 the opportunity to testify today on Intro 1062
22 which proposes to address emissions of chemicals
23 from businesses located in mixed use buildings. I
24 am joined today by Mike Gilsenan, Acting Deputy
25 Commissioner at DEP's Bureau of Environmental

1
2 Compliance and Nancy Clark, Assistant Commissioner
3 for Bureau of Environmental Disease Prevention at
4 New York City Department of Health and Mental
5 Hygiene.

6 At the outset I want to recognize
7 the work of this Committee and especially the
8 leadership of Chairman Gennaro in crafting
9 important environmental policies. Today's hearing
10 also allows for a detailed fact-finding and a full
11 airing of the complex issues surrounding indoor
12 air quality. Although we understand and support
13 the desire of the sponsors to reduce health risks
14 from fugitive emissions from commercial sources,
15 this legislation would not, in our judgment,
16 accomplish that and we cannot support it.

17 In my testimony I will offer the
18 reasons behind that judgment after first
19 explaining how DOHMH and DEP currently respond to
20 concerns related to indoor air quality. Improving
21 and protecting indoor and ambient air quality are
22 integral parts of the Administration's
23 environmental objectives. The City's
24 Sustainability Plan, PlaNYC adopts the goal of
25 having the cleanest air of any major US city by

2 2030. The City has led initiatives to reduce
3 emissions from on-road vehicles, marine vehicles,
4 construction vehicles and buildings.

5 The City has also committed to
6 improving indoor air quality and minimizing public
7 exposure to toxics. To that end the Mayor's
8 Office, DEP, DOHMH appreciate the need to continue
9 to address indoor air quality in New York City.

10 And in this case share the City Council's concern
11 about the impact on public health of emissions
12 into residences from businesses located in the
13 same building. Indoor air quality refers to the
14 condition of air inside a dwelling or other
15 building.

16 Many things affect indoor air
17 quality including indoor pollutants which can come
18 from a variety of sources such as the use of
19 household products like paints and cleaners,
20 building materials such as pressboard and
21 carpeting or co-located business processes, for
22 example dry cleaners and auto body repair shops,
23 outdoor pollutants which can get into a building
24 from sources like vehicle exhaust, fires,
25 industrial emissions or chemical spills, poor

1
2 ventilation which can lead to a buildup of odors
3 and pollutants if ventilation is inadequate and
4 uncontrollable temperature and humidity.

5 The most common types of chemicals
6 that can escape from dry cleaners, auto repair
7 shops, photo processing and commercial printing
8 are called volatile organic compounds or VOCs.
9 VOCs are chemicals that are readily evaporated in
10 the air and are commonly used in solvents, paint
11 thinners, adhesives and cleaners. Breathing in
12 the vapors is the most common way people are
13 exposed to VOCs.

14 Vapors from businesses also called
15 fugitive emissions can enter apartments through
16 many pathways such as common areas of the
17 buildings, air shafts, ventilation and exhaust
18 systems, through windows and doors or other
19 penetrations. Chemical spills are also a concern
20 and may lead to direct exposure to the product or
21 may contaminate the surrounding environment.

22 VOCs have a variety of health
23 effects depending on the specific chemical and how
24 much and how long a person is exposed. Effects
25 can range from temporary irritation to eyes and

2 respiratory systems to permanent organ damage.

3 Some people may be more susceptible to health
4 effects such as infants or people with underlying
5 illnesses. In general, workers have the highest
6 exposures to these chemicals and are at the
7 highest risk for health effects. There are
8 standards and guidelines for chemical exposures in
9 the workplace. These standards are not usually
10 appropriate to apply to residential settings.

11 Acceptable guidelines for
12 residential or community exposures have not been
13 set for most chemicals because of a lack of
14 information on potential health effects associated
15 with these lower levels of exposure. However
16 based on research and recommendations of the New
17 York State Department of Health and the New York
18 City Health Code has set a nuisance level of 100
19 micrograms per cubic meter for PERK in occupied
20 buildings that are co-located or adjacent to a dry
21 cleaner.

22 The City's regulation of hazardous
23 substances and its response to their suspected
24 environmental release, whether in the form of
25 emissions, leaks or spills, are comprehensive and

2 robust. The best way to protect people, both
3 workers and neighbors, from exposure to hazardous
4 chemicals is to prevent the exposure in the first
5 place.

6 Accordingly, and I will discuss in
7 depth, DEP works closely with businesses to assist
8 them in coming into compliance. DOHMH and DEP
9 also work closely together in responding to
10 complaints of odors and fumes from New York City
11 residents, including those who live in close
12 proximity to businesses that use chemicals.

13 Both agencies are staffed by highly
14 trained professionals including chemists,
15 biologists, environmental scientists, industrial
16 hygienists and toxicologists. The City's response
17 protocols are also adaptive, allowing for various
18 types of responses depending on site-specific
19 factors. We know from our experience that some
20 odor complaints are not life-threatening such as
21 commercial kitchens improperly venting its
22 exhaust. Other complaints such as those connected
23 with dry cleaning equipment are much more serious.

24 One of the drawbacks of Intro 1062
25 is that it sets for one basic response protocol or

1
2 procedure and requires that protocol to be broadly
3 used. Reliance on a prescribed single approach
4 can lead to inappropriate and costly use of
5 inspectional and sampling resources. Our
6 Environmental Response agencies currently triage
7 complaints and prioritize response resources for
8 the most hazardous situations such as PERK
9 emissions while less serious complaints require
10 fewer and less technical inspection resources.

11 Both DEP and DOHMH respond to
12 complaints from the public about chemical odors
13 which are generally routed to the agency through
14 311. The Health Department receives complaints
15 about indoor air quality in residences and other
16 buildings. DEP responds to complaints that are
17 related to impacts to emissions to outdoor air.
18 Any complaint from a caller who uses key words
19 such as hazardous, chemical, or explosive, is
20 directed to the City's Emergency Command Center
21 which mobilizes emergency responders including DEP
22 emergency responders who are at the site within an
23 hour.

24 Upon investigation if appropriate
25 the complaint will be referred for follow-up to

2 DEP air inspectors. The New York City Health Code
3 authorizes the City's Health Department to respond
4 to complaints about public health nuisances
5 including indoor air problems, and order
6 correction of conditions which are responsible for
7 the nuisances.

8 The Office of Environmental
9 Investigation responds to complaints received by
10 the Health Department. DOHMH receives
11 approximately 3,000 complaints related to odors,
12 chemicals and fumes each year, only a small
13 portion of these complaints are related to co-
14 located businesses. For instance the Health
15 Department only received 50 new complaints
16 regarding dry cleaners in co-located buildings.

17 In response to complaints that
18 identify a specific chemical odor from a co-
19 located business, OEI conducts an inspection of
20 the impacted space. Of the few complaints related
21 to business, dry cleaners, nail salons and auto
22 repair are the most common. For complaints about
23 dry cleaners, OEI takes air samples in at least
24 five locations within a co-located residence.

25 If results are greater than the 100

2 micrograms per cubic meter of air in an occupied
3 dwelling, the dry cleaner is cited in violation of
4 the City Health Code. If PERK levels exceed 1,000
5 micrographs per cubic meter, the dry cleaning
6 equipment will be sealed by OEI. In both
7 instances the case is referred to DEP. DEP
8 evaluates the operation of the equipment, works
9 with the operator to correct the problem and
10 achieve compliance.

11 After the dry cleaner is cleared by
12 DEP, OEI will reinspect and resample for PERK
13 vapors. If PERK vapors continue to be
14 problematic, OEI will order the dry cleaner to
15 perform an independent evaluation of the facility.
16 OEI also responds to complaints of other possible
17 chemical exposures from co-located businesses,
18 such as an auto repair shop or nail salon.

19 The OEI inspector will make a
20 visual determination of the potential for
21 chemicals to enter occupied spaces, determine if
22 an odor exists, and when indicated, take air
23 measurements using a device known as a Photo
24 Ionization Detector or PID. The OEI inspector
25 with the assistance of a PID will try to confirm

1
2 the source of chemical and possible pathways for
3 exposure.

4 In order to correct problems, may
5 be issued to any party that is responsible for the
6 release of chemicals into occupied spaces,
7 responsible parties that do not comply with Health
8 Department orders are subject to Notices of
9 Violations and fines.

10 In responding to concerns about
11 chemical exposure it is important to note that New
12 York City possesses extensive information about
13 hazardous materials. This information is
14 contained in the DEP database created pursuant to
15 Local Law 26 of 1988, the New York City Community
16 Right to Know Law, often known just by its
17 initials RTK. The RTK program requires public and
18 private facilities that use, store, process, or
19 otherwise handle any of 3,000 different hazardous
20 substances at or above certain threshold
21 quantities, to submit reports disclosing the
22 quantity and location of the substances.

23 During Fiscal 2009, DEP's audit
24 team has conducted 5,386 inspections. Power
25 utilities report separately on hazardous

2 substances used, stored, handled or processed in
3 their nearly 50,000 facilities, which are
4 primarily underground vaults. In addition to
5 maintaining the RTK database, DEP also responds to
6 a variety of complaints of odors and fumes apart
7 from PERK complaints generated by dry cleaning
8 equipment.

9 If a violation of the Air Code
10 prohibitions is found, DEP will issue a NOV
11 answerable to the Environmental Control Board.
12 Penalties start at \$400 for a first violation.
13 Inspectors can issue NOVs on the basis of visual
14 observations and their own sense of smell.

15 As explained earlier, obtaining
16 immediate and direct measurements of odors and air
17 contaminants is not always available for a broad
18 range of offending substances. Fortunately both
19 DEP and DOHMH inspectors can issue violations and
20 require businesses to correct fugitive emissions
21 based on observations and professional judgment.

22 Perhaps most importantly, DEP then
23 works with the business owner to reduce or
24 eliminate the fugitive emissions. If the owner
25 does not comply with DEP's recommendations and

emissions continue, further enforcement follows until the situation is resolved.

Intro 1062 appears to broaden the regulatory scheme for PERK to other indoor air pollutants likely to occur in co-location situation with other types of businesses. The PERK regulatory structure addresses emissions of a specific, dangerous compound from one type of business frequently located in a residential building. To broadly expand these regulations across a vast array of compounds, not all of which have indoor air quality standards, is a misguided approach to address other potential indoor air hazards.

The bill's legislative findings makes passive reference to printers, nail salons, furniture refinishers, metal platers, photo finishing, shoe repair and auto body repair facilities as potential sources of fugitive emissions. Currently both DEP and DOHMH can and do respond to complaints about these and other co-located businesses and already have the technical expertise to prioritize and evaluate problems and the regulatory authority to take protective action

2 with or without a documented threshold exceedance.

3 In summary--

4 ACTING CHAIRPERSON KOPPELL:

5 (Interposing) Well you know I'm going to interrupt
6 you for a moment there--

7 MS. GARCIA: (Interposing) Sure.

8 ACTING CHAIRPERSON KOPPELL: --

9 'cause, huh, you--these two paragraphs are very
10 interesting 'cause we're sort of--I don't disagree
11 with anything you said until you get to this page.
12 You talked about what you do. You talked about
13 the dangers. We all agree on that. But now,
14 here, we're talking about this particular
15 legislation.

16 MS. GARCIA: Um-hum.

17 ACTING CHAIRPERSON KOPPELL: And

18 you say here, the PERK regulatory... addresses
19 emissions of specific dangerous compounds. And
20 then you say to broadly expand these regulations
21 across a vast array of compounds not all of which
22 have indoor air quality standards is a misguided
23 approach.

24 But then you say in the next
25 paragraph, currently both DEP and DOHMH can and do

1
2 respond to complaints and these and other co-
3 located business. And have the technical
4 expertise to prioritize and evaluate problems and
5 the regulatory authority to take protective
6 action.

7 So I don't understand. You say,
8 number one, we're looking at too many things, and
9 then number two, you're looking at those things
10 already--

11 MS. GARCIA: (Interposing) Right--

12 ACTING CHAIRPERSON KOPPELL: --
13 because we're talking about the emissions from
14 these businesses.

15 MS. GARCIA: Right. But the
16 specific thing that you call out in the proposed
17 legislation really has to do with the protocols
18 for sampling. That's very specific under the PERK
19 legislation and that is what we're referring to
20 here as your--of changing and expanding to other
21 compounds. But we can and do respond to any
22 complaint about odors, fumes or other fugitive
23 emissions.

24 And we do have the ability, based
25 on our professional judgment to go in and make a

2 determination that a business is causing an indoor
3 air problem and issue NOV's based on that finding.

4 ACTING CHAIRPERSON KOPPELL: So
5 you're saying that the bill is--it doesn't seem to
6 me--that's all we're saying isn't it?

7 MS. GARCIA: No the bill calls for
8 a very specific protocol within its language about
9 how we would do this and how it would happen. And
10 I think that's one of the things--

11 ACTING CHAIRPERSON KOPPELL:
12 (Interposing) But wait a minute. The bill, let's
13 look at the bill. Let's look at the bill itself
14 and see where you see this because I... I don't see
15 that the bill regulates chemicals that don't
16 already have standards. If there's no standards,
17 I don't think they're covered by the bill. Read
18 me the part of the bill that you object to--

19 MS. GARCIA: The question--there
20 are two issues here. The questions on standards
21 that are found in this Intro are actually
22 guidelines. And they're really for the most part
23 for worker health and are developed according to
24 worker health. And perhaps, Nancy, if you want to
25 speak more to the threshold question 'cause I

1 think there are two parts to this.

2 One is the question of standards
3 for indoor air quality. There are very few
4 chemicals for which there are indoor air quality
5 standards. And I will let the Health department
6 address that in more detail. PERK has had lot of
7 study and that is why there is a specific standard
8 for it. Not--

9
10 ACTING CHAIRPERSON KOPPELL:

11 (Interposing) But is it incorrect, if you look at
12 page 5, and we looked, by the way, let me, Domenic
13 Recchia was here. I hope--he is not here any more
14 but he has made an appearance so I wanted his
15 appearance to be noted.

16 But let's look at page 5 and it
17 says you now say that there are no guidelines.
18 But it says Occupational Safety and Health
19 Administration Guidelines for Indoor Air Quality.
20 So we're talking about indoor air quality. And so
21 there are guidelines, right?

22 MS. NANCY CLARK: Can I--my name is
23 Nancy Clark. I'm Assistant Commissioner for--

24 ACTING CHAIRPERSON KOPPELL:

25 (Interposing) Right.

2 MS. CLARK: --the Health
3 Department. In the bill, it references the
4 Occupational Safety and Health Administration
5 Guidelines. There are guidelines. They are, they
6 appear in the Federal Code of Regulations. They
7 apply to workplaces and they intend to protect
8 workers from exposures that they may experience
9 during their workday, during their work week, over
10 their working lifetime.

11 Those numbers are really, really
12 high, compared--and we would not want to apply
13 that same type of health standard to your home, my
14 home or anyone's home because they're not know to
15 be protective at all for community people or for
16 the public in general.

17 So that's our problem with
18 referencing the OSHA standards is that they in
19 fact are not protective of communities, of the
20 public. And I think that in our experience, I
21 don't know of a case when one of those standards
22 would have ever been exceeded in a neighborhood
23 but they're just very, very high. I don't have a-
24 -

25 ACTING CHAIRPERSON KOPPELL:

(Interposing) So there's...

MS. CLARK: you can put it there
but it doesn't mean very much--

ACTING CHAIRPERSON KOPPELL:
(Interposing) Oh okay. I hear what you're saying--
-

MS. CLARK: --it doesn't help us
solve a problem.

ACTING CHAIRPERSON KOPPELL: --but
'cause they're so high that you're unlikely to get
those concentrations in a residence.

MS. CLARK: Exactly.

ACTING CHAIRPERSON KOPPELL: But
we, but the bill, well the bill does reference
those guidelines of the Occupational Health and
Safety Administration, it also says Department of
Health indoor air guidelines--

MS. CLARK: (Interposing) And those
are not truly indoor air guidelines. That is part
of the soil vapor intrusion guidance. I think the
bill references Appendix C of the New York State
Soil and Vapor Intrusion Guidance. Those, that
Appendix C is a collection of background
information. It's background data that has been

2 collected by New York State Department of Health.
3 Also some of those air levels have been collected
4 by the US EPA in different settings and different
5 cities, indoor and outdoor. And those are not
6 guidelines; they're not health-based. All they
7 are, are measurements of what is. So if we took a
8 measurement today in this room, we would have a
9 level of any number of VOCs and we could apply
10 that to the appendix--

11 ACTING CHAIRPERSON KOPPELL: So
12 maybe what you're saying is that with the
13 Department of Health has a job to do or maybe DEP
14 with the Department of Health in establishing some
15 guidelines if they don't exist.

16 MS. CLARK: I'll tell you--

17 ACTING CHAIRPERSON KOPPELL:
18 (Interposing) Some--more than guidelines, some
19 mandated regulations.

20 MS. CLARK: I can tell you that
21 that's a very frustrating area for those of us in
22 environmental and occupational health. We rely on
23 the Federal government to produce standards and
24 guidelines. Standard setting on some of these
25 issues are incredibly complex. They take a very

1
2 comprehensive, very multidisciplinary scientific
3 group of people, one, in order to set the standard
4 for one chemical. There are many, many studies
5 that have to be looked at. You also have to look
6 at the studies to see what we don't know. And for
7 a lot of chemicals, unfortunately, in this day and
8 age, we don't know enough--

9 ACTING CHAIRPERSON KOPPELL: So
10 what you're saying to us because there are not any
11 standards we should just ignore the problem--

12 MS. CLARK: (Interposing) Oh no,
13 no, no, no. We don't--I think we've been clear in
14 Commissioner Garcia's testimony that we have a
15 very robust and comprehensive response to
16 complaints. We do that.

17 ACTING CHAIRPERSON KOPPELL: Well.
18 Well if there's a complaint and you respond,
19 you've got to have a standard that you apply.
20 Let's assume there's a nail salon in my building.
21 And someone calls you up and says look this nail
22 salon's wafting odors into my apartment. You
23 would come and inspect you said in your testimony.

24 MS. CLARK: Right.

25 ACTING CHAIRPERSON KOPPELL: So

2 what standard would you apply to determine whether
3 the nail salon should be prohibited from--?

4 MS. CLARK: (Interposing) You know
5 what we would do and what we do do--

6 ACTING CHAIRPERSON KOPPELL:
7 (Interposing) No.

8 MS. CLARK: --when our inspectors
9 go there, we will look to ascertain if it's
10 possible that we think that emissions could
11 penetrate into the residence. We will look
12 around. We'll see does the chemical exist. We'll
13 perceive, using our own sense of smell.

14 We may use a direct reading
15 instrument called a Photo Ionization Detector to
16 track the pathway of the chemical. And even
17 without doing and detecting a specific level, if
18 we detect that chemical or we believe in fact that
19 it is causing a nuisance we will order that
20 business to abate.

21 ACTING CHAIRPERSON KOPPELL: But
22 you must apply some standard.

23 MS. CLARK: Is this a well-kept
24 secret that we're not applying necessarily a
25 standard. We, for us--

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ACTING CHAIRPERSON KOPPELL: What do you mean? Are you asking me the question?

MS. CLARK: Yeah I'm asking you the question--

ACTING CHAIRPERSON KOPPELL:
(Interposing) I don't know whether it's a well-kept secret or not.

MS. CLARK: I'm telling you. It's what--

ACTING CHAIRPERSON KOPPELL:
(Interposing) [Laughing]

MS. CLARK: --it's what I'm trying to describe to you is that without the--you may think it is a benefit but without going through a highly, sometimes technical, time-consuming and expensive air sampling process, we are able to order the correction of emissions into a home.

ACTING CHAIRPERSON KOPPELL: But it shouldn't be arbitrary. With all due respect--

MS. CLARK: (Interposing) It's not arbitrary. It's absolutely not--

ACTING CHAIRPERSON KOPPELL:
(Interposing) Is there a standard or isn't there a standard?

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MS. CLARK: There is not a standard for many chemicals. For PERK, absolutely, there's a standard. And--

ACTING CHAIRPERSON KOPPELL:
(Interposing) Well maybe we ought to look into creating standards.

MS. CLARK: Well I--

ACTING CHAIRPERSON KOPPELL: It shouldn't just depend on the nose of the inspector, right?

MS. CLARK: No, I totally agree with you. I'm only telling you that there's more than--we're not just relying on sense of smell. We're relying on identification of a chemical. IF we--what will happen is we will go into a business. We'll look what chemicals are they using. That's--they have regulations that they have to provide information. So that's immediately a source for us.

So we know what we're dealing with. Then we may use our direct reading instruments to track whether or not there are emissions from that business into a co-located space. We'll use that. We'll investigate. We'll look at it.

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ACTING CHAIRPERSON KOPPELL: But, but, the, huh, what the bill is trying to do is to have certain standards that will be enforced. If those standards don't exist then perhaps you've called attention to a very important--

MS. CLARK: (Interposing) Many--

ACTING CHAIRPERSON KOPPELL: -- problem.

MS. CLARK: Many times we've drawn attention to this--

ACTING CHAIRPERSON KOPPELL: (Interposing) So maybe what we should do is do a separate bill or maybe in this bill, require that standards be created. If you can't do it, maybe you have to hire a consultant or whatever.

MS. CLARK: Well it's far more than a consultant and, you know, that may be an offline conversation, discussion to have, about how these standards are--

ACTING CHAIRPERSON KOPPELL: (Interposing) Well what you're saying is that the standards in the bill are no good.

MS. CLARK: I'm saying that they're not real standards. They're not health-based.

2 What they represent, they represent levels of air
3 contaminants that have been measured in indoor
4 spaces and have also been measured in outdoor
5 spaces. I don't believe any of those numbers
6 represent air levels in New York City.

7 ACTING CHAIRPERSON KOPPELL:

8 Measured or measured in terms of just--

9 MS. CLARK: (Interposing) Measured.

10 ACTING CHAIRPERSON KOPPELL: --the
11 amount or measured in terms of the hazard--

12 MS. CLARK: (Interposing) No, no--

13 ACTING CHAIRPERSON KOPPELL: --that
14 they pose.

15 MS. CLARK: --measured in terms of
16 the amount. They are--

17 ACTING CHAIRPERSON KOPPELL:

18 (Interposing) Well that doesn't do any good.

19 MS. CLARK: That's why we were
20 surprised. Frankly we were surprised to see those
21 in that--

22 ACTING CHAIRPERSON KOPPELL:

23 (Interposing) Well why does it say guidelines?
24 Guidelines sound like they're telling people how
25 much they should use or how much they should

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breathe?

[Off mic discussion]

MS. CLARK: That's a puzzlement to us. Frankly. They're background levels.

ACTING CHAIRPERSON KOPPELL: So you're telling me that the Department of Health Indoor Air Guidelines, I mean the Department of Health is here, right? Who's from the Department--?

MS. CLARK: No wait, let me--

MR. MIKE GILSENAN: The State Department--

MS. CLARK: The guidelines--

ACTING CHAIRPERSON KOPPELL:
(Interposing) Oh the State Department.

MS. CLARK: --they're from the State and it's a guidance. And I--it's a very important document actually--

ACTING CHAIRPERSON KOPPELL:
(Interposing) But is it, wait a minute. Is it just measuring the amount in the air or is it actually a guideline for how much ought to be in the air?

MS. CLARK: The numbers that they

1
2 present in Appendix C which the Council's bill
3 references represent ambient levels that have been
4 measured in indoor environments, in homes, in
5 offices, and in the ambient outdoor environment.
6 They are--

7 ACTING CHAIRPERSON KOPPELL:

8 (Interposing) Just the amount.

9 MS. CLARK: Just the amount.

10 ACTING CHAIRPERSON KOPPELL: It
11 doesn't say this is good or bad.

12 MS. CLARK: It does not.

13 ACTING CHAIRPERSON KOPPELL: Well
14 that's not the--and then you've called our
15 attention to a faulty reference. But--and you're
16 also saying that there aren't any guidelines. We
17 don't have any guidelines--

18 MS. CLARK: (Interposing) I would
19 say there are a few guidelines. There are some.
20 And when we come into a situation that we're, and
21 I don't have an example off the top of my head,
22 but if we were to come upon a situation that we
23 were very concerned about, we would look very
24 closely at the scientific literature.

25 We would reach out to a variety of

1
2 experts to try to ascertain if there's not a
3 specific guideline what is an appropriate measure
4 for us to use. It just happens to be a very
5 complex science. And it's--

6 ACTING CHAIRPERSON KOPPELL: Well I
7 think--

8 MS. CLARK: --tough.

9 ACTING CHAIRPERSON KOPPELL: --it's
10 an interesting point, we've been joined by Council
11 Member de Blasio who is actually going to shortly
12 be our Public Advocate and one, I have a possible
13 job for you to do. And that is to look into the
14 creation of guidelines on air quality from things
15 other than PERK. 'Cause we do have guidelines for
16 PERK--

17 MS. CLARK: (Interposing)
18 Absolutely.

19 ACTING CHAIRPERSON KOPPELL: --but
20 not for some of these other chemicals. I mean if
21 these guidelines, if you're correct and these
22 guidelines either Federal or state are not really
23 guidelines, then this doesn't adequately deal with
24 the issue. I agree with that. So we'll have to
25 look and see.

2 MS. GARCIA: I--

3 ACTING CHAIRPERSON KOPPELL: So if
4 you want to complete your statement now.

5 [Laughter]

6 MS. GARCIA: I'll make it through
7 the rest of my statement but I think one of the
8 important things is while there aren't standards;
9 we still have the ability to try and make sure
10 that there are no emissions going into someone's
11 home from a business. And we are able to make
12 that business come into compliance and eliminate
13 that nuisance emission or health hazard--

14 ACTING CHAIRPERSON KOPPELL:

15 (Interposing) Compliance with what though?

16 MS. GARCIA: Well we make them stop
17 emitting into the home. I mean that is the whole
18 point is that it should not be occurring in your
19 home. So that's what we stop--

20 ACTING CHAIRPERSON KOPPELL:

21 (Interposing) But we know that it's impossible to
22 stop emitting altogether. It's unrealistic to say
23 don't emit. You're relying on the nose of the
24 inspector, in essence, is what you've testified.

25 MS. CLARK: Can I add--no--

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ACTING CHAIRPERSON KOPPELL:

(Interposing) You're not relying on the nose?
What are you relying on--

MS. CLARK: (Interposing) Well let
me tell you what--

ACTING CHAIRPERSON KOPPELL: --if
there are no standards what are you relying on--?

MS. CLARK: (Interposing)
Councilman, let me tell you what we would do--

ACTING CHAIRPERSON KOPPELL:
(Interposing) Okay.

MS. CLARK: --and let me use the
example of PERK because it's something--

ACTING CHAIRPERSON KOPPELL:
(Interposing) No don't use PERK 'cause we have
standards--

MS. CLARK: (Interposing) Okay let
me just--

ACTING CHAIRPERSON KOPPELL: --for
that.

MS. CLARK: --use any--

ACTING CHAIRPERSON KOPPELL:
(Interposing) Let's assume for a moment it's a
nail salon. And their odor is coming out and

1
2 someone calls up and says look there's a nail
3 salon, I'm on the second floor, it's on the first
4 floor and I smell something coming out of the nail
5 salon--

6 MS. CLARK: (Interposing) And this
7 is what we will do. We'll go into the nail salon.
8 We'll go into the home. We'll go into the nail
9 salon. We'll examine how--what chemicals are
10 being used. And we'll examine how they're being
11 used. And we'll provide recommendations to the
12 owner in ways to prevent evaporation of vapors.

13 ACTING CHAIRPERSON KOPPELL: But
14 how do you know how much is--

15 MS. CLARK: (Interposing) We don't
16 have to know how much because it's something--

17 ACTING CHAIRPERSON KOPPELL:
18 (Interposing) You don't?

19 MS. CLARK: --no, there's something
20 called good chemical working practices. We call
21 them Safe Work Practices. They're protective of
22 workers and they would be protective of the
23 environment and the public. There's something--
24 you don't need to measure something. In fact
25 sometimes you hurt yourself by measuring because

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2 you can see that you have a problem but if you're
3 not exceeding, right? If you're not--if you have
4 a number and you don't exceed it--

5 ACTING CHAIRPERSON KOPPELL:

6 (Interposing) But you need to have a number to
7 know if you're exceeding it or not.

8 MS. CLARK: (Interposing) No, no,
9 but there's something, as I--just--

10 ACTING CHAIRPERSON KOPPELL:

11 (Interposing) You're--

12 MS. CLARK: --just for a moment,
13 for a moment, give us the idea that you have a
14 benchmark that you think everything below is okay
15 and everything above is not okay. Take that away
16 for a moment 'cause remember, we don't have 24
17 hours a day, constant measurements going on,
18 right? When you take an air sample, it tells you
19 about the moment you took that sample. It doesn't
20 tell you about tomorrow. You may take the sample
21 when everything is hunky-dory, but what happens
22 the day that there's a spill? No just stay with
23 me. So what we do, when we examine--

24 ACTING CHAIRPERSON KOPPELL:

25 (Interposing) You're talking about something

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completely different.

MS. CLARK: We are. That's--

ACTING CHAIRPERSON KOPPELL:

(Interposing) No, no. Stick with the point. We're not talking about when you measure it. We're saying is there a level above which these concentrations should not go, parts per million--

MS. CLARK: (Interposing) But - - .

ACTING CHAIRPERSON KOPPELL: --

parts per billion.

MS. CLARK: For certain substances-

-

ACTING CHAIRPERSON KOPPELL:

(Interposing) If there is--that you--if there isn't--you can't say totally don't use it. Look. We know that these businesses, not just nail salons, auto repair shops, funeral homes, they all use hazardous chemicals. You said it. We said it. So if we're going to determine whether we are going to limit their use, there has to be a standard that we use to figure out what is a dangerous level.

MS. CLARK: Well let me put it, and, you know, maybe, join me if you think that

2 I'm not--

3 [Crosstalk from panelists]

4 MS. CLARK: --explaining myself
5 well. There are two ways to look at control of
6 chemicals in a business. Your way, what you're
7 thinking about, set a level, measure it, it's a
8 go, no go.

9 ACTING CHAIRPERSON KOPPELL: Right.

10 MS. CLARK: And that may, in
11 certain cases, that's very good, especially when
12 you have a quick and easy testing. And we do that
13 in certain places. You have constant measurements
14 going on all the time. That's what your CO
15 detector is at home. It's constantly measuring
16 for CO and can go off if you have an exceedance.
17 We don't have that for the thousands of chemicals
18 that are in use.

19 There's another way you can control
20 the exposures of chemicals. And we call those
21 more performance standards. In other words a
22 business that uses chemicals, and one thing that
23 we're encouraging dry cleaners to do, in fact they
24 won't be able to use PERK chlorethylene after
25 2020, is to use a safer material. Identify the

2 hazardous materials that you use now and then
3 investigate, can I do that job using a safer
4 chemical. That's one way.

5 Another way is to use the less
6 amount, the lowest amount that you need. Don't
7 slop the stuff all over and that's one of the
8 things we do when we go into a shop. We'll look
9 at their practices. And we'll tell them, look you
10 can't use, you can't leave bottles of nail polish
11 remover open because it constantly evaporates. We
12 want you to keep them closed. Or we'll say you're
13 discarding your cotton balls and they just
14 continue to evaporate. We want you to keep those
15 in a closed container because that, as a
16 performance process, that can limit the
17 evaporation.

18 So there are many, many things and
19 it's well accepted in the environmental science
20 and in the occupational health science community
21 to always urge the safest use of chemicals and to
22 use the safest chemicals that one can.

23 ACTING CHAIRPERSON KOPPELL: Yeah
24 but I'm sorry, it just, huh, you're avoiding the
25 issue. The whole bill is based on the assumption

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2 that there are certain levels that should not be
3 exceeded. And it seems to me that's clearly,
4 that's clearly the case.

5 And if the standards don't exist,
6 then they should be created. They shouldn't be
7 dependent upon each inspector's judgment. There
8 should be real standards because even taking your
9 last example, use less. Well how much less? You
10 don't know. You say, you know, it would be good
11 if you'd put the cotton balls in a closed
12 container. And that's probably a good suggestion.
13 But is that enough?

14 You know, we don't know because we
15 don't have standards. Now there may not be
16 standards for every chemical. I'm sure that's
17 true. But we should have standards for as many
18 chemicals as we can.

19 MS. CLARK: And I plead; don't
20 understand that I disagree with you because I
21 don't disagree. And I see you feel the
22 frustration that we often feel in the
23 environmental field. The references that are
24 cited in the bill are background levels as we'd
25 said. And those are important. We use those. We

2 look at those. It just tells us kind of within a
3 range well what's out there normally. So if we're
4 seeing something that's greater than that it tells
5 us action can be taken to reduced those levels--

6 ACTING CHAIRPERSON KOPPELL:

7 (Interposing) Well then you're using those
8 standards as a benchmark and don't say you're not
9 using them--

10 MS. CLARK: (Interposing) No we're
11 not--we're using it to describe and to consider a
12 whole issue. And--

13 ACTING CHAIRPERSON KOPPELL:

14 (Interposing) Well we're joined by Councilman
15 Ulrich--

16 MR. GILSENAN: (Interposing) You
17 know, I--

18 ACTING CHAIRPERSON KOPPELL: --
19 please make a note please.

20 MR. GILSENAN: If I might add, as
21 Nancy just said, under the Air Code there are
22 certain processes--

23 ACTING CHAIRPERSON KOPPELL:

24 (Interposing) Identify yourself please--

25 MR. GILSENAN: (Interposing) Oh I'm

2 Mike Gilsenan, Acting Deputy Commissioner for the
3 Bureau of Environmental Compliance from DEP.

4 Under the Air Code there are certain processes, as
5 you had said, like you had mentioned before in one
6 of the places but in the Air Code there are
7 certain processes that we, right now, regularly,
8 you need a permit for. You need to..

9 [[Moving the microphone]

10 MR. GILSENAN: Nancy and I go back
11 a long way so it's okay.

12 [Chuckling]

13 MR. GILSENAN: So there are certain
14 processes and equipment that we--that we regulate
15 and that you have to have a permit for and you
16 have to have an air engineer and you have to have
17 certain equipment and all, that's all working in
18 process. And we--so there are things in place
19 already. Some of these areas that we're talking
20 about like a nail salon, isn't, doesn't fall into
21 any category that we would have to permit them.

22 So I mean one of these things that
23 we might be talking about that we could have a
24 further discussion about would be to take those
25 types of places and kind of fit them underneath

1
2 the air code so that they would have to have the
3 proper equipment, the proper ventilation. That's
4 what I'm talking about.

5 ACTING CHAIRPERSON KOPPELL: Well I
6 think that's true if the chemicals that they use
7 are in fact hazardous or noxious. I mean they
8 could not be hazardous, there could just be a
9 terrible odor that people don't--

10 MS. CLARK: (Interposing) Sometimes
11 that happens and then--

12 ACTING CHAIRPERSON KOPPELL: --so,
13 again, I think what, I think your testimony has
14 convinced me at least that the Committee has to
15 look further at what standards to apply. But the
16 principle of the legislation that says that if
17 those standards are exceeded, that there should,
18 it should be clear that the business will be
19 required to either cut down or eliminate the use
20 of those chemicals. And I think, you know, that
21 seems to me to be appropriate. Well okay, why
22 don't you finish your statement? We'll listen to
23 other people--

24 MS. GARCIA: (Interposing)
25 [Chuckling] I'm almost done. I think I was

1
2 actually on my last paragraph. So just in summary
3 DEP and DOHMH, we believe, have in place a
4 comprehensive and flexible protocol system for
5 responding to complaints about emissions from
6 industrial and commercial sources that are
7 detectable within residences.

8 The new inspection requirements
9 created in Intro 1062 would not supplement or
10 improve the current response protocol; rather
11 implementation of the proposed procedures could
12 result in misdirected use of resources, delays in
13 corrective action and unnecessary cost. We
14 appreciate the opportunity to present testimony.
15 I was going to say we'd answer questions now--

16 [Laughter]

17 MS. GARCIA: --but we'll continue
18 to answer questions.

19 ACTING CHAIRPERSON KOPPELL: Well I
20 think I made clear that I don't think the protocol
21 actually, if I reviewed it as we're talking, it's
22 not all that dissimilar to what you said you do
23 frankly. So I don't quite understand that comment
24 but I think that the most important issue that's
25 been revealed by your testimony is that there have

1
2 to be standards established and if there aren't
3 adequate standards, that's something that has to
4 be done.

5 Because we don't want to find out,
6 you know, five years from now or ten years from
7 now that--and, you know, and the fact that you may
8 smell it or not smell it is not necessarily, you
9 know, conclusive, 'cause carbon monoxide as an
10 example, you can't smell or taste and yet
11 concentrations of carbon monoxide over a certain
12 level can be fatal.

13 MS. CLARK: Absolutely.

14 ACTING CHAIRPERSON KOPPELL: So,
15 you know, I think there have to be standards. You
16 have any questions? Okay. That's all I have for
17 now. Thank you.

18 [Pause]

19 ACTING CHAIRPERSON KOPPELL: Well
20 they're not doing anything [chuckling]. I'm not
21 doing anything.

22 [Off mic]

23 ACTING CHAIRPERSON KOPPELL:
24 They're not, that's clear.

25 MS. GARCIA: We're done?

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COMMITTEE ON ENVIRONMENTAL PROTECTION 49

ACTING CHAIRPERSON KOPPELL: Yeah.

MS. GARCIA: Thank you.

ACTING CHAIRPERSON KOPPELL: They just respond to complaints, that's what they said.

[Background conversation]

COUNCIL MEMBER ULRICH: Is it over?

ACTING CHAIRPERSON KOPPELL: No, no, no, no.

COUNCIL MEMBER ULRICH: Because I have a hearing at the same time.

ACTING CHAIRPERSON KOPPELL: Oh okay. Yes, yes, we'll--you were here. You're here.

[Off mic]: I don't believe we have any other witnesses?

ACTING CHAIRPERSON KOPPELL: We don't? Why are all these people, we don't have any other witnesses?

[Off mic]: Nope.

ACTING CHAIRPERSON KOPPELL: Oh I thought we had other witnesses [chuckling] I guess we have no other witnesses. But I think they've-- there's a significant defect that there don't seem to be adequate standards. We'll mark you as

present, yes.

[Off mic]: The State Department of Health uses those Indoor Air Quality Guidelines to say above which it shouldn't be present in your house. And they're the ones that gave me those standards, the State Department of Health. They use the State Department of Health's Indoor--

ACTING CHAIRPERSON KOPPELL:

(Interposing) She says they're not--she says they're not adequate guidelines.

[Off mic]: When they amended the PERK law earlier--

ACTING CHAIRPERSON KOPPELL:

(Interposing) Yeah.

COUNCIL MEMBER EUGENE: I need to go ahead. I think we will go - - -

[Crosstalk]

COUNCIL MEMBER KOPPEL:

(Interposing) Okay. Yes, yes, yes, yes, yes.

COUNCIL MEMBER EUGENE: Just for the record.

COUNCIL MEMBER KOPPEL: Okay yeah. I'm just skipping on your name.

COUNCIL MEMBER EUGENE: Mathieu

Eugene.

ACTING CHAIRPERSON KOPPELL: That's right, that's right Dr. Mathieu Eugene, I'm sorry, his name escaped me for a moment, is present at the hearing. Thank you. Yes. Sorry. [chuckling] A senior moment Mathieu.

COUNCIL MEMBER EUGENE: Yes.

ACTING CHAIRPERSON KOPPELL: A senior moment [chuckling]

COUNCIL MEMBER EUGENE: It happens to all of us.

ACTING CHAIRPERSON KOPPELL: Yes, okay [chuckling]. Yeah. The hearing is adjourned.

[Gavel banging]

ACTING CHAIRPERSON KOPPELL: They say those are not standards.

[Off mic]: They used those standards earlier this year and referenced them when they amended the--

[END 1002.MP3]

[START 1003.MP3]

[Background conversation]

COUNCIL MEMBER GENNARO: How's

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COMMITTEE ON ENVIRONMENTAL PROTECTION 52

that? Okay. this is Councilman Jim Gennaro.
Sorry that I was delayed to the hearing. I'm grateful to Council Member Koppell who chaired most of this hearing on Intro number 1062, a bill that I am the prime sponsor of, with regard to controlling emissions from businesses located in mixed use buildings that use chemicals.

This problem is what led me to write this bill. I'm happy that it had a hearing and I will endeavor to go over the record of the hearing and consult with staff on what we need to do in order to move forward on this bill and on the probing of this very important environmental issue. And with that said, I'd like to thank everyone for their participation and this hearing of the Committee on Environmental Protection is formally adjourned.

[Gavel banging]

[END 1003.MP3]

C E R T I F I C A T E

I, Laura L. Springate 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.

A handwritten signature in cursive script that reads "Laura L. Springate". The signature is written in black ink on a light-colored background.

Signature _____Laura L. Springate_____

Date _____December 18, 2009_____