

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON HEALTH

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City Hall

B E F O R E: JOEL RIVERA
Chairperson

COUNCIL MEMBERS:
Joel Rivera
Helen D. Foster
John C. Liu
Helen Sears
Kendall Stewart
Maria del Carmen Arroyo
Inez E. Dickens
Rosie Mendez
Daniel R. Garodnick

A P P E A R A N C E S

Christopher Boyd
Director of Public Health
NYC Department of Health and Mental Hygiene

Chris Manning
Assistant Commissioner for Intergovernmental Affairs
NYC Department of Health And Mental Hygiene

Josh Nachowitz
State Policy Director
New York League of Conversation Voters

Terence O'Brien
Deputy Director
Plumbing Foundation

CHAIRPERSON RIVERA: Good

afternoon, ladies and gentleman. I want to thank you for your patience. I apologize. We had an important press conference downstairs with the Speaker and other colleagues in the City Council. I want to thank my colleagues who are here with us. We have Council Member Dan Garodnick, Councilwoman Helen Sears, and Councilwoman Rosie Mendez here with us today. We have a couple of members who are still downstairs in the press conference. My name is Joel Rivera, Chair of the City Council's Health Committee. We are here today to discuss Proposed Intro. 408-A, sponsored by Council Member Garodnick. Intro. 408-A is a local law that would amend the administrative code in relation to the inspection of water tanks used for the purpose of storing and distributing drinking water. Water tanks are a common fixture in the New York City skyline. New York City buildings have been using water tanks as part of their drinking supply systems since the 19th Century. It is estimated that more than 12,500 buildings need water tanks. The tanks store between 5,000 and 10,000 gallons of water and are

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2 primarily constructed of wood. Water tanks are
3 generally found atop buildings over six stories.
4 Their primary purpose is to lift water to the
5 upper stories. The tank is needed because the
6 water pressure is too weak to reach the higher
7 stories on its own. Water from the top of the
8 tank is used for drinking, bathing and other daily
9 activities while water from the bottom of the tank
10 is used specifically for firefighting. Issues
11 arising from water tanks can occur as the water
12 comes into the tanks from the city's water source
13 and can contain various substances. These
14 substances can accumulate and present a health
15 risk for residents of the individual buildings.
16 Due to this the New York City Health Code requires
17 that building owners or agents have their water
18 tanks inspected annually. If a negative condition
19 is present, the owner or agent must ensure the
20 tank is emptied and cleaned. These inspection
21 records must be maintained for five years and must
22 be made available to the Department of Health and
23 Mental Hygiene. The Health Code includes a
24 provision that disallows these reports from public
25 inspection or subpoena. Intro. 408-A will add

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2 transparency by ensuring that the public can
3 access these inspection reports. Residents in a
4 building have a legitimate interest and right to
5 know the state of their building's water tank.

6 Intro. 408-A makes other improvements to this
7 process, which I will let my colleague, Council
8 Garodnick, the prime sponsor of this legislation,
9 discuss in greater detail. Again, I want to thank
10 the staff and the committee for their hard work.
11 I want to give the opportunity to my colleague to
12 say a few words on this topic.

13 COUNCIL MEMBER GARODNICK: Thank
14 you, Chairman Rivera and members of the Health
15 Committee. Thank you for allowing me to
16 participate in today's hearing. As you noted, we
17 are considering Intro. 408-A which would amend the
18 administrative code in relation to water tank
19 inspections. I think this is an example of
20 commonsense legislation. The Department of Health
21 today already requires building owners to inspect
22 their water tanks annually. We will hear from in
23 a moment. The purpose of such a rule is to
24 protect against the variety of things that you can
25 find in water, whether it's a water-borne illness

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2 or other health concerns. Building owners are
3 already required to make these results available
4 to the department and the records must be kept on
5 file for a period of five years. Yet, for some
6 reason the public does not have the right to
7 access them. It is illogical that the public
8 would not have the right to view the records of
9 inspections that are already completed evaluating
10 the water that they drink and use in their homes.
11 Without causing the department or building owners
12 to significantly alter their current practices or
13 expend additional funds or resources. Intro. 408-
14 A will make the records of these inspections
15 accessible to New York City residents. Intro.
16 408-A also requires the Department of Health to
17 conduct periodic inspections of the water tanks.
18 Again, we're not asking for a significant
19 expenditure of resources on behalf of the
20 Department of Health or building owners. The
21 department is not required to review every record
22 or even inspect every water tank each year under
23 our proposed legislation. Yet it only seems
24 logical that the department should hold building
25 owners accountable to their own guidelines in some

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2 way. Conducting periodic announced inspections is
3 a simple way for the department to ensure greater
4 accountability. If neither the department nor the
5 public is holding building owners accountable for
6 inspecting and maintaining their water tanks, then
7 such inspections are meaningless and we might as
8 well save everyone the trouble and get rid of
9 these inspections altogether. That's not what
10 we're advocating today. We're trying to give
11 meaning to the regulations which are already on
12 the books. Intro. 408-A will rectify the problem
13 with minimal impact on the part of the department
14 and building owners. Again, I thank the chairman
15 for allowing me to participate today. I'd like to
16 thank my staff, Lucy Joffe and Justine Almada, for
17 their work on this. I look forward to hearing
18 from the witnesses. Thank you, Mr. Chairman.

19 CHAIRPERSON RIVERA: Thank you very
20 much. First we have Chris Boyd, Director of
21 Office of Public Health Engineering from the
22 Department of Health and Mental Hygiene. Just
23 state your name for the record and proceed with
24 your testimony.

25 CHRISTOPHER BOYD: Hi, my name is

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2 Chris Boyd. I am the Director of Public Health
3 Engineering at the New York City Department of
4 Health and Mental Hygiene. Good afternoon,
5 Chairperson Rivera and members of the Committee on
6 Health. My name is Christopher Boyd and I am the
7 Director of the Office of Public Health
8 Engineering at the New York City Department of
9 Health and Mental Hygiene. On behalf of the
10 Department, thank you for the opportunity to
11 testify regarding Intro. 408-A, which would amend
12 the administrative code of the City of New York in
13 relation to the inspection of water tanks used for
14 the purpose of storing and distributing water.
15 DOHMH is responsible for ensuring New York City's
16 municipal water supply is in full compliance with
17 federal, state and city standards and regulations.
18 This oversight comprises point of use surveillance
19 sampling throughout the city's water distribution
20 system, performance of sanitary surveys and field
21 inspections of water supply facilities, review and
22 approval of the New York City Department of
23 Environmental Protection's deliverables relating
24 to water supply and treatment and investigation of
25 water quality related complaints. Our drinking

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2 water is delivered to the city every day through a
3 system of tunnels and aqueducts and is distributed
4 throughout the five boroughs through 6,000 miles
5 of pipes. The delivery system is mostly gravity
6 fed, due to the 1,000 foot elevation differential
7 between the watershed in Upstate New York and the
8 distribution system in the city. There is a
9 minimum what pressure of 20 pounds per square inch
10 throughout the city water mains, which is enough
11 to deliver uninterrupted services up to the sixth
12 floor in most buildings. Where the water pressure
13 system is insufficient to provide the minimum
14 pressure and flow required in the building,
15 supplemental pressure must be provided by the
16 building owner. Generally this is achieved
17 through the installation of an elevated water
18 tank, either on the rooftop or within the building
19 itself and/or through a water pressure booster
20 system. Tanks can be constructed either from wood
21 or metal and the Department of Buildings is
22 responsible for reviewing and approving the
23 design, installation, alteration and repair. Our
24 best estimate is there are more than 12,500 water
25 tanks in New York City. Under Article 141.03 of

1 the New York City Health Code, building owners are
2 required to inspect water tanks annually and
3 maintain inspection records on file for a minimum
4 of five years. Records must be made available to
5 the Health Department upon request, but are not
6 subject to inspection by those outside the
7 department. If the annual inspection reveals an
8 unsanitary condition, the tank must be properly
9 drained, cleaned, painted and disinfected in
10 accordance with the standard procedures outlined
11 in the Health Code before returning it to service.
12 Similar requirements are also included in the New
13 York City Plumbing Code. Water quality complaints
14 called in to 311 are initially routed to DEP for
15 handling. If upon investigation DEP determines
16 the complaint is related to the building's
17 internal plumbing, it is re-routed to the Health
18 Department for further review. If DOHMH finds
19 unsatisfactory water quality conditions in the
20 building which has a tank as part of the plumbing
21 system, the condition of the tank is inspected and
22 its inspection records are reviewed to determine
23 whether the tank could be the source of the water
24 contamination. In the case where an unsanitary
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2 condition of a water tank is found, DOHMH issues a
3 repair notice to the building owner requiring
4 cleaning and repair of the water tank. In the
5 past year, DOHMH has received more than 200 indoor
6 water quality complaints. Based on water quality
7 samples taken, only one building failed to meet
8 the requirements of the State Sanitary Code.

9 Intro. 408-A would require any building owner that
10 has a water tank as part of its drinking water
11 supply system to have their tank inspected at
12 least once annually and submit the results to the
13 department within 14 days of the inspection on a
14 form prescribed by the commissioner. DOHMH would
15 be required to maintain these records for a period
16 of five years from the date of the inspection and
17 make them available to the public for examination.
18 The bill further requires the health department to
19 conduct periodic unannounced water tank
20 inspections to ensure compliance with the Health
21 Code. The provision of the legislation pertaining
22 to annual inspections is consistent with the
23 Health Code. However, requiring DOHMH to develop
24 a system for receiving, maintaining and making
25 available more than 60,000 inspection reports that

1 would be generated over a five-year period creates
2 a significant cost and administrative burden for
3 the department. Similarly, requiring DOHMH to
4 proactively conduct unannounced inspections of
5 water tanks would require the hiring of additional
6 inspectors and administrative staff at a time when
7 resources are extremely limited. When not
8 maintained properly, drinking water tanks can
9 indeed pose a public health risk. The department
10 supports the council's efforts to make building
11 owners more accountable by making the results of
12 these inspections available to the public. The
13 department is in the process of revising the
14 Health Code and will be asking the Board of Health
15 to amend the Health Code to similarly make such
16 records publicly available. However, the actual
17 prevalence of public health threats associated
18 with drinking water tanks and potential
19 administrative costs to the department associated
20 with Intro. 408-A prevent us from supporting the
21 legislation in its current form. We would be
22 happy to meet and discuss our concerns regarding
23 this legislation in more detail and consider
24 alternative ways to achieve the council's goal.
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Thank you, again, for the opportunity to testify and I'd be happy to take any questions at this time.

CHAIRPERSON RIVERA: Thank you very much. We've been joined by two of my colleagues, Council Member Inez Dickens and Council Member Maria del Carmen Arroyo. I just have a few statements and questions and then I'll turn it over to my colleague Daniel Garodnick for his questions. You say that there are 12,500 of these water tanks within the city of New York, correct?

CHRISTOPHER BOYD: That's correct. That's our best estimate.

CHAIRPERSON RIVERA: And of that you had 200 complaints that were phoned in to 311. And of that only one actually turned out to have serious issues?

CHRISTOPHER BOYD: That is correct.

CHAIRPERSON RIVERA: The question that I have is without annual inspections, how do we know that the rest of the 12,300 are not facing serious issues or issues that we should be concerned about? How often are inspections being done on these records if not prompted by someone's

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phone call?

CHRISTOPHER BOYD: We do not currently have a proactive inspection program for all of the 12,500 water tanks in New York City.

CHAIRPERSON RIVERA: I take the commissioner's advice with great confidence. When he says that we should all drink tap water to save ourselves from having to buy bottled water because it's more environmentally friendly. Water is obviously something of great importance to us. This bill, which my colleague has introduced seems to fall in line with that comment. Now, if we are requesting that New York City residents utilize tap water more frequently, I think it's incumbent upon us to make sure that we can ensure that the quality of that water is up to par. If we do not have a proactive inspection program, how are we able to guarantee that the water supply is safe enough for our consumers to consume. This is not with the buildings, but we've heard reports that they are pharmaceuticals found in the water supply. Sediment one-inch thick can settle within the water tanks and that can cause issues. We know that there can be various issues pertaining

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to the water that's coming out of the faucet, whether it's the piping materials that are utilized, and that I believe is the reason why this bill has been introduced by my colleague. So while it may be costly to move this bill forward, I think in following the commissioner's advice to consumer tap water more so than bottled water, it would be a good call to make sure that the water that people are drinking is actually safe.

CHRISTOPHER BOYD: I think we have to make a distinction between looking at compliance with this section of the Health Code and the monitoring of the drinking water supply system. The department collects around 220 samples every month from internal sources across the city, verifying the condition and quality of the water that's delivered from the Department of Environmental Protection. That systematic surveillance, which happens every single month, returns with absolute assurance that the water being delivered to people's homes is safe, healthy and acceptable to drink. We have no evidence, zero, that there is any one currently drinking water from a tap that is dangerous to their

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CHAIRPERSON RIVERA: There's no evidence because no evidence has been presented, no evidence has been researched, no evidence has been acquired, or is there no evidence because it has been researched and none has been found?

CHRISTOPHER BOYD: Because we do research it. We take samples, around 200 and some odd samples, every month, all across the city from taps, from internal plumbing, in commercial establishments generally across the city. The Department of Environmental Protection takes around 800 water samples a month across the city, verifying that the water being delivered to people's homes is safe. Combined, we have 1,000 samples a month and we have the utmost confidence that the water being delivered to people's taps is very, very safe.

CHAIRPERSON RIVERA: Thank you. At this point I'll hand it over to my colleague, Council Member Dan Garodnick. Thank you.

COUNCIL MEMBER GARODNICK: Thank you, Mr. Chairman. Let me just start with the easy stuff. So just to understand what you said

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in your testimony. Under the current Health Code regulations, building owners are required to inspect their building's water tanks every year. Is that right?

CHRISTOPHER BOYD: That is correct.

COUNCIL MEMBER GARODNICK: And they're required to hold on to that information in their own files for a period of five years. Is that right?

CHRISTOPHER BOYD: That is correct.

COUNCIL MEMBER GARODNICK: And they only are required to give it to the Department of Health upon request of the department. Correct?

CHRISTOPHER BOYD: That's the current reading of the code.

COUNCIL MEMBER GARODNICK: Why is it important, in your view, that these tanks be inspected annually?

CHRISTOPHER BOYD: An unclean tank does present a risk to public health. So it's creating an expectation, a requirement for building owners to move forward with cleaning the tank. We do not anticipate that tanks represent a significant risk. We have no evidence that water

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2 tanks currently present a risk and we believe it's
3 a low potential risk. So when evaluating the
4 level of regulatory oversight, both in terms of
5 the resources dedicated from the department and
6 the amount of resources that the regulated
7 community needs to manage, we have to balance out
8 what are the known risks and what are the
9 potential risks. So we've created a standard that
10 allows us to hold people accountable should they
11 not comply.

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COUNCIL MEMBER GARODNICK: It
13 sounds like to me that it presents enough of a
14 risk for you to require that buildings go through
15 this process every single year. Correct? These
16 are the Department of Health rules.

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CHRISTOPHER BOYD: Yes. They're
18 required to inspect and based upon that inspection
19 take appropriate maintenance action.

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COUNCIL MEMBER GARODNICK: You said
21 an unclean tank does present a risk to public
22 health. What kind of risk are we talking about?
23 Give us some examples of the sorts of things that
24 we would be worried about.

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CHRISTOPHER BOYD: We would be

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2 worried about a tank which has lost its integrity
3 and there's the potential for harborage to enter
4 the tank, whether that be birds or rodents or
5 something of that nature. If the tank is
6 improperly maintained, you can get sediment
7 buildup that can potentially cause a problem if
8 there's an insufficient chlorine residual in the
9 tank. Our primary concern is the structural
10 integrity of the tank and the introduction of
11 foreign material into the tank. The water that's
12 being delivered to that tank is chlorinated, safe
13 and clean. The chlorine residual that is in the
14 water is a buffer on bacterial growth. So our
15 major concern is whether or not there's a loss of
16 structural integrity.

17 COUNCIL MEMBER GARODNICK: So the
18 current law, as you discuss in your testimony, and
19 as we stated in the intros, it says that these
20 records may not be subject to inspection by the
21 public. Is there any reason in your view why the
22 public should not be able to access these records?

23 CHRISTOPHER BOYD: The department
24 is in agreement that it would be an improvement to
25 allow the public access to these records.

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2 COUNCIL MEMBER GARODNICK: Can you
3 think of any example of other rules which prohibit
4 public access in this manner, either in the
5 Department of Health or in any other department?

6 CHRIS MANNING: I'm Chris Manning,
7 Assistant Commissioner for Intergovernmental
8 Affairs at the Health Department. In going back
9 and looking at some other sections of the Health
10 Code, there are some provisions that have similar
11 language regarding making inspection results
12 available only to the department. As we're going
13 through a comprehensive revision of the Health
14 Code, it's our expectation that as we get to those
15 provisions we would actually remove that
16 prohibition on releasing the information as well.
17 So I can get the sites for you. I don't have
18 them, but I do know that there is at least a few
19 that exist in other sections of the Health Code.

20 COUNCIL MEMBER GARODNICK: We would
21 be curious to look at those with you. It seems to
22 me in answer to the question from the chairman
23 about whether or not the department looks at any
24 of these records after a building owner does the
25 inspection, I think your answer was no unless

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there are specific complaints. Is that right?

CHRISTOPHER BOYD: That is correct.

We do some periodic inspections. I would not classify it as systemic. But for the most part our response is complaint driven. If you're interested, we can give you the actual number of water quality complaints related to a water tank. It works out to be about five per year.

COUNCIL MEMBER GARODNICK: How many spot checks do you do a year?

CHRISTOPHER BOYD: This year we have done a total of 83 that have come back.

COUNCIL MEMBER GARODNICK: Eighty-three of 12,500?

CHRISTOPHER BOYD: That's correct.

It's a random sample and that provides us with a margin of error of around 11%, based on those findings. From a statistical standpoint it gives us a reasonable sense of the rate of compliance in the city.

COUNCIL MEMBER GARODNICK: I see.

So you're just checking to see if they have done it. You're not looking for a substantive check of what has been found. Is that correct?

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2 CHRISTOPHER BOYD: It's a record
3 inspection, so we're verifying that the owner of
4 the building has had the tank inspected by a
5 certified individual.

6 COUNCIL MEMBER GARODNICK: So you
7 are never looking at the results unless somebody
8 has made a specific complaint. Is that fair?

9 CHRISTOPHER BOYD: Could you say
10 that again?

11 COUNCIL MEMBER GARODNICK: In terms
12 of the findings within one of these inspection
13 reports, you as the Department of Health are never
14 looking at the results of those inspections unless
15 there was a specific complain issued which
16 prompted you to take a substantive look a the
17 results. Is that correct?

18 CHRISTOPHER BOYD: In order to get
19 a certificate of certification from a plumber or a
20 tank cleaning company, the owner of that building
21 would have had to have passed their inspection
22 protocol. So the certification by a tank cleaning
23 company that the water tank was in compliance is
24 the basis of our review. So if an owner can
25 demonstrate that a licensed company has certified

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2 that that tank is in compliance, we accept that.

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COUNCIL MEMBER GARODNICK: I think I understand your point. You don't actually get issued whatever it is you need to be issued unless it comes up to the appropriate standard. Your checks figure out whether or not that was all completed.

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CHRISTOPHER BOYD: That's correct.

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COUNCIL MEMBER GARODNICK: Now, 83 spot checks of this out of 12,500 tanks is not a high number. What were your findings of the percentage of buildings that are actually doing what they're supposed to be doing in terms of their annual building water tank inspection?

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CHRISTOPHER BOYD: We found a two-thirds compliance rate on the record keeping requirement.

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COUNCIL MEMBER GARODNICK: One in every three buildings in the City of New York, by your estimation, we have no idea what's going on in their building water tank or whether they are even doing their annual inspection. Is that fair?

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CHRIS MANNING: What we know is that the owner could not generate a certificate of

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certification.

COUNCIL MEMBER GARODNICK: And if they couldn't do that that means either the water tank had some sort of a flaw to it or that they didn't do what they're required to do under the law. Is that correct?

CHRISTOPHER BOYD: They did not do what they were required to do under the law. They are required to be able to provide us with a certification. They have to keep record of that. So they were in noncompliance with the Health Code.

COUNCIL MEMBER GARODNICK: If they didn't give you the certification, there's a couple of reasons for that, right?

CHRISTOPHER BOYD: That's true. That is correct.

COUNCIL MEMBER GARODNICK: The reasons are either that they failed their inspection and therefore could not actually present a completed inspection to you or that they didn't do it. Is that right?

CHRISTOPHER BOYD: Or the building owner couldn't present the documentation of the

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2 work that was done. We do run into instances
3 where there's been a change in building ownership
4 and the new building owner doesn't have five years
5 worth of records on the tank cleaning that does
6 usually happen. The most sort of comprehensive
7 look at this was actually done in '96 where the
8 Department of Health with the Department of
9 Environmental Protection did an evaluation of 248
10 water tanks in a random sample across the city.
11 We found a similar compliance rate, but what we
12 did find was that 97% of the water samples taken
13 came back in compliance with the State Sanitary
14 Code.

15 COUNCIL MEMBER GARODNICK: This was
16 a study that you did in 1996?

17 CHRISTOPHER BOYD: That's correct.

18 COUNCIL MEMBER GARODNICK: Okay.
19 I'm looking at the testimony which is going to be
20 presented in a few minutes about a pilot study of
21 1% of the buildings from 1998. I don't know if
22 this is accurate, but a finding that the
23 Department of Health reported 3% of sampled
24 buildings were coli form positive. Are you
25 familiar with this study?

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CHRISTOPHER BOYD: Yes, that's correct. On resample, all but one of those came back negative. On the third round of sampling, all came back negative. Coli form itself is not hazardous. It is an indicator organism. The rates that were found at that time were very low. As an indicator organism the requirement is to resample in case there might be E. Coli in the water. That would have been as a result of an introduction of material from outside the water system into those water tanks. That's a very rare thing to occur. So the actual presence of coli form does not present a direct health hazard. The responsibility upon finding it is to resample and that was done.

COUNCIL MEMBER GARODNICK: I've got two more questions. Do you think it would aid the efforts of public health if we were to allow the public to make its own evaluations, determinations, studies of the various findings that are out there since it seems that you consider this to be important enough to create rules for, but perhaps in terms of the overall number of things that you are looking for it's not

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2 at the top of the list. Do you think that it
3 would be helpful to you as a public health matter
4 or as the arbiters of public health to be able to
5 allow the public to scrutinize this data?

6 CHRISTOPHER BOYD: The department
7 is in favor of allowing the public to be able to
8 see the certification.

9 COUNCIL MEMBER GARODNICK: Do you
10 believe that it will help you in your efforts to
11 ensure the health and the safety of our water
12 system?

13 CHRISTOPHER BOYD: Yeah, I mean
14 more information is always better. We as a
15 department are always looking to make
16 improvements, to find opportunities to better
17 protect public health and find more efficient ways
18 to communicate public health information. And as
19 part of this process if we get additional
20 information that would be very helpful.

21 COUNCIL MEMBER GARODNICK: Last
22 question for you and it goes to the administrative
23 issues, or what you referred to as a significant
24 and costly administrative burden if the Department
25 of Health were to receive these inspection reports

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2 every year. We're talking about 12,500 inspection
3 reports a year, best case scenario. You're
4 actually talking about today about 8,000
5 inspection reports because you have a one-third
6 noncompliance for whatever reason. Truly is it
7 that much of a burden to set up a website and have
8 them email it in to you? Or is that really a
9 matter of a college intern setting you up to
10 receive these things which can be PDF'd to you and
11 received and stored?

12 CHRISTOPHER BOYD: There are some
13 technical issues that we would have to work
14 through. We've talked about this with our IT
15 department, looking at similar online registration
16 programs for equipment and licensing that the
17 department has developed recently. Our estimate
18 is a back of the envelope estimate based on a
19 roughing out of what would be required. The
20 initial IT cost would be around \$300,000 to
21 develop this. The recurring cost would be around
22 \$65,000. Within the IT world your maintenance
23 cost on an annual basis is about 20% of your
24 development cost. So that's our experience based
25 on developing dog licensing registration portal,

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2 looking at the online registration of pesticide
3 applications and looking at the online
4 registration of radiological equipment. Based on
5 three real world examples that the department has
6 developed recently that was our IT department's
7 rough estimate.

8 COUNCIL MEMBER GARODNICK: Look,
9 those numbers are shockingly high, which prompt
10 the members of this committee to take a good look
11 at the Health Department and its budgetary
12 decisions. Because to me either you have portals
13 set up which you could just piggyback on in
14 setting something like this up without very much
15 difficulty, or you set you an email account that
16 can just receive these things with particular
17 rules and subject line information from particular
18 buildings. To me it's something that can be done
19 with little administrative cost. It could
20 probably be done by a sophisticated person who
21 already works within the department. But that is
22 a conversation that I think we're going to have to
23 explore more. My feeling is that number may
24 suggest what you have done in other circumstances,
25 but it should not be any indicator of what it

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2 would cost for you to achieve what we're looking
3 to do here. So I will leave it at that. I
4 appreciate your testimony and I appreciate your
5 openness to this. I think that we agree that it
6 would serve the public interest and the interest
7 of public health to allow these inspection reports
8 to be available to the public and to figure out
9 exactly what would be the system that makes it
10 most convenient for members of the public to
11 access in a way that doesn't create too much of an
12 administrative headache for you all. We
13 understand the budgetary circumstance that we're
14 in. We're not looking to create additional costs
15 or expenditures for you guys at all. I look
16 forward in working with you in making this
17 something that you feel good about and that you
18 can support. It sounds like we're pretty close.
19 Thank you.

20 CHAIRPERSON RIVERA: Thank you very
21 much. We've been joined by Council Member Helen
22 Foster, Council Member Kendall Stewart and by
23 Council Member John Liu who was here and had to
24 leave for a moment. Next we have Council Member
25 Maria del Carmen Arroyo, followed by Council

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2 Member Helen Sears.

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COUNCIL MEMBER ARROYO: Thank you, Mr. Chair and thank you, Council Member Garodnick for raising the issue. It's certainly one I never thought about until this hearing. It raises a question for me. Currently the Code reads that the owners whose properties have these water tanks are required to do annual inspections and to have them on file. Yes?

CHRISTOPHER BOYD: That is correct.

COUNCIL MEMBER ARROYO: How would you know if there is an abnormal finding and the owner did what he or she was supposed to do to correct the problem that could pose a health hazard?

CHRISTOPHER BOYD: Right now we do periodic inspections and we respond to complaints from the public. As part of our investigation of water quality complaints, if we find a problem with the water quality, as part of that investigation, we determine whether or not the water tank may be the source of that. Our experience with complaints around water quality is that 99% of the time the water is perfectly safe.

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2 In the last year we've only had one instance where
3 a water complaint resulted in a violation of the
4 State Sanitary Code.

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COUNCIL MEMBER ARROYO: So if
6 there's an abnormal finding and the owner does
7 nothing to correct it there's no way for you to
8 know.

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CHRISTOPHER BOYD: That is correct.
10 Absent a complaint from the public, if a building
11 owner chooses to ignore a problem with the water
12 tank, we would not know about that information.
13 Now, an owner who was so recalcitrant about
14 protecting a major piece of infrastructure
15 probably wouldn't participate in this program.

16

COUNCIL MEMBER ARROYO: Which is
17 probably the reason why the legislation is
18 necessary. I think when we know what the behavior
19 of property owners in the city could be and often
20 when we have to deal with housing that is
21 substandard and tenants have complaints, it
22 usually connects back to an irresponsible owner.
23 I think that if we have no way or no mechanism of
24 throwing up a red flag then that ought to be
25 corrected. I'm not sure if in '98 this mayor was

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in office. I don't think so. So this study is about 14 years old now. I notice that the only properties sampled were in Manhattan and Queens. Are there no water tanks in the Bronx, Brooklyn or Staten Island?

CHRISTOPHER BOYD: There are water tanks across the city. The number of water tanks tends to be concentrated in parts of the city that have buildings over seven stories.

COUNCIL MEMBER ARROYO: Is there any discussion or plans to reengage in a study that would give us a better sense 14 years later how the industry is doing with regards to maintenance and/or reporting?

CHRISTOPHER BOYD: Looking at the sites that were sampled in the pilot study from '96, the samples actually are from across the city, including Brooklyn, Manhattan, Queens, and the Bronx.

COUNCIL MEMBER ARROYO: I'm referencing the document that Council Member Garodnick referenced. I guess you should have a copy of it, but it's from April 14th, 1998. The list of the properties surveyed were only in

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2 Queens and Manhattan. That's the one I'm
3 referencing. I think it would certainly be
4 important for us to understand if a negative
5 finding is present that a property owner does what
6 he or she ought to do to correct it. If nothing
7 else comes out of this legislation, certainly that
8 would be one of the strongest benefits to make
9 sure that the agency can identify the problem and
10 then take action to do the appropriate enforcement
11 to ensure property owners do the right thing. We
12 all know that property owners don't always. Not
13 all of them, but some don't always do what they're
14 required and is the right thing to do to protect
15 public health. Thank you, Mr. Chair.

16 CHRIS MANNING: That's why we're
17 particularly supportive of the transparency issue.
18 I mean like most city agencies can't be all places
19 all the time and privy to all the information. So
20 to the extent that building residents and tenants
21 could be a part of that process and utilize the
22 city's 311 system to bring these things to the
23 city's attention would be enormously helpful for
24 us and also for those building residents. To
25 Council Member Garodnick's point, I think that's

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2 why in thinking about how best to track and
3 register and respond to these things, that while
4 some of the other Health Department initiatives to
5 bring some of our other registration processes
6 into the 21st Century may not be exact parallels I
7 think the idea is that we would want to make sure
8 that there was a system in place that actually
9 functioned in perpetuity for this purpose. That
10 way you didn't have a lost spreadsheet somewhere
11 that loses some of this information a few years
12 down the line. We're referencing the same study.
13 It looks the evaluations were done in '96. the
14 report was delivered in '98. Neither one of us
15 were here so I couldn't speak to why that was the
16 case. There may actually be some pages missing,
17 which is why you don't see some of the boroughs
18 represented.

19 COUNCIL MEMBER ARROYO: You're
20 correct. It jumps from page two to four and from
21 four to six. Thank you.

22 CHAIRPERSON RIVERA: Thank you very
23 much. Before we move on to my next colleague, I
24 just wanted to follow-up. You stated that to
25 actually 60,000 inspections done within a five-

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2 year period would be extremely costly. There's
3 also the opportunity to do a computer algorithm to
4 cross reference with the hospitals within the City
5 of New York to see if there's any conditions,
6 ailments or diseases that a person comes into a
7 hospital that may have been water-borne. Is that
8 currently being done to cross reference that
9 information?

10 CHRISTOPHER BOYD: Yes. We have a
11 very comprehensive syndromic surveillance program
12 at the Department of Health and with GEP where the
13 Department of Health tracks very closely the
14 emittance of gastrointestinal illnesses to
15 hospitals. In addition, that program also tracks
16 the sale of over the counter diuretics. So if we
17 see an increase in diuretic sales in one
18 particular part of the city we can identify that
19 and then do a proactive investigation to see
20 whether or not that is a result of cross
21 contamination with the water supply or a food
22 borne illness outbreak. So that system is in
23 place. We do get that daily.

24 CHAIRPERSON RIVERA: Are the
25 findings of that information available to the

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2 public for review?

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CHRISTOPHER BOYD: It is. They do an annual report of the syndromic surveillance, which is distributed relatively broadly.

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CHAIRPERSON RIVERA: Thank you. Next we have Council Member Helen Sears, followed by Council Member Inez Dickens.

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COUNCIL MEMBER SEARS: Thank you very much. Thank you, Council Member Garodnick for doing this. I think it's a very good bill. My first question is, can you tell us what are some of the reasons why the structural integrity of a tank has problems, internal and external? What is the lining of the tank? What is it made of?

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CHRISTOPHER BOYD: The building code sets out the parameters for the structural integrity of a water tank. They are generally built out of wood. Some are built out of metal.

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COUNCIL MEMBER SEARS: You see mostly wooden ones. What would make the structure begin to have major problems that a lay person would not know, including perhaps even the owner?

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CHRISTOPHER BOYD: Time.

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COUNCIL MEMBER SEARS: Time? What is the approximate lifespan of a wooden tank for instance?

CHRISTOPHER BOYD: About 30 years.

COUNCIL MEMBER SEARS: Thirty years?

CHRISTOPHER BOYD: So over time you can have degradation of the wood, the appropriate screens that are--

COUNCIL MEMBER SEARS: [interposing] What is the lining of a wooden tank?

CHRISTOPHER BOYD: The tank itself doesn't have a lining.

COUNCIL MEMBER SEARS: It doesn't have a lining. I didn't think it did. Is that something that might help with the loss of structural integrity? That's a technical thing and I don't know.

CHRISTOPHER BOYD: I would defer that to the buildings department as to whether or not that would improve the longevity of a water tank.

COUNCIL MEMBER SEARS: At the risk of sounding a little absurd with the technology

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2 that you have, if I were to ask for the locations
3 of these tanks in my district, would you be able
4 to locate them by zip codes? I know where some of
5 them are because we have quite a few. You've got
6 12,500, so you must know where they all are. So
7 I'm asking a very layman question. You know where
8 they are so how would we know where they are?
9 What would you share with us?

10 CHRISTOPHER BOYD: The Buildings
11 Department is part of the approval of a plumbing
12 system. It documents whether or not a particular
13 building has a water tank or what kind of booster
14 system is there. Our estimate is based on the
15 height of the buildings. So in New York City we
16 have around 12,500 buildings over 6 stories.
17 Depending on where you are in the city that's kind
18 of the cutoff point. If you're above that you
19 generally need supplemental pressure. That could
20 be a booster pump or a water tank. Depending on
21 the size of the building you may have more than
22 one water tank. To answer your direct question,
23 what we would be able to do is to provide you with
24 a list of buildings that would meet that basic
25 criteria. Whether or not the building owner has a

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booster or a water tank would depend on each individual building.

COUNCIL MEMBER SEARS: I think I'll ask for that. When they do have these tanks inspected, is it a self-certification? I think I may have missed that point that you were discussing. I apologize. If I have a tank and I'm responsible for the maintenance of that tank, in communication to you do I fill in a form and it's self-certification that I have to do annually and that's accepted as gospel truth? Because you cannot possibly inspect all those tanks. We know the city and we know what it costs to do that. That means you're really relying on the owner and what that owner says. That goes back to my colleague's question of how we know. So is it self-certification, or is it just a form that they fill in without certifying anything?

CHRISTOPHER BOYD: We're relying on a licensed company to provide the owner with a certificate of fitness. For example, when our inspectors go and do a record check, what they look for is a record from a tank company.

COUNCIL MEMBER SEARS: Licensed in

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the City of New York?

CHRISTOPHER BOYD: Yes, licensed in the City of New York, or a licensed plumber who certifies that the tank was inspected and maintained. It's not a self-certification. It's similar to what DEP does with cross connection controls. All those devices need to be certified by a plumber on an annual basis as being properly maintained. That's the kind of documentation we look for. We look for a licensed individual and company to demonstrate compliance.

COUNCIL MEMBER SEARS: If someone doesn't do this on an annual basis and they skip a year, is there a way of knowing that within your system?

CHRISTOPHER BOYD: Right now we would not know because the individual building is not reporting that to us on an annual basis.

COUNCIL MEMBER SEARS: What would be a way of correcting that that would not be so painful to the department, or that we could help with? The reason for that is we all know that there are building owners that don't quite have the integrity they should. Fortunately, most of

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them do.

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CHRIS MANNING: We almost look at it from the back end. We're looking primarily for evidence of public health issues that may have arisen through some water-borne mechanism, including a water tank. As Chris pointed out, on a daily basis the department collects hundreds of thousands of pieces of data. So we would actually know in fairly real time if there was a water-borne illness outbreak in any particular part of the city. Not just by whether or not people are going to the doctor, but as he pointed out, what they're buying at the drug store. So between that very sensitive system that we operate and complaints that come in from the public. We're focused on evidence that something is wrong in a particular water tank or water tanks. As far as the transparency issue and allowing building residents and tenants to be a part of that system and bring issues to our attention if they believe that their tank hasn't been inspected or it has been inspected but something is off for whatever reason, giving them the ability to ask for the certification results and then presumably if they

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2 found something that alarmed them to contact the
3 Health Department is probably the most efficient
4 way to use the department's resources and to keep
5 tabs on what's happening with these water tanks.

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COUNCIL MEMBER SEARS: So for the
7 public to be so well informed and to be so
8 knowledgeable on it, what are some of the
9 complaints that you get from the public that will
10 cause you to respond? The public are lay people
11 that are not technicians in the quality of water,
12 et cetera.

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CHRISTOPHER BOYD: The quality of
14 water that comes out of the tap is extremely high.

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COUNCIL MEMBER SEARS: I believe
16 that.

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CHRISTOPHER BOYD: If there's any
18 degradation to that we find that the public is
19 very quick to respond.

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COUNCIL MEMBER SEARS: What do they
21 say? What is the complaint? What do they
22 complain about? The color of the water? Is it
23 cloudy?

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CHRISTOPHER BOYD: Exactly. Yes.

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COUNCIL MEMBER SEARS: Is cloudy

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2 water an indication there's something wrong? Is
3 it because it's so foul tasting?

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CHRISTOPHER BOYD: That's correct.

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6 it's foul smelling? Like too much sulfur in the
7 water?

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9 CHRISTOPHER BOYD: Yes. So those
10 calls come to 311. The resident would describe
11 what they're experiencing. That would be routed
12 to DEP as the first chain of the 311 process. DEP
13 would evaluate whether or not there was an
14 operational issue in that part of the city, such
15 as a water main break or planned construction work
16 that might change the quality of the water. If
17 they determine that the issue is with the internal
18 plumbing that would be forwarded to the Department
19 of Health and we would do an independent
20 investigation to see if there was something wrong
21 with the plumbing in that building that might be
22 causing a water quality problem. We respond to
23 all of these complaints. Our experience is that
24 around 99% of them come back with the water
25 quality being safe.

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COUNCIL MEMBER SEARS: Thank you

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very much. Thank you, Mr. Chair.

CHAIRPERSON RIVERA: Thank you very much. Next we have Council Member Inez Dickens.

COUNCIL MEMBER DICKENS: Thank you, Mr. Chair. Thank you for your testimony.

Buildings that are six stories and under are generally required to have a water tank, either rooftop or within the building because the PSI is sufficient, the water pressure is sufficient in the building.

CHRISTOPHER BOYD: That is correct.

COUNCIL MEMBER DICKENS: So buildings that are seven stories and up to what might have to have water tank versus the pressure booster system?

CHRISTOPHER BOYD: That's up to the building owner. The requirement in the building code is to maintain a minimum pressure supplying to the fixtures in the building. The building owner can decide whether or not they want to do that with a series of rooftop or inner floor water tanks or a booster system.

COUNCIL MEMBER DICKENS: Because in most recent construction that I'm looking at in my

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2 community, sans one or two, most of them no longer
3 have the rooftop tanks. Years ago, of course, you
4 saw many rooftop water tanks. But you don't see
5 that so much now. The buildings that seem to be
6 very high see to have the booster system versus
7 the rooftop. I can think really of only one or
8 two that were built in the last eight years in my
9 community that built a rooftop tank. So I was
10 trying to find out if there was a maximum where
11 the rooftop would qualify and after that you'd
12 have to get the booster system.

13 CHRISTOPHER BOYD: No. That's up
14 to the building owner to decide how to supply the
15 appropriate pressure.

16 COUNCIL MEMBER DICKENS: Based upon
17 the plumbing inspection.

18 CHRISTOPHER BOYD: Yeah, based on
19 the plumbing.

20 COUNCIL MEMBER DICKENS: I'm
21 looking at this obsolete test that was done in '96
22 where you said no roof tank, does that mean that
23 there was a tank but within the building and not a
24 roof tank? Do you know what I'm referring to?

25 CHRISTOPHER BOYD: Yeah. Let me

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look at the exact one you're on.

COUNCIL MEMBER DICKENS: Page two for instance. I just happen to be looking on page two.

CHRISTOPHER BOYD: Yes, that would be my supposition as well is that they had an internal tank.

COUNCIL MEMBER DICKENS: It was an internal tank. All right. Those that have a steel cylinder versus the wooden cylinder, aren't there some other attributes that come along with water stored in steel?

CHRISTOPHER BOYD: No. That's a building owner decision.

COUNCIL MEMBER DICKENS: Steel versus wood?

CHRISTOPHER BOYD: Yes. As long as it meets the requirements of the building code.

COUNCIL MEMBER DICKENS: Because it would also have an impact upon the roof.

CHRISTOPHER BOYD: We wouldn't anticipate there being any water quality difference between a wood tank and a steel tank.

COUNCIL MEMBER DICKENS: I'm glad

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2 that my colleague brought this out because there
3 are companies that do these tests that an owner is
4 required to go to. Could something be done with
5 Local Law 11 or with the boiler inspections where
6 the owner is required to get an inspection and
7 it's simply filed? Is that something that is
8 feasible?

9 CHRISTOPHER BOYD: I think probably
10 anything is feasible. Whether or not it's the
11 best and most efficient way to get there I think
12 we'd be happy to think through with the council
13 how best to achieve that goal. But again, the
14 building owners maintaining them in some very open
15 and transparent way and accessible to their
16 building tenants, whether there's some more direct
17 involvement by the Health Department or some other
18 city agency, I think we'd be more than happy to
19 think through that.

20 COUNCIL MEMBER DICKENS: The reason
21 I ask that is because the concern is about are you
22 seeing that a building does have the inspections
23 conducted annually and whether there is a
24 violation or not. As a renter it never occurred
25 to me to go ask the owner to look at the water

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inspection reports, or if indeed there was one. It never occurred to me. So I was just wondering since it wouldn't occur to most renters or buyers. Most occupants would not think about asking about the inspections. Is that something that is feasible that an inspection that is already required to be done, paid for by the owner and conducted by a qualified company that certifies that there are no violations that maybe this could be just filed with the appropriate agency, either DEP or DOH or DOB or whomever.

CHRIS MANNING: I mean it's certainly something that we're more than happy to sit down and try to think through how best to get there.

COUNCIL MEMBER DICKENS: Thank you.

CHAIRPERSON RIVERA: Thank you very much. Next we have Council Member Kendall Stewart.

COUNCIL MEMBER STEWART: Thank you, Mr. Chair. I want to go back to the inspection process. Please clarify it for me if you can. The inspection is done how often? Is it for five years? You say it's being kept for five years.

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2 How often does the inspection have to be done?

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CHRISTOPHER BOYD: The owner of the water tank is required to have it inspected and properly maintained on an annual basis.

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COUNCIL MEMBER STEWART: So you should have an inspection every year.

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CHRISTOPHER BOYD: That's correct.

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COUNCIL MEMBER STEWART: Why would you want to keep the certificate for five years?

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CHRISTOPHER BOYD: Having the certificate kept for five years allows to document. Because we do periodic inspections it allows us to document consistent compliance with an annual inspection. And if we ever did find a significant problem, we would want to understand whether or not it was a recent phenomenon or whether it goes back some period of time.

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COUNCIL MEMBER STEWART: That confuses me a little bit because if one misses the inspection one year and the following year he does the inspection and you have it on file, how would that really help you? Now you have a current inspection, but it wasn't inspected two years ago, how is that going to help you?

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2 CHRISTOPHER BOYD: The owner is
3 responsible for performing an annual inspection.
4 If the owner fails to do that, they have failed to
5 take the appropriate preventative measures to
6 avoid a public health risk. If we come to a
7 building and he's got an inspection for one year
8 but has failed to clean his tank for the previous
9 four, that is a violation and we track that in
10 order to make sure that we get consistent
11 compliance. So we go back five years as a way of
12 making sure that building owners are consistently
13 meeting the requirement of the regulation.

14 COUNCIL MEMBER STEWART: Who keeps
15 the record, the owner or the Department of Health?

16 CHRISTOPHER BOYD: The building
17 owner is required to keep the documentation on
18 file and make it available upon our request.

19 COUNCIL MEMBER STEWART: Tanks are
20 being used for different reasons. Some of them
21 are for water that is being used because of
22 depression and all of that and people use the
23 water for drinking and other purposes. But it's
24 also used for air conditioning in some instances
25 and being used solely for bathroom purposes. Are

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those tanks being inspected the same and the records have to be kept the same?

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CHRISTOPHER BOYD: The regulation applies only to tanks that are related to drinking water.

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COUNCIL MEMBER STEWART: How do you determine during an inspection whether those tanks are not solely used for drinking purposes? What I'm saying is if you go out in certain parts of the city you may see tanks on the roofs. If you go as an inspector and you want to know if they've been keeping the records, is there any way you can determine from the city point of view that those tanks are being used for drinking purposes only?

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CHRISTOPHER BOYD: Yes, we can.

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COUNCIL MEMBER STEWART: You can?

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CHRISTOPHER BOYD: Yes.

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COUNCIL MEMBER STEWART: So in other words, the question that was asked earlier about tanks, you know how many tanks are there in the city and where they are located?

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CHRISTOPHER BOYD: When we do an inspection the inspector will be able to make a determination as to whether or not the tank onsite

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2 is being used only for fire suppression purposes
3 for example, or whether the tank is connected to
4 the drinking water supply. There are some tanks
5 that are set up only for fire protection purposes.
6 Only tanks that are connected to the drinking
7 water supply are required to have an annual
8 inspection.

9 COUNCIL MEMBER STEWART: I'm just
10 trying to figure how you determine that. That's
11 all I'm trying to do. There are many tanks out
12 there. People install tanks. From the point of
13 view of the city there are plans that have to be
14 drawn and certified and all of that, but whether
15 you connect with the building department to make
16 sure that those tanks that have been installed
17 that they're being used for the purpose that you
18 want to inspect.

19 CHRISTOPHER BOYD: The inspector
20 would make that determination during his
21 inspection in the building.

22 COUNCIL MEMBER STEWART: During the
23 inspection?

24 CHRISTOPHER BOYD: That's correct.

25 COUNCIL MEMBER STEWART: I don't

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2 see how they would be able to do that, how they
3 would see the pipes are connected. I mean all
4 they may see is the tank. But whether the tank is
5 being used for drinking purposes or not, I don't
6 see how the inspector can determine that at the
7 site. So that is one problem I see. Another
8 problem I see is water when it's being still you
9 can have different organisms that develop after a
10 time such as fungi, mold and things like that.
11 They may not be to a point whereby it causes an
12 epidemic in an area, but the fact is fungus is
13 something that would cause an infection on the
14 skin or even in the lungs or wherever. But on the
15 skin basically you take a shower and the fungus
16 begin to grow. If it comes through the water, if
17 it's there and there's no way to really tell it
18 may be from the lining of the tank that has built
19 up after a while and it can build up in months,
20 not years, in month. You say one inspection per
21 year and you keep it for five years, but the point
22 is I don't see you have a strict way of really
23 telling that each water tank is really being
24 inspected on a regular basis. You're saying
25 they're supposed to keep the records, but a while

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ago you said they don't have enough inspectors to go and inspect all these tanks on a yearly basis. So I don't understand how we're really protecting the public based on the fact that these things can happen in a situation where you have a tank and it's not being inspected on a regular basis. If I'm opening up a can of worms, maybe I should stop there. But you understand where I'm going with that?

CHRIS MANNING: I think your point is that the current requirements is for an annual inspection, but your point is that things could build up more rapidly inside of a year and how do you know if that's the case?

CHRISTOPHER BOYD: Are you asking if we should have building owners inspect and clean out more than once a year?

COUNCIL MEMBER STEWART: I'm not sure that you identify who should be inspected properly on a regular basis. That's the first issue. Because we have different types of tanks, or different tanks carrying water for different purposes. I just want to make sure that we have a proper system whereby the public is being

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2 protected from water that might be contaminated.

3 It may not be a pandemic, it may not be an

4 epidemic in the city based on that, but the fact

5 is people should be taken care of.

6

CHRISTOPHER BOYD: We have no
7 evidence that anyone is getting sick from the
8 water delivered out of their tap.

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COUNCIL MEMBER STEWART: Well, you
10 may not have evidence, sir, but the fact is that
11 when people get sick, they don't come to you.
12 They go to their pharmacist and they buy some skin
13 cream to take care of the problem. That's what
14 I'm saying. It's only when it becomes and
15 epidemic that we really deal with it.

16

CHRISTOPHER BOYD: The water that's
17 delivered from the city carries an appropriate
18 chlorine residual to keep all bacterial growth in
19 check. We would not anticipate there being any
20 instances where someone taking a shower would get
21 a fungus from the water coming out of their
22 shower.

23

COUNCIL MEMBER STEWART: Let me
24 give you an example of how you can tell that molds
25 and fungus really do grow on surfaces. Let me

1
2 give you an example. If you have a fish tank,
3 that water came from the tap, which is supposed to
4 have chlorine to control the fungus, isn't that
5 so? But if you leave the tank there for a while,
6 after a couple of weeks the sides of that tank
7 develop the mold and fungus. They grow. So I'm
8 saying the same thing can happen with a tank
9 that's on the roof of the building. If you're
10 only inspecting it once a year or if you let it go
11 on for more time, then you have a problem.

12 CHRISTOPHER BOYD: Are you
13 recommending that we have the building owner
14 disinfect the tank more than once a year?

15 COUNCIL MEMBER STEWART: I think it
16 should be looked at much more often. It's
17 something that should be looked at. That's what
18 I'm saying.

19 CHRISTOPHER BOYD: I think we can
20 take that under advisement. Thank you.

21 COUNCIL MEMBER STEWART: I think
22 I've taken up enough time, sir.

23 CHAIRPERSON RIVERA: Thank you very
24 much for your questions. Next we have Council
25 Member Inez Dickens for some follow-up.

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2 COUNCIL MEMBER DICKENS: I just had
3 a question about civil penalties. The inspections
4 that an owner is required to do is annual
5 inspections. Is it any time during the course of
6 a year and what determines the year? Is it a
7 calendar year? Is it the fiscal year?

8 CHRISTOPHER BOYD: When we do our
9 inspections we hold owner to an annual year cycle.

10 COUNCIL MEMBER DICKENS: Based on
11 the calendar?

12 CHRISTOPHER BOYD: We expect to see
13 at least one certified cleaning per annum.

14 COUNCIL MEMBER DICKENS: So during
15 the calendar year? Any time during the calendar
16 year?

17 CHRISTOPHER BOYD: That's correct.

18 COUNCIL MEMBER DICKENS: In '07 I
19 might have done it in January and in '08 I might
20 have done it in December.

21 CHRISTOPHER BOYD: That's correct.

22 COUNCIL MEMBER DICKENS: So there's
23 no specified time.

24 CHRISTOPHER BOYD: There is not a
25 specified time.

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CHRISTOPHER BOYD: Just during the course of a calendar year.

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CHRISTOPHER BOYD: I think that's a reasonable thing for us to think about. These are systems that building owners are maintaining all the time. The same way they maintain their boiler and they same way they maintain their elevators.

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COUNCIL MEMBER DICKENS: So there's no such thing as being late.

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CHRISTOPHER BOYD: That's correct. As long as you're within that year that's what we expect to see.

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COUNCIL MEMBER DICKENS: One other thing on the civil penalties. If during the course of five years I do the inspection every year and miss one year and you come out in year six, tell me how you calculate the civil penalty. Please tell me how you would calculate the civil penalty.

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CHRISTOPHER BOYD: The civil penalty would be calculated based on the violation. If we come out and give a violation the violation would be per occurrence. So if we come and identify that you have failed to maintain

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2 your water tank as required for four years--

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COUNCIL MEMBER DICKENS:

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[interposing] No. I mean if you didn't file the

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report. You come out periodically and inspect. I

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am supposed to do an inspection annually and

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maintain those records for five years. That's

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reasonable. You come out and find that one year I

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omitted doing it. I did it for all years but one

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year I didn't. The civil penalty that you would

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assess me, is it based upon per occurrence or is

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it based upon something else?

13

CHRIS MANNING: So if for example

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two out of the five years there weren't inspection

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records would there be--

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COUNCIL MEMBER DICKENS:

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[interposing] I said I did it every year.

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CHRIS MANNING: But one. So would

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it be for the year that didn't have the inspection

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result.

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COUNCIL MEMBER DICKENS: Yeah,

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there was one year that didn't. Is it per

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occurrence? Is that the civil penalty, per

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occurrence, or is it based upon a timeframe?

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CHRISTOPHER BOYD: Yes, it's per

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2 occurrence. It would be per occurrence. The
3 actual assessment of the fee is adjudicated at the
4 tribunal. We would write the violation and the
5 owner would get a hearing date with the tribunal.
6 And then at the tribunal a penalty assessment
7 would be given.

8 COUNCIL MEMBER DICKENS: So it's
9 determined by the adjudicator?

10 CHRISTOPHER BOYD: That's correct.

11 COUNCIL MEMBER DICKENS: So it
12 could vary.

13 CHRISTOPHER BOYD: Yes, based on
14 the judge.

15 COUNCIL MEMBER DICKENS: For my
16 colleagues building the hearing officer may say
17 because this is your first occurrence so you pay
18 \$200. He may look at me and say well, it's your
19 first occurrence but you're going to pay \$300.

20 CHRISTOPHER BOYD: I don't believe
21 they have that kind of leeway.

22 COUNCIL MEMBER DICKENS: That's
23 what I'm saying. Is there a set civil penalty
24 structure per occurrence? That's what my question
25 is.

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2 CHRISTOPHER BOYD: Yes, I believe
3 it's \$2,000 per occurrence.

4 COUNCIL MEMBER DICKENS: Per
5 occurrence, not based upon the first or the second
6 or third? It doesn't go up the more frequent that
7 you find that I do this?

8 CHRISTOPHER BOYD: I would have to
9 get back to you on that?

10 COUNCIL MEMBER DICKENS: Could you
11 please because I'd like to know how the fee
12 structure is.

13 CHRISTOPHER BOYD: Yes. Often
14 there is an escalating scale based on the number
15 and frequency of the violation. So we can get
16 back to you on that.

17 COUNCIL MEMBER DICKENS: Would you
18 see that my chair gets that?

19 CHRISTOPHER BOYD: Yes.

20 COUNCIL MEMBER DICKENS: Thank you.

21 CHAIRPERSON RIVERA: Thank you. We
22 have a follow-up question Kendall Stewart.

23 COUNCIL MEMBER KENDALL: I want to
24 follow-up on the violations part of this. If an
25 inspection is done and it has been 14 months since

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2 one was done, so that means it's in violation. Is
3 there any corrective measure that this person can
4 take? Let's assume that he does the inspection at
5 that time and file it. You have given him a
6 violation. Now that you've done the inspection
7 and you see that he's in violation, is there any
8 corrective time that is given or measure that he
9 has to take to be in line with what's supposed to
10 be done? Any measure that you can think about?
11 Because what you're saying here is that you keep
12 records for five years, but if by chance the guy
13 does not have records for the second year that
14 you've seen in your system, he's going to be in
15 violation. There is a fine for being in violation
16 because of that inspection. But there's no
17 measure or way for him to correct that. That's
18 what I'm understanding now.

19 CHRISTOPHER BOYD: That's correct.

20 COUNCIL MEMBER KENDALL: To me I
21 don't think it should be that way either. First
22 of all we have transfer and sale of buildings that
23 may have a water tank. The previous owner may not
24 have done the inspection. And now the new owner
25 has done the inspection in time. And because

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2 you're doing an inspection you're saying that if
3 there is a missed inspection within the last five
4 years where you keep records, that person is in
5 violation.

6 CHRISTOPHER BOYD: It would be
7 inappropriate to give an inspector the authority
8 to decided whether or not to impose a violation.
9 An owner, if he thought the violation was
10 inappropriate could address the mitigating
11 circumstances at the tribunal. And the
12 administrative law judge would make that
13 determination. It is not appropriate for an
14 inspector to be onsite and to observe a violation
15 and have the independent to, in a sense, ignore
16 the occurrence of that violation. It is a much
17 more legitimate, objective and transparent process
18 for inspectors to cite violations that they see.
19 If an owner has a mitigating circumstance that can
20 go before an administrative law judge who can
21 weigh those circumstances based on the law and
22 determine whether or not a fine should be given.

23 COUNCIL MEMBER KENDALL: But what I
24 am saying is that usually time is given to make
25 corrective actions. In other words, I'm saying,

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2 if you go to a building and you have seen
3 something, you may issue a citation, but you can
4 give time to correct it. Most of the city
5 departments will have provisions for that. You
6 have ways in which you can correct that. If you
7 go to a building and there's something, they give
8 you time to correct it. I'm asking if there's
9 time to correct the problem, even if there's an
10 appeal. There seems to be no form of really
11 correcting this problem.

12 CHRISTOPHER BOYD: Are you
13 suggesting that we would allow someone who did not
14 perform the required inspection in 2006 to take a
15 corrective action that would avoid a violation in
16 2008?

17 COUNCIL MEMBER KENDALL: Well, you
18 just said a while ago that you can go anytime and
19 inspect. You said it must be inspected on a
20 yearly basis. So if you go to a building and they
21 changed something on the boiler, they give you
22 time to correct it or file the papers to give you
23 time to do it.

24 CHRISTOPHER BOYD: An owner who
25 cannot produce the required certification onsite

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2 at the time of the inspection is given three days
3 to supply the paperwork.

4 COUNCIL MEMBER KENDALL: To supply
5 the paperwork? What I'm saying is usually you
6 given them maybe 30 days to make the correction.
7 If there are building violations right now, they
8 usually give you time to make the correction. The
9 onus is upon the building owner, yes. But
10 sometimes you may miss something. All I'm saying
11 is what is the time that you're giving someone to
12 make the correction? In most of the building
13 violations that we have they are given time to
14 correct, whether it's 30 days or 40 days or
15 whatever. They're given time to make sure it's
16 corrected. Then you file an affidavit that it's
17 been corrected. I don't see that here. Even if
18 it's two days after the year that you're saying
19 that you're supposed to have it within a year.

20 CHRISTOPHER BOYD: If we went out
21 and the inspection results were not available, if
22 they could produce them for within that calendar
23 year within three days, then it would go away.
24 But I don't think that we would withdraw it. The
25 expectation is that the building owners will

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2 comply. Even if they're out of compliance and
3 it's been 14 or 15 months, that they would in
4 short order get an inspection of their water
5 tanks, regardless of the circumstances. I don't
6 believe that we would withdraw the violation if
7 they went out and had an inspection done shortly
8 after being found in violation. We would not
9 withdraw the violation simply because they took
10 that action. The expectation is that the building
11 owners will have their inspections done on an
12 annual basis and be able to produce the
13 documentation. They do get a grace period if they
14 can't produce the documentation. To do so would
15 essentially wipe out every violation that the
16 department would issue in this respect. Building
17 owners would wait until we issued a violation and
18 then schedule their inspection, only to have us
19 come back and take out the violation. I think it
20 would lose some of the teeth of the enforcement.
21 You don't call for an inspection. You have
22 inspectors going out all the time. You don't have
23 to call for an inspection. My point is basically
24 that sometimes how it's being done in New York
25 City here is we leave it up to the inspector to

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2 just issue violations without using their
3 discretion. We have to make it in a way that they
4 should be able to use their discretion. If there
5 is something wrong and you notify them that
6 something is wrong, they should be give some sort
7 of time to correct that problem. In most
8 instances that is what is happening. But in this
9 case you're saying there is no time for you to
10 make the correction. You're being issued a fine
11 of \$3,000 or \$7,000 or \$10,000 for something that
12 you have found. And without them even getting an
13 opportunity to address it, they have to pay that
14 fine. That's what I'm saying. And it's only in
15 this case that I see that happening. So if we can
16 find some way in which they'd be given a grace
17 period to correct the problem. We see that in
18 much more grievous situations. As I explained to
19 you, they give you violations whether it's a
20 boiler or it's an air conditioner on the roof or
21 something, they give you time to make the
22 correction. And if you don't make the correction
23 within that time, then you pay the fine. That's
24 what I'm saying. They should be given some sort
25 of opportunity to make that correction. Because

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most of the time they may not even know that there is a violation.

CHRISTOPHER BOYD: We'll take that under advisement.

COUNCIL MEMBER KENDALL: All right, thank you.

COUNCIL MEMBER DICKENS: Thank you so much. Do any of my colleagues have any questions? I have one last question. Who is qualified to conduct this type of inspection?

CHRISTOPHER BOYD: When we look for the records, we look for a tank cleaning company which does this as part of their normal course of business, or a licensed plumber. But it has to be either one of those. The owner can't say their super looked at their tank, unless that super is a licensed plumber and indicates under his seal that he approved that tank.

COUNCIL MEMBER DICKENS: Are tank cleaning companies qualified to determine whether there's coli in the water, or do they just clean? Are there varying types of cleaning companies?

CHRISTOPHER BOYD: There are different tank cleaning companies in the city.

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2 Some of which are larger than others. They take
3 water samples when they do the collection.

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COUNCIL MEMBER DICKENS: So all
5 water cleaning companies take samples to test and
6 not merely to empty and clean the tank. Is that
7 what you're saying? I want to be clear. I want
8 it for the record.

9

CHRISTOPHER BOYD: It depends. I
10 don't believe it's uniform that a water quality
11 sample of every tank is take on an annual basis.

12

COUNCIL MEMBER DICKENS: So then a
13 tank cleaning company really may not be qualified
14 to conduct the test that you're talking about.

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CHRISTOPHER BOYD: The tank
16 cleaning company would generally send that test
17 out to a certified lab. We wouldn't expect a
18 plumbing company to have a lab capable of doing
19 water testing. That would be sent out to a
20 certified lab.

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COUNCIL MEMBER DICKENS: So then
22 the sampling can be taken by a licensed plumber
23 you're saying and/or by a tank cleaning company?
24 I just want to get a clear understanding.

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CHRISTOPHER BOYD: I think we have

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2 to separate the collection of a water sample and
3 the testing of the water sample. So a licensed
4 plumber would be capable of collecting a water
5 sample from a water tank. That water sample would
6 be tested by a lab. So a certified lab would then
7 determine whether or not the water sample met the
8 State Sanitary Code.

9 COUNCIL MEMBER DICKENS: Pardon
10 that I don't thoroughly comprehend. The Health
11 Code requires that an owner maintain records and
12 do annual conducting of sampling of their water
13 tanks. That as part of that test to ensure that
14 there's certain bacteria that's not in the water.

15 CHRISTOPHER BOYD: Say that again.

16 COUNCIL MEMBER DICKENS: I want to
17 know what that test consists of. That's what I
18 want to know.

19 CHRISTOPHER BOYD: The Health Code
20 does not require that a water sample be taken on
21 an annual basis.

22 COUNCIL MEMBER DICKENS: Just that
23 the tank is cleaned?

24 CHRISTOPHER BOYD: The Health Code
25 requires that there be an inspection of the tank.

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And if a problem is identified that the tank be cleaned and maintained appropriately.

COUNCIL MEMBER DICKENS: Well maybe I don't understand what the inspection consists of. Maybe we need to get to the basics here. What constitutes an inspection? Because maybe I don't understand what an inspection really means. Does it mean just looking at it? Does it mean drinking it? I mean, when you have a pool anybody can go in and take a sampling of the water and send it in for a test. Maybe I don't understand what that inspection consists of. Maybe that's the first thing that we need to have a thorough understanding of what exactly constitutes a valid inspection report that you find acceptable when you do your five-year inspection or whenever.

CHRISTOPHER BOYD: The Health Code is not explicit as to the kind of activity that needs to occur when an inspection takes place. It requires an inspection and it requires the identification as to whether or not there is foreign material, whether or not there's a loss of structural integrity. The New York City Plumbing Code provides specific direction as to the kind of

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things that have to happen during an annual inspection.

COUNCIL MEMBER DICKENS: Thank you. You said as part of the inspection a loss of structural integrity is what the DOH is looking at. Did I hear that correctly? That part of that inspection looks to see if there's a loss of structural integrity. Is that right?

CHRISTOPHER BOYD: That's correct.

COUNCIL MEMBER DICKENS: So the tank cleaning company, are they actually capable of really determining whether there is a loss of structural integrity?

CHRISTOPHER BOYD: Just to clarify, when we say structural integrity we mean observable leaks, is there water coming out of the tank, do we see that the cover of the water tank has lost its integrity, it's open to the environment, there's an opportunity for harborage to enter that tank. That's the kind of issue that we're most concerned with when they do the annual inspection.

COUNCIL MEMBER DICKENS: Because I would think that loss of structural integrity is a

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tad bit more than if it's an observable leak.

CHRISTOPHER BOYD: Our concern from a public health standpoint is whether or not there is an opportunity for foreign material to enter the water tank and compromise the integrity of the water being delivered to the building. That is the primary concern.

COUNCIL MEMBER DICKENS: So when you look at the inspection reports of a building, as part of that inspection, there has been some testing of the water?

CHRISTOPHER BOYD: The inspection does not require testing of the water.

COUNCIL MEMBER DICKENS: Just really the loss of the structural integrity then. What else constituted the inspection? I want to make sure I write this down.

CHRISTOPHER BOYD: It would be the buildup inside the tank, if there was sediment in the tank. If there was foreign material in the tank, that would be cleaned out and removed from the tank. The interior of the tank would be washed down. Depending on the condition, it might be hyper chlorinated to disinfect the tank.

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2 COUNCIL MEMBER DICKENS: So we're
3 really talking about a visual inspection and a
4 cleaning and not actually to ensure that the water
5 is clean for drinking.

6 CHRIS MANNING: To be clear, a
7 clean tank presumes that the water that's flowing
8 from it because of the work that the Health
9 Department does to ensure that the integrity of
10 the water system as a whole. So if you have a
11 clean tank and you have clean water going into
12 that tank, you wouldn't have any reason to believe
13 that there's a contamination.

14 COUNCIL MEMBER DICKENS: What does
15 the requirement say? Does the requirement say
16 that it's a requirement for an inspection or a
17 requirement for a cleaning? Please clarify this.

18 CHRIS MANNING: The requirement in
19 the Health Code is for an inspection. Then based
20 on that inspection they are required to take
21 appropriate action to ensure that the tank meets
22 the applicable requirements.

23 CHRISTOPHER BOYD: In addition to
24 that the Building Code provides specific direction
25 as to the kind of activity that has to happen on

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an annual basis to clean and disinfect the water tanks.

COUNCIL MEMBER DICKENS: So then you're saying that an inspection actually is not really an inspection to ensure that the water is drinkable pursuant to the standards that has been already preset, but actually as to whether visually there's any sediment or visually there's any foreign matter or visually there is a leak or visually the tank cover is not in place. Is that what you're telling me?

CHRISTOPHER BOYD: That's correct. That's what's required in the Health Code. The Building Code requires specific activity to happen on an annual basis that requires the cleaning, draining and disinfection of the interior of the water tank.

COUNCIL MEMBER DICKENS: Thank you. Council Member Sears?

COUNCIL MEMBER SEARS: I guess if we have to use the word assumption, the assumption is that when it reaches that wooden tank that the city has done everything to purify that water to make it proper for drinking so that when it gets

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2 into these tanks that the tanks are receiving
3 purified water. Is that correct?

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CHRISTOPHER BOYD: That's correct.

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6 We have some of the best municipal water in the
7 globe coming to the faucets of the City of New
8 York.

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9 COUNCIL MEMBER SEARS: I understand
10 that. That means that the inspection then is not
11 to test the quality of the water because that has
12 already been done. Our understanding in this
13 council is that the testing in our reservoirs and
14 everything else is done a daily basis. That means
15 that when it gets to the watershed what we're
16 looking at, which is important, is that the
17 structural integrity is maintained and that's why
18 I had raised the questions before. So that means
19 that we are safe to assume that the quality of the
20 water, which has its journey from where it starts
21 and how it gets distributed into our faucets, that
22 the city on a daily basis is absolutely checking
23 that. When it reaches the system in which it
24 flows through and the distribution of it is pretty
25 well having the integrity of the quality of the
water is ensured. Am I correct?

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CHRISTOPHER BOYD: That is correct.

COUNCIL MEMBER SEARS: That means then that what is essential is that this pure water that gets into the wooden tank that the tank is prepared to receive this purified water. So the inspections are to maintain that the tanks are prepared to receive this purified water for drinking.

CHRISTOPHER BOYD: That's correct.

That was a great summary of why the inspection protocol is the way it is. We know that the water that's entering the building is safe and clean. The only opportunity for that water to be compromised would be the introduction of some foreign material from the water tank.

COUNCIL MEMBER SEARS: We have some of the best drinking water anywhere and I always say that. I think I would agree with my colleague, that because the city goes through this amazing effort is that we have to be assured that the efforts and the money that the city spends to guarantee this quality water is that those who have these tanks are prepared to receive quality water. It seems that is a very crucial element.

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2 You know there are 12,500 tanks and there may be
3 more, but it's the owners of those tanks are the
4 ones that can contaminate the water, not the
5 system that the city uses and is checking and what
6 it does to maintain the quality of the water. So
7 I think the basic question as it relates to the
8 bill is not the quality of the water, but the
9 potential for these tanks to be so contaminated by
10 either the neglect of the building owners, or the
11 erosion of these wooden tanks through the loss of
12 structural integrity. Now, it's a good question
13 as to just how responsible do we hold the owners
14 to maintain that structural integrity. I think
15 that's the issue then, not the quality of the
16 water. That is the basic issue. I asked the
17 question of where are they in my district and I
18 was being parochial for a moment. You asked for
19 community input and you're absolutely right.
20 Believe me; I've always had a thing about these
21 tanks. I happen to think they're great when I
22 look at them. However, there is a responsibility
23 to that, and it seems that building owners cannot
24 be neglectful in that area. I think that is
25 really what my colleague is getting at. So how do

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2 we go about having these building owners
3 responsible for maintaining those tanks to receive
4 the purified water that the city works and spends
5 all our dollars for to maintain the quality of it?
6 I know that water comes through the process and by
7 the time it reaches us it's drinkable in a very
8 fine way.

9 CHRISTOPHER BOYD: A couple of
10 different things come to mind. As with many
11 things, a little bit of education can go a long
12 way. Many of the buildings of this size are
13 represented in some way by very responsible and
14 well organized organizations, associations and
15 things like that. There would be opportunities
16 through various newsletters. Just getting the
17 word out and reminding people of the requirement I
18 think would go a long way. Similarly, the owners
19 and residents of these buildings live in your
20 districts and perhaps we could think about putting
21 something together that you could put in a
22 newsletter that would remind both owners of their
23 responsibility and also tenants of their building
24 owner's responsibility. And then I think taking
25 that one step further, making the results more

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transparent and having building tenants and residents sort of hold their building owners accountable I think would probably go a long way towards achieving that goal.

COUNCIL MEMBER SEARS: I would agree with that. I think it certainly is a necessary step for compliance with a bill that hopefully will pass in the council. Thank you.

COUNCIL MEMBER DICKENS: Thank you. Council Member Stewart and Garodnick?

COUNCIL MEMBER STEWART: That raises a lot of question now as to what the inspection is all about. If you're not going to be testing the water quality that comes from these tanks, then something is missing. Every so often we have a water main break and there's a problem. All of us, whether it's a tank or the pipes, we get our water from the same place. That water is contaminated somehow. And we are told before you use the water, you must boil it. That water that gets into the tank is being stored there. So if you're not testing that after those instances then something is wrong. So to say that you're not testing the water quality that comes from the

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2 tank, then something is missing. That's why I
3 raised the issue of other organisms living and
4 growing and breeding in the tank or on the walls
5 of the tank. And if you are going to wait a year
6 or even more than a year before you can really
7 inspect and test it, and as a matter of fact, the
8 inspection and testing is not on the water
9 quality, it's on the structural integrity and the
10 other thing that you talk about, and then
11 something is wrong. I think you need to look at
12 that. You need to look at the fact that these are
13 the tanks that stores the water. That water could
14 have been from after a water main break with
15 sediment and all those things in the bottom. If I
16 did an inspection today of my tank and then
17 there's a water main break next week, is there any
18 onus upon me to really check it and see what is in
19 the tank after the water main break? Those are
20 the things we have to look at. I don't see here
21 that we are addressing that issue. I don't see
22 here whereby problems that develop within those
23 tanks are being looked at within that year that
24 you're saying that they must be inspected. And
25 the inspection that you're talking about is not an

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2 inspection of the quality of the water that people
3 are using, but just on the visual structural
4 outlook of the tank. To me that's not enough.
5 That's not enough and that creates a bigger
6 problem because people get diseases from water-
7 borne bacteria and fungus and all these different
8 things. So to me there needs to be something more
9 done when we have a water tank on the roof. What
10 you said is an inspection, that's no inspection.
11 That's really not an inspection. Not of the
12 water. People are using the water. Anything can
13 happen to them. You're saying that good quality
14 is going into that tank, but when? If it's a tank
15 that stores water, sediment, bacteria and all of
16 those things can be in there brewing on the walls
17 of those tanks. It's not inspected, especially
18 after a water main break; you don't have any
19 provisions for doing an inspection. So I would
20 want you to address that. I want you to look at
21 that in the future.

22 COUNCIL MEMBER DICKENS: Thank you
23 so much.

24 CHRIS MANNING: If I could just
25 respond for two seconds. I want to be very clear

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2 to separate out issues relating specifically to
3 the water tank versus the extremely rigorous water
4 quality assurance program that DEP and DOHMH have
5 in place. Every year DEP issues a very
6 comprehensive drinking water quality report, as
7 Chris said earlier, more than 200 samples a month
8 taken from internal sources to lab test drinking
9 water. Broken water mains and things like that
10 are not directly related to the integrity or the
11 cleanliness of the water tank. There are specific
12 actions that DEP and that DOHMH would recommend
13 after specific acute events. But as a general
14 matter, those things are all handled separate and
15 apart from. So they're not one in the same and
16 not mutually exclusive for that matter. So I
17 think we should all be very clear that the city's
18 drinking water is safe.

19 COUNCIL MEMBER STEWART: Sir, I
20 understand fully what you are saying, but all I'm
21 trying to say is that we agree that the water
22 before it gets there it's tested and all of that.
23 I am looking that the water that leaves that tank
24 because there are many times we have problems with
25 the water if something happens on the way there.

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2 And if something happens on the way there we don't
3 really do any testing and there should be some
4 form or some method. As a matter of fact, you
5 should say that in a specific area if you're going
6 to give a boil order advisory to boil water before
7 drinking, that it's good for washing, but is not
8 good for drinking. You should boil the water.

9 The same principle should be given to these tanks
10 after a while and have them tested. Because
11 remember, if you accumulate water and it is there
12 for a while, even though you may replace it in a
13 form, because it's in a tank the bacteria and the
14 sediments and those things remain in that tank for
15 a longer period of time than in the pipes. If
16 you're not going to do a test as to that water in
17 that tank, when you tell people that the water is
18 good for them to drink in the normal
19 circumstances, with the tank it will not be
20 normal. It will not be right because remember,
21 there's water that remains there in that tank for
22 a period of time before it gets replaced.

23 CHRIS MANNING: So the
24 recommendation that we'll take back that you would
25 like us to consider more frequent inspections and

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2 more action on the part of building owners over
3 the course of the year. We can certainly take
4 that back and discuss it.

5 COUNCIL MEMBER STEWART: I would
6 recommend that after there is a water main break
7 or whatever in a specific area, those water tanks
8 should be tested, or the water itself should be
9 inspected and tested. Something should be set up
10 because you're leaving it to the folks that get
11 sick. I could give you my papers that my water
12 tank was tested last week. But the tank has been
13 broken today. You're telling me that that water
14 is good? That if there's bacteria that got into
15 the system and came to my tank, but because it was
16 inspected last week that means the water today is
17 good. All I'm saying is basically you need to do
18 something whereby you put the responsibility that
19 something is done to protect the constituents of
20 the city.

21 CHRIS MANNING: Certainly if anyone
22 at any point has any concerns about the color, the
23 odor, the taste of their drinking water regardless
24 of whether or not they think it's something with a
25 tank or elsewhere they should call 311 and we'll

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work with DEP to make sure that everything is okay.

COUNCIL MEMBER DICKENS: Thank you so much. Council Member Garodnick?

COUNCIL MEMBER GARODNICK: Thank you for your answers to all the questions today. I heard what you said on the subject of the Health Code not being explicit about what needs to happen. You're correct about that. In Section 141.03 it essentially says when the inspection reveals the existence of foreign matter or the necessity of removal of scum or other objectionable matter, surface incrustation, the owner, agent or other person in charge shall correct the condition by causing the tank to be emptied and cleaned. That really is as much direction as the Health Code provides. You did not that the Building or the Plumbing Code gives more explicit direction. So just to make sure that I understand, there is a specific provision in the Building or the Plumbing Code which says what you must do in order to be in compliance with this particular rule 141.03 of the City Health Code?

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CHRISTOPHER BOYD: It doesn't reference the City Health Code in the Plumbing Code. It does lay out the responsibilities of a water tank owner on an annual basis to drain, clean and disinfect the water tank. The New York City Plumbing Code lays out a specific requirement for the actions that need to be taken on an annual basis to clean, drain and disinfect that water tank, in addition to the requirements in the Health Code.

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CHRIS MANNING: It may even be safe to say that theirs is a maintenance requirement and ours is an inspection requirement. Is that fair?

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CHRISTOPHER BOYD: I think that is fair. The other significant difference is that the Health Code requires the maintenance of the record for five years and the Building Code doesn't require that.

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COUNCIL MEMBER GARODNICK. Right. So here is my question for you then. Should the Health Code specify what needs to happen here in order for us to be satisfied that it is safe?

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CHRISTOPHER BOYD: We're in the

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2 process of updating Article 141 of the Health
3 Code.

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COUNCIL MEMBER GARODNICK: We are
too.

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CHRISTOPHER BOYD: We would be
happy to talk with the council about the
parameters and the specifications that would be
most appropriate.

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COUNCIL MEMBER GARODNICK: So
you're open to the possibility that perhaps the
Health Code should set it forth right there in
Section 141.03 or whatever its subsequent
iteration is.

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CHRISTOPHER BOYD: Yes.

COUNCIL MEMBER GARDONICK: That it
explain exactly what needs to happen here.

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CHRISTOPHER BOYD: Yes.

COUNCIL MEMBER GARODNICK: Thank
you very much.

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COUNCIL MEMBER DICKENS: Thank you
so much. Seeing that there are no further
questions, seeing that there are no further
colleagues, thank you so much, Mr. Boyd and
Manning for your testimony and for coming down.

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2 Thank you.

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CHRISTOPHER BOYD: Thank you.

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5 COUNCIL MEMBER DICKENS: The next
6 panel, in support of Intro. 408-A, Mr. Terence
7 O'Brien of the Plumbing Foundation and Mr. Josh
8 Nachowitz, New York League of Conservation Voters.
9 Please come up and take a seat. For the record,
10 Mr. Harvey Epstein from the Urban Justice Center
11 was here and left written testimony to be placed
12 in the record and I'm so ordering. Whenever
13 you're ready, please state your name and your
14 affiliation.

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16 JOSH NACHOWITZ: My name is Josh
17 Nachowitz. I am the state policy director for the
18 New York League of Conservation Voters. I'm happy
19 to be here today to testify in favor of Intro.
20 408-A. Protecting the purity and safety of our
21 drinking water is one of the most important goals
22 of New York City's environment community. This
23 legislation will create important safeguards for a
24 vital resource that too many of us take for
25 granted. New Yorkers use 1.1 billion gallons of
water a day. Access to clean drinking water is
absolutely fundamental for life in the city.

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2 Environmental organizations have traditionally
3 focused our efforts to protect the city's vast
4 upstate watershed through land protection
5 agreements. As a result of these efforts and the
6 city's continuing vigilance, New Yorkers are
7 treated to one of the cleanest big city water
8 supplies in the United States. The thousands of
9 water towers that dot the skyline are also an
10 important part of a vast infrastructure system
11 that ensures all New Yorkers have access to
12 quality drinking water. Unfortunately, these
13 ubiquitous structures have the potential if
14 they're not cleaned and maintained properly to
15 cause the water stored in them to deteriorate and
16 possibly become unsafe. Water left in un-cleaned
17 or poorly maintained water tanks can play host to
18 algae and other potentially dangerous bacteria.
19 Cleaning and maintaining these vessels is a simple
20 and relatively inexpensive activity that should be
21 conducted on a regular basis. Intro. 408-A would
22 significantly enhance the city's regulation of
23 these important components of our water
24 infrastructure. This legislation would provide
25 for public access to the records of water tank

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2 inspections, thus allowing for far greater public
3 oversight of the cleanliness of our drinking
4 water. NYLCV urges the council to continue its
5 long tradition of safeguarding New York City's
6 drinking water by swiftly passing Intro. 408-A.
7 Thank you.

8 COUNCIL MEMBER DICKENS: Thank you
9 so much. Mr. O'Brien?

10 TERENCE O'BRIEN: Good afternoon.
11 My name is Terence O'Brien and I'm the deputy
12 director of the Plumbing Foundation. The Plumbing
13 Foundation of the City of New York is a nonprofit
14 association of licensed contractors, engineering
15 associations, manufacturers and supplier whose
16 sole mission is to ensure the public health
17 through the enactment of enforcement of safe
18 public plumbing codes. In connection with that
19 mission we regularly meet with legislative and
20 regulator bodies that pass laws, primarily with
21 regulations which affect the plumbing industry.
22 New York City's Health Code and Building Codes
23 require that owners have licensed professionals
24 perform annual inspections and cleaning of water
25 tanks that provide drinking water. These

1 requirements are designed to avoid public health
2 disasters that have been responsible for hundreds
3 of people becoming ill and numerous deaths
4 nationally over the last 11 years. The issue
5 before the council today is how best to enforce
6 the existing health law. There are 17,000 water
7 tanks in the City of New York to supply drinking
8 water for occupants of buildings. That was based
9 off of a 1998 report, but it probably was done, as
10 stipulated, prior to that in '96. The drinking
11 water tanks are almost exclusively in buildings
12 greater than five stories. Once a year, landlords
13 with buildings with these water tanks are required
14 to have the tanks inspected and cleaned by
15 licensed master plumbers, Health Code Section
16 141.05. The cleaning be conducted by licensed
17 plumbers pursuant to technical specs of Section
18 606.5.4.5 of the newly adopted Plumbing Code of
19 the City of New York. How does the city ensure
20 that these required annual inspections/cleaning
21 actually are performed is the question. The only
22 mechanism is a provision of the Health Code
23 Section 141.03 that simply requires the landlords
24 keep a copy of reports on his or her premises.
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2 That is an honor system. Does this honor system
3 work? In 1998, the Department of Health undertook
4 a pilot program which was handed out today, a
5 pilot study of 1%, or 170, of the 17,000 buildings
6 with water tanks to see if the landlords were
7 compliant with this statute. The Department of
8 Health report found that the landlords in 35% of
9 the buildings could not provide the inspection
10 reports even after being called in advance by DOH
11 personnel. Even more worrisome was the fact that
12 the DOH reported that 3% of the sampling buildings
13 were coli forming positive. Accordingly, in 1998,
14 Intro. 142, which was also handed out today, was
15 drafted to ensure that landlords comply with the
16 annual inspection and cleaning requirement. That
17 bill required that the landlords actually send the
18 report to the city and failure to file the annual
19 inspection/cleaning report would make the owner of
20 the building liable for civil penalty. The bill
21 state that if an owner, agent or other person in
22 control of a building which has a water tank as
23 part of its drinking supply system fails to file a
24 written statement required under this subdivision
25 on or before the 31st of December of each year,

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2 such owner shall be liable for civil penalty. Are
3 we assured that landlords meet their legal
4 obligation under the Health and Plumbing Codes to
5 have their drinking water tanks inspected and
6 cleaned by qualified personnel? Intro. 408-A is a
7 good start to assuring compliance because it moves
8 away from the honor system, which we all know, is
9 part of the issue at hand, and would require that
10 the report be actually filed with the city. It
11 does not, however, have any stated enforcement
12 mechanism. In other words, what happens to
13 landlords who fail to file? We suggest the
14 committee add the civil penalty requirement from
15 the 1998 bill Intro. 142 to address that issue.
16 The amount of civil penalty for the failure to
17 file a required report is not a new concept. It
18 has been used for many years to ensure that
19 landlords comply with periodic reporting
20 requirements for facades, boilers, elevators, et
21 cetera. The question before the committee is
22 whether it should require landlords to comply with
23 existing law by passing Intro. 408-A with an
24 enforcement mechanism or continue with the honor
25 system, a system that obviously has not worked for

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2 the city over the last 11 years. The city needs
3 to close the enforcement loophole before a lack of
4 compliance and accountability with the Health Code
5 turns tragic. We urge that the council adopt
6 language of the 1998 bill Intro. 142 to the
7 current bill Intro. 408-A and pass this much
8 needed health and safety legislation.

9 COUNCIL MEMBER DICKENS: Thank you
10 so much for your testimony, both of you. Council
11 Member Garodnick?

12 COUNCIL MEMBER GARODNICK: Thank
13 you both for your patience and for sticking it out.
14 You're right afternoon did some point in the
15 middle of this process become evening. Mr.
16 O'Brien, we will take a look at that point that
17 you make about the language from the 1998 bill for
18 addition to this bill. But my question for both
19 of you is really just to ask you to respond to
20 something the Department of Health said on the
21 subject of administrative burdens of their
22 receiving this information. I mean they cited the
23 cost of hundreds of thousands of dollars to be
24 able to simply receive these inspection reports
25 which are already presumably done. I wanted to

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get your reaction to that and see whether you agree with that or whether you think there's a simple way to do it. That's my question for you.

JOSH NACHOWITZ: It definitely does seem that their figures are a little bit outrageous. If they really wanted to they could find a far simpler way to comply with the requirements of Intro. 408-A. From a broader perspective, this administration and the Department of Health specifically have made accountability and public access to information really sort of a hallmark of the way they try to govern the city. So I can't imagine why those policies would not be applied to something as fundamentally important as the city's drinking water.

TERENCE O'BRIEN: I would have to concur. And also, going back before, they have these processes in terms of boiler inspections, elevator inspections, which are minimal requirements for the department to oversee. It may be DOB or DOH. So it should not be that much of a nuisance to the Department of Health to actually vigorously get this information of the

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utmost health importance for the City of New York.

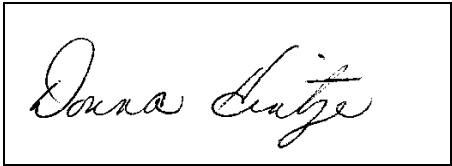
JOSH NACHOWITZ: And they really already do a terrific job at DOH of getting a lot of information made available to the public in a very user friendly format through their website, so I can't imagine why they wouldn't be able to do this.

COUNCIL MEMBER GARODNICK: Thank you for that. To me it doesn't even require vigorousness or aggressiveness or anything really to set up a system for people to send it over and for them to hold it. But I hear you both and I appreciate your testimony. I agree with you. I thank our acting chair here, our majority whip for stepping in and for her patience too. Thank you.

COUNCIL MEMBER DICKENS: Thank you so much, Mr. O'Brien and Mr. Nachowitz. It's good seeing you, Josh, again. Thank you for your patience. Mr. Boyd, thank you for standing up to a long, long list of questions. Thanks, of course, to Chris Manning. This hearing on Intro. 408-A is hereby adjourned.

C E R T I F I C A T E

I, Donna Hintze 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_____

Date January 29, 2009_____