

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON SANITATION AND SOLID WASTE
MANAGEMENT

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September 29, 2016
Start: 1:09 p.m.
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HELD AT: 250 Broadway - Committee Rm.
16th Fl.

B E F O R E: ANTONIO REYNOSO
Chairperson

COUNCIL MEMBERS: Andy L. King
Vanessa L. Gibson
Costa G. Constantinides
Steven Matteo

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

Dan Brownell, Commissioner
NYC Business Integrity Commission, BIC

Noah Genel, General Counsel & Deputy Commissioner
Legal Affairs
NYC Business Integrity Commission, BIC

Julie Moy, Analyst
NYC Business Integrity Commission, BIC

Rocco Lacertosa, Chief Executive Officer
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Demos Demopoulos
Secretary-Treasurer & Executive Officer
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David Stern, Senior Director
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Jerry McDonald
Star Gas

Nick Cornopolis, Delivery Manager
Delivery Managers

Allison Heaney, President
Scaggs-Walsh Fuel Oil

George Hamilton, Manager
Oil Department
Scaggs-Walsh Fuel Oil

Nestor Arsay, Oil Truck Driver
Scaggs-Walsh Fuel Oil

Daniel Showalter, President
Fred M. Schildwachter and Sons

Allan Cohn, President
Cohler Fuel Oil

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[sound check, pause]

CHAIRPERSON REYNOSO: We're going to have to do that again. [pause] While I-- [gavel]. This hearing has now begun. Thank you guys for being here. Thank you for being here, Commissioner. Good afternoon, and welcome to this hearing concerning Intro No. 1268, which would authorize the Business Integrity Commission to regulate the heating oil supply industry in New York City. For decades--last year, the Manhattan DA's Office issued indictments against 44 individuals and nine companies that are part of New York City's heating oil industry who were alleged to have defrauded New Yorkers out of as much as 10% of the oil that the customers believed they were receiving in a typical delivery. This fraud was perpetuated through a practice known as shorting, where all delivery trucks--truck equipment was manipulated to show that oil was being delivered to a customer when, in fact, a portion of the oil remained in the truck, and was typically later resold to another heating oil company on the Black Market at a discount. I actually want to limit my background on my opening statements to allow for BIC to make the presentation. So I guess I want to go straight to

1
2 them, and say that this is the beginning of the
3 legislative process, and not the end. We look
4 forward to hearing from BIC and others that are going
5 to present today about their talks on this bill. So
6 at this moment we have Commissioner Dan Brownell
7 here. Thank you so much for being here, sir, and
8 Noah Genel, the Deputy Commissioner of Legal Affairs
9 as well. Okay, so when you—when you speak, can you
10 please just make sure you state your name, and you're
11 going to go back and forth. So we could catch it on
12 the record, and your title, and I want to go ahead
13 and give you the floor. Thank you.

14 COMMISSIONER BROWNELL: Thank you, sir.

15 CHAIRPERSON REYNOSO: Oh, I'm sorry, and
16 we've also been joined by Council Member Matteo and
17 Council Member Constantinides. [pause]

18 COMMISSIONER BROWNELL: Good afternoon,
19 Chair Reynoso and members of the City Council's
20 Sanitation and Solid Waste Management committee. I'm
21 Dan Brownell, Commissioner of the New York City
22 Business Integrity Commission or BIC. Joining me is
23 Deputy Commissioner of Legal Affairs and General
24 Counsel Noah Genel. Also with us to help us out is
25 with the IT portion of this is Julie Moy, one of our

1
2 Analyst. Thank you for inviting us to today's test-
3 to testify today regarding Intro No. 1268, which will
4 empower BIC to regulate the heating oil supply
5 industry in New York City. BIC fully supports this
6 legislation, which will protect both the heating oil
7 consumers, and the industry itself. The heating oil
8 supply industry in New York City has been plagued by
9 corruption for decades. Because the market for
10 heating oil is fiercely competitive, retain heating
11 oil usually sells at only a few pennies per gallon
12 above wholesale prices, numbers companies in the
13 industry have sought to gain an advantage over their
14 peers by committing fraud. Dating back at least 30
15 years, law enforcement has exposed many of the
16 fraudulent schemes and prosecuted the participants.
17 Yet, the fraud persists. Intro No. 1268 is the
18 solution to this problem. A comprehensive set of
19 regulations administered by BIC, which has the
20 infrastructure and experience to stamp out corruption
21 in the industry. This past November BIC together
22 with the NYPD and the Manhattan District Attorney's
23 Office announced the indictments of nine heating oil
24 supply companies, and 44 of their owners and
25 employees for stealing millions of dollars from

1 customers through a scheme called shorting. The
2 defendants in those cases used various methods to
3 subvert the anti-theft devices on the heating oil
4 delivery trucks to deliver less oil than they charged
5 for, thus shorting the delivery, usually by hundreds
6 of gallons at a time. As alleged in the indictments,
7 the defendants stole from virtually all major types
8 of buildings in the city including schools, apartment
9 buildings, churches, homeless shelters, police
10 stations, fire houses and NYCHA housing developments.
11 The schemes generally targeted buildings that
12 received large amounts of oil making it easier to
13 conceal the thefts. If a customer questioned the
14 amount of oil received, the supply companies simply
15 claimed that they had made an innocent mistake and
16 compensated the customer. That usually settled the
17 matter while the larger systemic fraud continued
18 unabated. Gallon by gallon the defendants stole an
19 average of 10 to 15% of their heating oil deliveries
20 amounting to tens of millions of dollars each year.
21 As one law enforcement informant who spent decades in
22 the heating oil supply industry exclaimed, they steal
23 so much they think it's legal. There are several
24 different ways to short deliveries, most of which are
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2 focused on circumventing the meters on the delivery
3 trucks. The meters are supposed to register the
4 total amount of oil delivered to a customer and then
5 produce a ticket, which acts as receipt. The most
6 common method of shorting is to rig the delivery
7 trucks to permit air rather than oil to be pumped
8 through the meter for a portion of the delivery
9 falsely inflating the meter's reading. While there
10 is a device on the trucks called an air eliminator
11 valve that is supposed to prevent air from flowing
12 through the meter, the corrupt heating oil supply
13 companies found ways around that also. During the
14 investigation we used court authorized eavesdropping
15 commonly known as wire taps to monitor telephone
16 conversations between various participants in the
17 fraud. Through these recorded conversations, we
18 heard first hand how companies by pass the anti-theft
19 mechanisms on the trucks, and shorted their
20 customers. Some of the drivers used an industrial
21 strength magnet to disable to air eliminator valve
22 allowing air to run through the meter and inflate the
23 reading. Other companies fit their trucks with hoses
24 to route the oil back into the truck after passing
25 through the meter rather than delivering the oil to

1
2 the customer. Near the end of the investigation we
3 executed court ordered search warrants and seized 58
4 oil delivery trucks. With the help of several
5 informants from the industry and inspectors from the
6 Department of Consumer Affairs, we found clear
7 evidence that 48 of the trucks had been physically
8 altered to enable the drivers to short. We found at
9 least one rigged truck belonging to each of the
10 companies indicted for shorting. Here is a
11 compilation of some of the calls we monitored and
12 recorded during the investigation. The calls provide
13 a sense of the methods the heating oil supply
14 companies used to short their customers.

15 MALE VOICE: [ringing] In fact, you gotta
16 put hat thing.

17 MALE VOICE: What thing?

18 MALE VOICE: All that somewhere
19 inconspicuous. You understand?

20 MALE VOICE: [ringing] It's only one
21 switch to redirect the flow of the oil.

22 MALE VOICE: [ringing] Do you see like a
23 lever for the drop hose? I have told them not to use
24 the real hose.

25

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MALE VOICE: [ringing] Eventually, you
you're going to put the handles back on?

4

MALE VOICE: Everyone of those trucks

5

MALE VOICE: Okay.

6

MALE VOICE: Every one. Whatever one-
whatever--I've got about six-five or six handles.
They're going to go on.

9

MALE VOICE: [ringing] Yes, so look, you
got to go put that spring in that truck.

10

11

MALE VOICE: [ringing] I put in the
bypass valve of the-by the meter?

12

13

MALE VOICE 1: And that's on the bypass
valve by the-by their meter?

14

15

MALE VOICE : Yeah.

16

MALE VOICE: You open that valve and go
until you bypass that meter then, until you pump it
all faster.

18

19

MALE VOICE: [ringing] The aluminum
valve in the in the truck trust me. That's why I
went through the bottom later. You know, I drilled a
hole, and put a metal--heavy check valve to open up-
you open the handle halfway on-on the bottom of it,
and you just take the aluminum at the top of the
truck and you can do it.

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MALE VOICE: [ringing] If you bring it
to me--

MALE VOICE: Right.

MALE VOICE: --and it's pumping gas--

MALE VOICE: Right.

MALE VOICE: I could correct all of that
without breaking your seal and make you look good.

MALE VOICE: Okay.

MALE VOICE: I'm just trying to be
helpful.

COMMISSIONER BROWNELL: After a day of
shorting customers, there would be a significant
amount of excess oil in the delivery trucks' tanks.
The heating oil supply companies disposed of that oil
by delivering it to one of their other customers
selling it at full price or selling the oil illegally
to another heating oil supply company at a cut rate
for cash. Those sales frequently occurred in the
middle on the night on dark side streets with one
truck transferring the oil directly to the buyer's
truck. Notably, these truck-to-truck transfers of
oil are illegal in and of themselves. Particularly
because of the narrow profit margin in this industry
the companies that steal the oil, and those that

1
2 illegally buy the stolen oil at cut rate have an
3 almost insurmountable advantage over the companies
4 that do not cheat. The wire taps allowed us to
5 document discussions regarding thousands of heating
6 oil deliveries during which heating oil supply
7 companies stole from their customers. The recorded
8 conversations revealed just how and where the various
9 schemes were carried out. We now play a sample of
10 those calls. The brazen attitude and shocking greed
11 demonstrated in these calls is truly remarkable.

12 [coughs]

13 MALE VOICE: [ringing] The ones that are
14 still leased (sic) by the precincts, you—you need a
15 truck to do something like that with a precinct.

16 MALE VOICE: Well, let me put it this
17 way, we definitely can't—we definitely can't do
18 nothing with the MTA.

19 MALE VOICE: Right and the fire house.

20 MALE VOICE: You know what I mean?

21 MALE VOICE: And the fire house. what
22 are—what are you going to do, and—and the Sanitation.

23 MALE VOICE: You can't--

24 MALE VOICE: Just leave it alone.

25 MALE VOICE: Upon the street. (sic)

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2

MALE VOICE: [ringing] I have a question.

3

I'm going to bring this on instant Kendall. Is that

4

what you're offering is the real—is two tons at

5

common. (sic)

6

MALE VOICE: Yes.

7

MALE VOICE: Do you understand we're just

8

talking in that room. Yeah. Yeah? Yeah, that's and

9

we could tell them to buy.

10

MALE VOICE: \$50.

11

MALE VOICE: [ringing] That's King

12

County. You have to be careful over there.

13

MALE VOICE: Yeah, you know, why I don't

14

I top it off at Queens Family Court, you got the

15

serious mother fuckers over there.

16

MALE VOICE: [ringing] I have all the

17

clemency (sic).

18

MALE VOICE: But you know, I wouldn't

19

have flatten yours. (sic)

20

MALE VOICE: Yeah, I'm still okay. I

21

mean I—you know when I'm coming by, and I know what

22

they'll buy. At least we had the six time reading

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for which we apologized and then it's a place

24

so...(sic)

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MALE VOICE: Alright.

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MALE VOICE: Yeah.

MALE VOICE: [ringing] Hoffer (sic)

Street, you're on Hoffer Street, you go—we used to go every day or every other day. Now, when I was doing it, that stop alone I was doing like six to seven hundred.

MALE VOICE: [ringing] Just went to the third floor. Yeah, but that caught me 700 short, 700 short so I told them I'm going to take the beacon (sic) out of the meter, and I'm going to bring it up.

MALE VOICE: Oh, and I counted no tourists and an officer--(sic).

MALE VOICE: [interposing] Yeah.

MALE VOICE: --living at the--

MALE VOICE: Who is that?

MALE VOICE: The hospital.

MALE VOICE: [ringing] Of course, I mean they did that Curt yesterday. Curt did two. They told he did he did seven.

MALE VOICE: Yeah, well, it was—it was stopped so I don't know it happened. (sic)

MALE VOICE: The—that—he did that fucking hospital that he went to yesterday. But I told him he's supposed to do one.

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2

MALE VOICE: They got everything I needed
there. I told you.

4

MALE VOICE: I know, I know, I know it's-

5

MALE VOICE: [ringing] In a year or two
I'll stop. I-I know Marcus Garvey my whole accounts.

7

MALE VOICE: [ringing] It's 1600 Avenue
L, right?

9

MALE VOICE Yep.

10

MALE VOICE: [ringing] I took a hundred.

11

FEMALE VOICE: [ringing] No, they put
1,700 gallons in a 1000-gallon tank.

13

MALE VOICE: [ringing] They're a little
guy right? He's a nice guy Matt. I used to live-
look at Felix, this house, too, for the years. He
wanted to pump fuel oil right? The owner never
learned how to pump the oil right? Because I used to
make him-make him steal the oil from his own tank.
He didn't even know what he was doing. [laughs] I
used to tell him open up this one over here, and it
was the empty one all. All on my legs. (sic)

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MALE VOICE: [ringing] 1250 Warren
Avenue. You want to go over there.

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MALE VOICE: 1250 what?

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MALE VOICE: Two.

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MALE VOICE: Two?

MALE VOICE: Two or two and a half.

MALE VOICE: Okay.

MALE VOICE: And go there.

MALE VOICE: It should be. My average
was two and half.

MALE VOICE: Yeah. It's no problem.

MALE VOICE: 275.

MALE VOICE: Yeah, yeah, it will be a
fucking Merry Christmas for real. [laughter] Don't
fool me man.

COMMISSIONER BROWNELL: Of all the
victims of the shorting schemes, the City was easily
the biggest. At the press conference announcing the
indictments, District Attorney Vance estimated that
city buildings alone suffered annual losses of \$10
million from these schemes in both 2014 and '15, and
\$38 million- I'm sorry--\$10--\$10 million from these
schemes in 2014 and '15 and \$38 million was stolen
from all consumers during this period by just the
companies charged in the shorting, and we know that
those companies were far from the only ones involved
in the fraud. [pause]

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2 MALE VOICE: The cost of living and doing
3 business and providing municipal services in New York
4 City gets more expensive and raises every year.
5 Families and small businesses all across these five
6 boroughs face challenges of affordability and
7 displacement everyday, and as this winter approaches,
8 and heat-radiators start rattling, and the heat is
9 turned on, costs from fuels only rise in all our
10 communities. Today, we are—with that backdrop
11 announcing the indictment of nine companies and 44
12 individuals for routinely, persistently over many
13 years shorting heating oil from their residential and
14 commercial customers. In our indictments each
15 defendant is charged—is indicted with felony charges
16 including what's called enterprise corruption and
17 grand larceny stemming from criminal possession of
18 stolen property and falsifying business records.

19 COMMISSIONER BROWNELL: Even after these
20 indictments, in February of 2016, BIC joined with the
21 NYPD and the Brooklyn District Attorney's office and
22 Mr. Vance's Office to bring even more arrests
23 concerning this industry. This time four other
24 heating oil supply companies were caught stealing oil
25 from a Brooklyn oil terminal by paying off workers

1 there. Unfortunately, the fraud revealed in these
2 investigations was not an isolated series of thefts
3 perpetrated by a few rogue companies. The fraud is
4 systematic, as demonstrated by criminal cases dating
5 back 30 years. As an example, in July of 2007 the
6 Federal Prosecutor in Brooklyn announce arrests after
7 its investigation revealed conduct strikingly similar
8 to the schemes outline in the November 2015 Manhattan
9 DA indictments. In the federal case, the largest
10 heating oil supply company in the region at the time,
11 Mystic, along with other companies were doing the
12 exact same thing, blowing air into their customers'
13 tanks as they called it. The companies caught in the
14 federal case collectively bilked their customers out
15 of \$75 million. And shorting is not the only scheme
16 rampant in this industry. Another common tactic is
17 called blending, which involves illegally mixing
18 waste oil with good heating oil before it's delivered
19 to consumers. Blending is an environmental issue
20 because burning large quantities of waste oil
21 increases the production of harmless emissions. From
22 a practical perspective, waste oil produces less heat
23 than heating oil, burns faster, and can be harmful to
24 boilers. Thus, blending also takes an economic toll.
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2 The start reality is that the heating oil supply
3 industry in the city is so rife with theft that no
4 one can reasonably be confident that heating oil
5 customers are getting the oil they paid for. The
6 City, New York State and the Federal Government have
7 all attempted to regulate the heating oil supply
8 industry on various levels over the year. New York
9 State law requires every heating oil delivery truck
10 to be equipped with the meter and air eliminator
11 valve that I discussed earlier. DCA inspects the
12 meters annually to verify that they work properly and
13 that they provide an accurate record of each
14 delivery. Other City agencies, specifically the New
15 York City Department of Environmental Protection and
16 the New York City Fire Department also play an
17 oversight role. The DEP oversees the makeup of the
18 oil and its proper storage. FDNY oversees truck
19 safety. In addition to city agencies, the Federal
20 Transportation Security Administration and the United
21 States Department of Transportation and the State
22 Departments of Motor Vehicles in New York and New
23 Jersey all have regulations focused on the
24 backgrounds and qualifications of the delivery truck
25 drivers. The—the regulations include a criminal

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2 history check, drug testing and certain driver
3 training certifications. Lastly, the U.S.
4 Environmental Protection Administration requires that
5 all fuel trucks have specific vapor elimination
6 devices so that fumes from the fuels being
7 transported to not build up and collect in-in truck
8 tanks. As the most recent indictments demonstrate,
9 the existing regulations have not stopped the fraud
10 in the industry. Every truck involved in the theft
11 schemes we investigated was equipped with both a DCA
12 inspected truck meter and an air eliminator valve.
13 The problem is that heating oil customers are usually
14 not present for oil deliveries, and even if they
15 were, they do not know what to look for to prevent
16 shorting. Unchecked, the delivery drivers have
17 bypassed the anti-theft devices on the trucks freely.
18 And while piecemeal prosecutions are effective in
19 stopping fraud committed by the targeted companies,
20 those criminal cases have had little impact on the
21 broader industry wide corruption. Even a criminal
22 conviction has not up to now necessarily meant that
23 the wrongdoer is out of the industry. We were
24 stunned to learn that a driver who was convicted and
25 even served jail time in the 2007 federal case, had

1 returned to the industry, and was caught shorting
2 customers again in our recent investigation. We must
3 break the cycle. Some members of the heating oil
4 supply industry will argue that too many regulations
5 already exist. To state the obvious, if that were
6 true the fraud endemic to the industry would not
7 persist. The current regulations are focused largely
8 on safety and environmental concerns, not fraud
9 prevention. Additionally, the regulations that
10 currently exist are not comprehensive. They focus on
11 discrete aspects of the heating oil supply industry
12 and are divided across numerous agencies.

14 In the wake of the November 2015
15 indictments, BIC joined with the Department of
16 Investigation to educate heating oil consumers by
17 issuing a report on the best practices to prevent
18 thefts of oil. Yet, while arming consumers with the
19 knowledge of how to prevent fraud is crucial, the
20 burden should not lie with the potential victims to
21 correct this problem. To protect the city, our
22 consumers and the heating oil supply industry itself,
23 we need regulations to remove bad actors from the
24 industry, keep them out and punish those who continue
25 to commit fraud. The good news is that the City

1 already has a proven template to fix this problem.

2 In the 1990s, the Manhattan District Attorney's

3 Office brought a series of criminal cases that

4 exposed that another industry trade-trade waste

5 removal, was completely controlled by organized

6 crime. Honest companies could not compete. The

7 criminals dictated the fees that businesses paid to

8 have their garbage collected. To break free, the

9 City Council passed Local Law 42 of 1996, which

10 created the Trade Waste Commission later renamed the

11 Business Integrity Commission. Twenty years later,

12 the waste-trade waste removal industry is open and

13 robust. Commercial carting fees are affordable, and

14 more than anything else, true competition drives this

15 industry. Of course, organized crime continues to

16 attempt to work its way back into the industry, and

17 it remains one of BIC's missions to ensure that does

18 not happen. We are not implying that organized crime

19 dominates the heating oil supply industry today. The

20 corruption is less organized, but sill rampant and

21 extremely costly. While many heating oil companies

22 exist, the bad one exert-exert far too much

23 influence. Without adequate oversight, the companies

1
2 that do not commit fraud simply cannot compete in the
3 industry.

4 Intro 1268, the subject of this hearing,
5 is based largely on Local Law 42. The current state
6 of the trade waste removal industry operating
7 ultimately and free from organized crime's
8 stranglehold demonstrates that Local Law 42 provides
9 an effective regulatory model without being overly
10 burdensome. Under Intro No. 1268, heating oil
11 dealers, deliver companies, dispatchers and delivery
12 truck drivers who wish to operate in the city would
13 be required to apply to BIC for a license. We expect
14 the applications to be available electronically on
15 BIC's website, and applicants would be permitted to
16 continue to operate pending the results of BIC's
17 licensing process. Our goal is to make the
18 applications simple and straightforward seeking only
19 the most essential information. We will work with
20 applicants to make sure that the process goes
21 smoothly. As the existing trade waste legislation—as
22 with the existing trade waste legislation, Intro No.
23 1268 authorizes BIC to deny an application if BIC
24 determines that an applicant lacks good character,
25 honesty and integrity. I can assure you that while

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2 the Commission is committed to keeping corrupt
3 companies and individuals out of the industry it
4 regulates, we understand that a denial of a license
5 can be devastating, putting a company out of business
6 or an individual out of work. BIC regularly
7 considers less severe measures to assist troubled
8 companies to reform themselves before considering
9 denial. But for the legislation to be effective, BIC
10 must have the authority to deny licenses when a
11 particular applicant has demonstrated that it—that it
12 lacks good character, honesty and integrity necessary
13 to operate in this industry. The proposed
14 legislation does not infringe on the powers or duties
15 of the DCA, DEP, FDNY or any other agency. In fact,
16 this bill would only enhance their functions. The
17 information we would collect as part of our
18 application process would be made available to these
19 other city agencies. As a result, for example, DCA
20 would have access to a complete list of all heating
21 oil companies operating in the city and their roster
22 of trucks. This would allow DCA to check to see
23 whether any owners had failed to have their trucks
24 inspected. The FDNI—FDNY will have the same access
25 to this information for their inspectional process.

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2 And the prohibitions on illegal blending contained in
3 the proposed legislation would supplement and enhance
4 DEP's enforcement of requirements regarding the
5 content of heating oil in the Air Pollution Control
6 Code. For all these reasons, BIC fully supports
7 Intro No. 1268 sponsored by Chair Reynoso. We are
8 ready to work with the Council, our sister agencies,
9 and the heating oil supply industry itself to develop
10 effective oversight to better protect consumers and
11 curb the fraud in this industry. As we move into
12 fall and cooler weather, it is imperative that the
13 City Council take swift action before the city and
14 public once is placed during another heating oil
15 season. Thank you and we are happy to answer any
16 questions.

17 CHAIRPERSON REYNOSO: Commissioner, thank
18 you for the presentation. I do want to ask do you
19 have any examples of exactly how the trucks are
20 modified to—to do this work, or how complicated is
21 it, or what method they use? I know DCA is supposed
22 to inspect these trucks. So how it that they go into
23 DCA, they get inspected and then the next day they
24 can be reconverted, or—or modified? Can you just
25 explain that to us a little better?

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2 COMMISSIONER BROWNELL: Yeah, I'll start
3 off in answering the question, and actually Noah
4 knows the various methods better than I do. Noah
5 Genel, the General Counsel.

6 CHAIRPERSON REYNOSO: Uh-huh.

7 COMMISSIONER BROWNELL: So with regard to
8 the DCA inspections, which are annually, those are
9 scheduled inspections where a driver drives a
10 particular truck to the DCA inspectional location,
11 which is somewhere in the middle of Brooklyn. So the
12 point is if the way in which the truck has been
13 rigged—the way in which the truck has been rigged can
14 be put back to the way it should be if it's something
15 that would be easily noticed in an inspection. And
16 then once the inspection takes place and they pass
17 inspection, it can simply be put back into place.
18 I'll not turn it over to Noah to talk more
19 specifically about the various ways that we observe
20 that the trucks have been rigged.

21 DEPUTY COMMISSIONER GENEL: Good
22 afternoon, Chair Reynoso. I'm Noah Genel from BIC.
23 There are a number of different ways that we found
24 that the trucks were rigged. There is a pending
25 criminal investigation going on, and so I don't want

1
2 to go into too much detail exactly, and give a road
3 map exactly how to do this. But some of them were
4 actually physically altered where pipes or hoses
5 were added to the trucks so that either air could be
6 forced through the air eliminator or bypass the air
7 eliminator or once going through the meter, air-oil
8 was redirected back into the truck rather than into
9 the-into the customer's tank. And then there were
10 some methods of shorting that did not require
11 modification of the truck at all. For example use of
12 an industrial strength magnet on the air eliminator
13 valve, which has a metal ball bearing that's supposed
14 to block the air from going and using the magnet with
15 the-the ball and allowed air to be-to go through the
16 eliminator and into the meter, which made the meter
17 spin, falsely inflating the reading on the meter.

18 CHAIRPERSON REYNOSO: So I was going to
19 ask that since the-the indictments came through I
20 figured that the industry will then take note, and
21 make sure that they weren't proceeding with more
22 crime or the possibilities of-of the Attorney-General
23 to-to achieve more indictments or to-to process more
24 indictments. But you said recently in Brooklyn I

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2 guess you guys caught more--more companies doing this
3 even after the indictment.

4 COMMISSIONER BROWNELL: Right, but
5 actually the more remarkable thing is this was a 2-
6 1/2 year investigation. When this investigation
7 started, I was Chief of the Rackets Bureau in the
8 Manhattan DA's Office. BIC came to me. Dominic who
9 you've met, one of our retired detectives had an
10 informant in the industry that came to us and pitched
11 this investigation. So we were up on wires,
12 eavesdropping through the winter. I get the years
13 mixed up. So it would be the winter of 13 going
14 into 14, and then what becomes critical in being able
15 to develop a sufficient criminal case is to get the
16 business records of these--of these companies. So
17 after we were up through most of that winter we
18 executed search warrants. I think it was four or
19 five different heating oil companies, and we took all
20 their BIC's--books and records. Obviously, they knew
21 they were under investigation, and we knew from other
22 informants we had in the industry that everybody in
23 the industry knew that we had been doing this
24 investigation for and executed these search warrants.
25 Even with that, when the next winter started, which

1
2 was the in '15, we then got information that other
3 heating oil companies were engaging in very similar
4 types of activities. Maybe they rigged the trucks
5 differently, but they were doing the same thing all
6 over again. And, you know, you sit—we sit here now
7 and we say how stupid can that be, but I guess greed
8 makes people do stupid things.

9 CHAIRPERSON REYNOSO: So how—how
10 widespread is this practice? Is it—did you guys
11 catch all the bad guys is I guess what I'm trying to
12 say? This industry I imagine is—is large. It has
13 many players into—in it. You said you inspected how
14 many trucks and how many were actually rigged from
15 how many companies, and do you think that this is
16 actually something that's widespread or just a few
17 bad apples.

18 COMMISSIONER BROWNELL: So of the trucks
19 that we seized, there were 58, and I think it's
20 either 48 or 49, we were able to determine that
21 they've actually been rigged, which would permit the—
22 the—the driver to short. But this is the thing that
23 I want to emphasize here and I—and I—I believe
24 Councilman, you have a letter from DA Vance in
25 support of this legislation, and—and he forwarded me

1
2 a copy of the letter. And one of things that the
3 Council needs to realize, which I think DA Vance
4 spelled out very clearly in his letter is that these
5 investigations are very time consuming and very
6 costly. It is--it is difficult and expensive to--to go
7 up on wires. Basically, BIC spent--BIC used--I would
8 say at least half of our staff the last two winters
9 when we were doing this investigation I know from the
10 DA's standpoint because I was during the first winter
11 that we had to have a lot of attorneys, investigators
12 and auditors and other people involved. And we know
13 based on all of the conversations that we listened to
14 that there were other companies that were not
15 indicted that were engaging in this because they were
16 interacting especially with the companies that had
17 stolen the oil to then buy the stolen oil from them
18 at these cut rate prices where they would meet on
19 dark streets, and we had surveillance of that, and do
20 these truck-to-truck transfers in the middle of the
21 night. So there were many other companies that were
22 not indicted that were part of this scheme, and we
23 know from informants that, you know, that a lot of
24 these practices are fairly common. And I say all
25 this, and I know this is going to sound

1
2 contradictory, but there are also a lot of good
3 companies we believe in the industry. The—the
4 Heating Oil Association we met with them a couple of
5 times at the end of the winter. It was very helpful
6 us, even though, you know, and they'll speak for
7 themselves not too keen on this sort of regulation.
8 But there are—there are good companies in this
9 industry and then—and at least from the people I met
10 from the Heating Oil Association, which not every
11 company is a member that it, you know, that that is
12 very good and very thorough.

13 CHAIRPERSON REYNOSO: So I guess before I
14 pass it onto Council Member Constantinides and King,
15 I—we—we want to make sure we protect the good
16 businesses, and that the good businesses are able to
17 compete. I want to say that rooting out this—the
18 corruption here or rooting out the—the bad players
19 will make it so that the—the playing field is level
20 now so that they are not competing against folks that
21 are selling oil at a much lower rate because they're—
22 they're stealing a portion of it. But, are—are—are
23 the regulations so onerous that the operation of the
24 heating oil industry or heating oil business would
25

1
2 be—it will be more difficult to—to a degree to where
3 we can see these companies get shut down?

4 COMMISSIONER BROWNELL: Why don't I start
5 this and then I'm going to give most of this to Noah
6 because he was actually the one along with other
7 people at BIC in the Law Department to draft the
8 legislation. The thing I would point out is that as
9 we indicated in the testimony that the—the structure
10 of the proposed bill is very much in sync with the
11 existing legislation that gives us the regulation
12 under the trade waste removal industry, and—and that
13 works. It doesn't always work perfectly. The trade
14 waste companies don't love us to death, but, you
15 know, quite frankly I think especially over the last
16 couple of years, we've developed a—a—a very good
17 working relationship with them so that we can sort of
18 try to meet this. You know, sort of point where
19 there's enough regulation so that it's actually
20 effective, but it's not overdone so that it becomes
21 onerous and overly burdensome to the companies
22 involved.

23 DEPUTY COMMISSIONER GENEL: And
24 specifically with respect to the legislation on the
25 past page of the legis—legislation I think I think

1
2 it's Section 3 at the very end, it even has a
3 provision where companies will be able to continue to
4 operate while their applications are being reviewed.
5 I mean we're stating to—if this bill passes, we'd be
6 starting from scratch. And so, you know, we're not
7 looking to shut down this entire industry. That
8 doesn't make sense for anybody, and it will take some
9 time to get the applications out and get people—get
10 the applications back that are filled out, and to
11 review them. We engage in a very thorough
12 backgrounding process. That has been the hallmark of
13 our success in rooting out the organized crime from
14 both the trade waste industry and the public
15 wholesale markets. And we would use that same
16 structure, all the same infrastructure to, you know,
17 it—it would require a little bit more, but the same
18 basic background check in order to make sure that for
19 example the driver who was convicted in 2007 in the
20 Eastern District case doesn't end up shorting again
21 seen years later.

22 CHAIRPERSON REYNOSO: Okay. So I want to
23 just—I—I do have more questions, but I—I really want
24 the—the trade waste industry—I'm sorry—the heating
25 oil industry and the Teamsters who come up, and

1
2 eventually to speak as well. So I'm going to allow
3 for my colleagues to-to-to ask questions, and I want
4 to read into the record District Attorney Sal Vance's
5 letter for everyone in the room: I understand that
6 you are sponsoring Bill Intro 1268, legislation to
7 task the Business Integrity Commission with oversight
8 of the heating oil industry in the city. I further
9 support this effort, and the effective government
10 oversight of this industry as set forth in the
11 proposed law. State and federal prosecutors have
12 been investigating and prosecuting fraud in the
13 heating oil industry for the last several decades.
14 One recent investigation by my office resulted in the
15 indictment of nine companies and 44 of their
16 employees for engaging in fraud schemes costing
17 retail oil customers tens of millions of dollars
18 annually. The heating oil industry company-the-the
19 heating oil companies charge-charged and stole from
20 residential apartment houses, office buildings,
21 hospitals, schools, and other public properties
22 throughout the five boroughs. Another recent
23 investigation, one that my office conducted with the
24 Brooklyn District Attorney's Office, led to the
25 indictment of seven individuals from five different

1
2 companies for stealing and trafficking in stolen
3 heating oil. Our notable federal prosecution in 2007
4 that the United States Attorney's Office in Brooklyn
5 resulted in the court ordering and restitution from
6 defendant heating oil delivering companies to their
7 customers in the amount of \$79 million. From the
8 investigations, it is clear this industry as a whole
9 must be regulated. The Council should be aware that
10 these investigations are different from law-for law
11 enforcement agencies to conduct because the thefts
12 themselves are generally hard to detect, and the
13 corrupt companies are often careful and conceal their
14 crimes. For example, in the investigation that
15 resulted in the indictment of nine companies, and 44
16 individuals, many of the perpetrators rigged their
17 oil trucks to push air rather than oil through the
18 meters, thereby creating false delivery tickets to
19 charge uninspected cust--customers. Even when a
20 prosecutor has their requisite evidence to start an
21 investigation like this, the time and cost demands
22 are staggering. My office's recent investigation
23 took two years, and required the use of several
24 crossly-costly eavesdropping wires, the hiring of
25 experts and testing to determine if the oil delivery

1
2 met quality standards. Additionally, the manpower
3 necessary to run this investigation requires BIC's
4 entire—entire squad of NYPD detectives and most of
5 BIC's other investigative staff, including auditors
6 and analysts as well as three prosecutors and our
7 support staff and numerous investigators from my
8 office. Based on leads developed from our recent
9 cases, we can investigate more heating oil deliver y
10 companies for fraud this coming winter. Given the
11 high cost placed on the law enforcement to take these
12 cases, the fact that criminal investigations alone
13 appear to have a limited impact on correcting the
14 wider fraud across the city, city government must do
15 its part to adopt regulatory measures to address this
16 system fraud. Because of the 20-year history New
17 York City had—had in regulating the trade waste
18 removal industry after decades of organized crime
19 control and the fact that this new legislation
20 closely follows that structure, this structure of the
21 law that created the Trade Waste Commission, now BIC,
22 I'm confident—I am confident that it will be
23 effective. Please know that this proposed
24 legislation has my full support. Attorney Cyrus R.

1
2 Vance and now I would like to call on Council Member
3 Costa Constantinides.

4 COUNCIL MEMBER CONSTANTINIDES: Thank
5 you, Mr. Chair, I appreciate the opportunity to ask a
6 few questions. Thank you Commissioner for being here
7 today, and let me start from a place where I-I
8 wholeheartedly agree that we have to do all we can to
9 protect the customers in New York City. We have to
10 make sure that instances that you've played the-
11 hearing those excepts where, you know, it makes your
12 stomach turn and, you know, we have to do more. So
13 I-I appreciate your efforts. But I do want to ask a
14 few questions. What would this-what would this bill
15 do to prevent that? I mean how-how do we-what are
16 the additional background checks? What is BIC going
17 to do that is not currently being done in your role
18 to make-to stop what we were just hearing?

19 DEPUTY COMMISSIONER GENEL: Well, first
20 of all, and you should jump in because I'm sure I'll
21 leave something out. Heating oil delivery companies
22 themselves do not have to register within any one
23 city to operate. Meaning that we don't even know as
24 we sit here how many companies there are, what
25 they're called, where they are located within the

1
2 city. We were trying to figure out what the--the--the--
3 the sphere of heating oil companies operating--

4 COUNCIL MEMBER CONSTANTINIDES:

5 [interposing] You don't know how many companies are
6 operating--

7 DEPUTY COMMISSIONER GENEL: [interposing]

8 We don't, we don't.

9 COUNCIL MEMBER CONSTANTINIDES: --in New
10 York city?

11 COMMISSIONER BROWNELL: They're not even
12 required to be licensed by DCA just to get a license,
13 and so certainly there's no background being done,
14 and again I'll--I'll, you know, we have the example--

15 COUNCIL MEMBER CONSTANTINIDES:

16 [interposing] Is there--is there some sort of state or
17 federal contract license that has to be done?

18 COMMISSIONER BROWNELL: [interposing] Not
19 actually licensing in that way. No. So--so what--and
20 what we would, which--which would be different than
21 even what DCA could do with the companies that they
22 do license is we do what I would describe as a deep
23 dive background check into the--into the companies
24 themselves, the individuals that run the companies.

1
2 And, of course, in this particular case especially
3 the drivers and dispatchers of those companies.

4 COUNCIL MEMBER CONSTANTINIDES: Have—have
5 any of these individuals ever done anything in their
6 past before that have indicated any future issues?

7 COMMISSIONER BROWNELL: Well, we won't
8 know that.

9 COUNCIL MEMBER CONSTANTINIDES:
10 [interposing] Would we have—would we have caught
11 them? I mean that's—that's my question.

12 COMMISSIONER BROWNELL: Well, we would—we
13 would know. Well, so one of the things that would be
14 required is that they would have to be fingerprinted,
15 which would allow—which would allow us to see whether
16 or not they have been arrested before. So that's
17 obviously a big help, but we go far more than that in
18 terms of what we do and so that will allow us to see
19 exactly who it is running the company and what, if
20 any, corruption history they've had in terms of their
21 operations as a heating oil delivery company. And
22 from there, of course, we have the ability to then
23 decide, you know, if—if they have a problem with
24 fraud or corruption, whether or not it rises to the
25 level where the company or the individual should be

1 denied. And I would remind you that just like with
2 the trade waste companies. It isn't BIC for small
3 agencies that alone makes the decision. The decision
4 has to be made by the five city agencies, which
5 include DOI, the NYPD, Small Business Services, the
6 Department of Consumer Affairs,
7

8 COUNCIL MEMBER CONSTANTINIDES: Do we
9 have any evidence that there are this--this large
10 number of individuals who are starting and stopping
11 companies that have these sort of bad actor history
12 and--?

13 COMMISSIONER BROWNELL: Well, I don't
14 know if they're starting or stopping, but as--

15 COUNCIL MEMBER CONSTANTINIDES:
16 [interposing] Well, they're going--if they're--if
17 they're getting caught, they're going to jail and
18 then they come back and maybe repositioning or--or--
19 Is there evidence that we have these types of
20 longstanding corruption running these companies now
21 that this background check would--would uncover?

22 COMMISSIONER BROWNELL: It would uncover
23 it absolutely.

24 COUNCIL MEMBER CONSTANTINIDES: But if
25 they--what if they're--you know, I'm just trying to see

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like what else were--what else is--what other

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regulations? What are we doing to prevent what those

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bad actors? If these guys were never arrested before,

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they had never been bad actors before, they sort of

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hatched this scheme, like what does this bill do to

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stop that?

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COMMISSIONER BROWNELL: Well, so if they--

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if they don't have any criminal history--

10

COUNCIL MEMBER CONSTANTINIDES:

11

[interposing] Uh-huh.

12

COMMISSIONER BROWNELL: --and so they're

13

sort of starting off with a clean slate, so if

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they're engaging in criminal activity involving their

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operation of a heating oil supply company, you know,

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we would also have other informants within the

17

industry that if it was the kind of thing that was

18

widespread enough that other people knew it, we would

19

find out about that. If--

20

COUNCIL MEMBER CONSTANTINIDES:

21

[interposing] That wouldn't be happening now with

22

DCA, but there being--there's no one else to do that?

23

COMMISSIONER BROWNELL: Well, again, DCA

24

doesn't license heating oil companies themselves.

25

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2

COUNCIL MEMBER CONSTANTINIDES:

3

[interposing] But they--

4

COMMISSIONER BROWNELL: The--the

5

inspections that are done. (sic)

6

COUNCIL MEMBER CONSTANTINIDES:

7

[interposing] Right. I--I--I understand that,

8

Commissioner. I'm not--I'm not trying to be

9

confrontational.

10

COMMISSIONER BROWNELL: Not annoying.

11

COUNCIL MEMBER CONSTANTINIDES: [laughs]

12

But--but is there--there's--there is someone that right

13

now if there's a bad actor and they know this is

14

widespread, there is someone they can go to now

15

correct? They can contact DCA, they can contact the

16

City. They're--they're--is having BIC?

17

COMMISSIONER BROWNELL: But DCA doesn't

18

license heating oil companies.

19

COUNCIL MEMBER CONSTANTINIDES: Okay. So

20

there is no one that they can go to now. You--you

21

stated, that's your testimony?

22

COMMISSIONER BROWNELL: [interposing]

23

Well, my guess is that if--if it involves the--

24

COUNCIL MEMBER CONSTANTINIDES:

25

[interposing] If it's a bad actor in the industry

1
2 now, there's no one that--that anyone can report that
3 to--

4 COMMISSIONER BROWNELL: [interposing]

5 Well, my guess is that--

6 COUNCIL MEMBER CONSTANTINIDES: --not BIC
7 or--or--or any way to do that?

8 COMMISSIONER BROWNELL: My sense is if
9 part of what they were doing was--was too in the city--
10 -

11 COUNCIL MEMBER CONSTANTINIDES:
12 [interposing] Uh-huh.

13 COMMISSIONER BROWNELL: --one would hope
14 they certainly would get to DOI.

15 COUNCIL MEMBER CONSTANTINIDES: Right.

16 COMMISSIONER BROWNELL: And given that we
17 have a very close relationship with DOI, and again I
18 know we don't regulate heating oil now, and but--I
19 just actually work at DOI. I know people there that
20 we would also be included in sort of any
21 investigations because--because of our knowledge of
22 trucking in general and the investigations that we
23 do, this would very quickly become a collaborative
24 investigation.

1
2 COUNCIL MEMBER CONSTANTINIDES: And that—
3 my—my next question is how much is a BIC license on
4 a—on a yearly—on a yearly, bi-annually? How often do
5 you have to pay for one, or how does this work?

6 COMMISSIONER BROWNELL: Well, again, with
7 regard to heating oil supply, you know, sort of—this
8 is a process that would in terms of determining the
9 fees that would have to be worked out with OMB with
10 the Office of Management and Budget. In the trade
11 waste industry, a license is \$5,000 for a two-year
12 license and then certain owners of the companies also
13 have to pay a fee for the backgrounding process. And
14 the purpose of the fees is to offset some of the
15 costs of doing the backgrounding that we need to do.

16 COUNCIL MEMBER CONSTANTINIDES: And—and
17 is there a fee per truck?

18 COMMISSIONER BROWNELL: There would be a
19 fee for—for a truck as well.

20 COUNCIL MEMBER CONSTANTINIDES: And if—if
21 we don't know if this is—if we don't know if there
22 are bad actors currently, and we are not sure how—
23 how—what—this seems like a large amount of expense.

24 COMMISSIONER BROWNELL: [interposing] We
25 know there are bad actors.

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COUNCIL MEMBER CONSTANTINIDES: We know that there are bad actors yes. We know that how-we- I'm not sure-how many of the-they-they were bawd actors before the background check. I'm not sure. It just seems like a very sort of high price for these mom and pop companies. I know there are a lot of small businesses in my district that would be having to pay \$5,000 and having to pay, you know, several hundred dollars per truck on a yearly basis would be onerous, right? I mean--

COMMISSIONER BROWNELL: [interposing] So, a couple of things. First, I would remind you that as D.A. Vance announced, the city alone was-was bilked out of \$10 million annually.

COUNCIL MEMBER CONSTANTINIDES:
[interposing] I whole--

COMMISSIONER BROWNELL: -and that's just per year. (sic)

COUNCIL MEMBER CONSTANTINIDES: --
Commissioner, I-I-I wholeheartedly agree with you. I-and I think we-and I started this from a place in saying we want to get after bad actors. I'm just trying to see if we're--

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COMMISSIONER BROWNELL: [interposing]

3

There is no point doing this unless it's going to be

4

done comprehensively. If we're not going to be doing

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deep dive investigations into a very troubled

6

industry, there--my suggestion is there's just no

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point doing this other than we'll know which

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companies went and applied for a license for whatever

9

value that is.

10

COUNCIL MEMBER CONSTANTINIDES:

11

Commissioner, I'm not disagreeing that we need to go

12

after the collection. If--if you're--you're trying to

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make that your--your pet argument to me. [laughs]

14

I'm in agreement with you that we have to find a way

15

to do that. I'm just trying to figure out if this is

16

the way, the right way to do that. And then the DOI

17

that I--the DOI report that was issued was this part

18

of that?

19

COMMISSIONER BROWNELL: Yes. So what

20

happened was as we got near the end of the

21

investigation it was actually last summer, we worked

22

with DOI to come up with a report so that we could

23

essentially be consultants with both city agencies,

24

and the public in terms of best practice just to

25

avoid this.

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2

COUNCIL MEMBER CONSTANTINIDES: Uh-huh.

3

4

COMMISSIONER BROWNELL: And so there was actually a working group set up of the large city agencies, which was--purchased the most oil for their buildings, and then--and then other agencies, and then DCA dis some outreach to consumers in general.

8

COUNCIL MEMBER CONSTANTINIDES: Alright, I'll just--I'll leave it there for the moment.

10

COMMISSIONER BROWNELL: I think Noah was there.

12

COUNCIL MEMBER CONSTANTINIDES: Okay, Noah.

14

DEPUTY COMMISSIONER GENEL: Thank you.

15

COMMISSIONER BROWNELL: He wants to say something.

17

DEPUTY COMMISSIONER GENEL: So there have--

19

COMMISSIONER BROWNELL: I have a point by your official name, but you can call me Costa and you can call me Noah--if I can call you Noah that works out.

23

DEPUTY COMMISSIONER GENEL: That's fine.

24

[laughter] So there is a 30-year history of criminal

25

1
2 prosecutions in this industry. They cannot all have
3 just been the first time for every drive by.

4 COUNCIL MEMBER CONSTANTINIDES: Correct.

5 DEPUTY COMMISSIONER GENEL: There was a--
6 there was a driver in the Eastern District federal
7 case in 2007--

8 COUNCIL MEMBER CONSTANTINIDES:

9 [interposing] Right.

10 DEPUTY COMMISSIONER GENEL: --who showed
11 up again in the DA's 2015 case. So there are repeat
12 offenders. One of the things that our background
13 does is establish--it shows us relationships between
14 companies. And so it's not companies--in order to
15 commit this fraud, you heard on the telephone calls
16 there were people calling each other. There were
17 relationships between companies, between people
18 within companies. And in order to stop fraud like
19 this, you have to understand those relationships, and
20 the only way to do that is by backgrounding people,
21 and then taking that and having people who are
22 dedicated to understanding this industry. Not just
23 having somebody put in a license application, and it
24 goes in the file and that's it. You need to
25 understand who are the principals of the company, who

1
2 are the employees of the company. Are all of the
3 employees just employees or are some of them—are some
4 of them principals? Why weren't they declared as
5 principals? All these things are important to
6 understanding who makes up this industry, and to
7 understand who the bad actors are, and who the good
8 actors are in taking out the bad actors from the
9 industry is the most important thing in order to stop
10 the fraud.

11 COUNCIL MEMBER CONSTANTINIDES: I—I don't
12 disagree with you on this. I'm just again wondering
13 if this—are there any companies--? You're saying we
14 just don't know how many companies there are
15 currently, right?

16 DEPUTY COMMISSIONER GENEL: We don't have
17 a definite--

18 COUNCIL MEMBER CONSTANTINIDES:
19 [interposing] We don't have a definite number?

20 DEPUTY COMMISSIONER GENEL: We don't have
21 a definite number.

22 COUNCIL MEMBER CONSTANTINIDES: We don't
23 know if nine is a large percentage, a small
24 percentage or we could—I just want to know, you know,
25 I'm just trying to again to wrap my mind around this,

1
2 and making sure that we're putting, you know,
3 definitely, you know, making a legislation that's
4 tailored to the problem that we have.

5 DEPUTY COMMISSIONER GENEL: Well, one
6 number that I've heard I mean around—I've—I've heard
7 around 100, but I think that that might be low. And
8 so I mean for nine companies to certainly— You know,
9 there's certainly many more than that out there, but,
10 you know there are—that is nine companies alone--

11 COUNCIL MEMBER CONSTANTINIDES:

12 [interposing] Right, uh-huh.

13 DEPUTY COMMISSIONER GENEL: --and
14 knowing, and those were the ones that were indicted
15 knowing that there were interrelationships with many
16 other players, many other companies. You know there
17 are—it's—it's fraud within the industry. It's not
18 just single actors.

19 COUNCIL MEMBER CONSTANTINIDES: Again, I
20 just want to—I just want to say I'll work with you
21 and speak with you and speak with you about this
22 legislation, and—and with my colleagues and—and the
23 Chair to make sure tell all this that we are doing
24 the best that we possibly can to root out this
25 corruption, and this corruption, and still be able to

1
2 support small businesses in our communities who are
3 doing this work that aren't bad actors. And I know
4 lots of companies that are in my district that aren't
5 bad actors that are doing good work, and are
6 providing home heating oil and putting food on the
7 table, and keeping those businesses open should also
8 be a shared goal for the people that a playing by the
9 rules, right?

10 DEPUTY COMMISSIONER GENEL: Right, right,
11 that's right.

12 COMMISSIONER BROWNELL: And Council
13 Member if any point you have more questions or your
14 staff does, you should always feel free to contact
15 us.

16 COUNCIL MEMBER CONSTANTINIDES:
17 Absolutely. I'm-I'm not shy about that, and I-I
18 definitely will do so, and I hope that we can sit
19 down in the near future, and I'll sit down sit with
20 the Chair as well. Thank you.

21 CHAIRPERSON REYNOSO: Can I-can I just
22 ask a question? So how would somebody know if
23 they're getting shorted? So-so what concern here is-
24 and I'm-and I'm hearing the cost line (sic) and I-I
25 agree that we don't want to make this so onerous that

1
2 they just can't operate. But from what I understand,
3 for example, how many 311 calls come in regarding
4 people or customers that feel they're getting
5 shorted, right? And from what I'm seeing, and this
6 is why I definitely want the heating oil industry to
7 come up with. From what I'm seeing, there's no way
8 for me as a regular consumer to be able to tell
9 whether—whether or not I'm getting shorted. There's
10 like a level of trust that needs to be there because
11 we're not the experts. You just assume they come in
12 and you want 100 gallons, they give you 100 gallons.
13 They go—and you just go about your day. What is
14 there—is there a way that consumers—I guess
15 eventually I think there's going to need to be an
16 education campaign. That's exactly how it is, and
17 you get this. Because I—I don't even know how we
18 deal with it. I've got to have a unit in my home or
19 we have to deal with our own oil? I got a lot less
20 than, you know, a school or a homeless shelter, but I
21 never ask ever how much I've got in it. I just do
22 the same thing every single day, and assume that
23 everything is okay every single time.

24 DEPUTY COMMISSIONER GENEL: So with
25 regard to complaints under 311, we were actually

1
2 really surprised to learn at least for the two years
3 that we were doing the investigation that there were
4 almost no complaints to the City. And, the companies
5 that we investigated were mainly targeting very large
6 buildings so that if they took a couple hundred
7 gallons that it's—it would be much less likely that
8 it would be noticed. One of the things that we
9 recommended in the report, and this based on our
10 conversations with other agencies, the MTA—I think
11 you heard in the tape some—one of the people said
12 from the office, you basically it's the MTA. Don't
13 do it there. The MTA is of all the city agencies at
14 least up until last year had developed the best
15 system, anti-fraud system, and that was mainly
16 because in like 2002, 3, 4 they had a number of large
17 thefts in shorting from their facilities, and they
18 put—actually put together the most comprehensive
19 program. And they were good enough to be—even
20 though they're a state agency--they were good enough
21 to be a part of the working group that DOI put
22 together of city agencies. And the main thing that
23 large buildings need to do--and I don't want to take
24 too much time here--is they need to get good working
25 gauges on their oil tanks, and they need to have

1
2 somebody there. The MTA will not allow the delivery
3 to any of their facilities in the city--and I think
4 there are about 28 of them--unless there is a
5 knowledgeable MTA person there to watch the delivery.
6 And there are certain things they notice in terms of
7 the noises that the truck makes, what the driver or
8 driver's assistant does in hooking it up. But the
9 thing that they do is they have a good working gauge
10 in their--in their tank. They do a reading
11 immediately before the delivery. They do a reading
12 immediately after the deliver, and they compare the
13 difference with the ticket that the truck
14 automatically spits out after the delivery takes
15 places.

16 CHAIRPERSON REYNOSO: So I guess in--in--in
17 trying to respond it's that at this moment there's
18 been almost no complaints to 311 so that there is no
19 real system. No one is calling to deal with this
20 because no one knows it exists almost because they're
21 not experts. They're not the MTA certified
22 inspectors or supervisors or whatever, you know.

23 COMMISSIONER BROWNELL: So 100 Church
24 Street that came up during the--the second set of
25 calls. That's the building where the DA's office is

1 located in Manhattan. That is the building I was in
2 Center Street. The building I was in when we were
3 doing this investigation. No one knew that that had
4 happened until we got that call, and were able to
5 work backwards from there.
6

7 CHAIRPERSON REYNOSO: So I guess what
8 we're trying to find is a balance of the load. (sic)
9 We obviously know that whatever we have in place now
10 is not enough. We need to do something. We need to
11 do more, but we don't want to make it so much so that
12 it makes it difficult to do business in the City of
13 New York. That's what we want to make sure we do
14 now. I want to be clear for a lot of the folks in
15 the other room that BIC is not the problem here.
16 That the problem is at least the corruption has made
17 it so that you have to see regulation. Like that--
18 that's how it always happens. There's some bad
19 actors ruining it for everyone else. But the bad
20 guys in the people you should be looking at are the
21 folks in the industry that have allowed this to
22 happen for so long, not necessarily BIC. BIC is
23 using this presentation as a clear example as to why
24 they believe that they need to be involved in this.
25 So, I just really want us to be mindful in the fact

1
2 that the people are here trying to find the solution
3 to a problem that hasn't been addressed for over—for
4 what I see 30 years. Whatever we're doing now is
5 obviously not working, but if DCA's lack of
6 inspections or—or lack of resources, whatever it is,
7 it just doesn't seem to be working.

8 COMMISSIONER BROWNELL: [interposing] So
9 Council Member, the only thing I would say is I
10 wouldn't—DCA was actually very helpful to us during
11 this investigation. They're not a law enforcement
12 agency. They don't have subpoena power.

13 CHAIRPERSON REYNOSO: [interposing] But—
14 so DCA can't--

15 COMMISSIONER BROWNELL: [interposing]
16 They don't have the tools to do this.

17 CHAIRPERSON REYNOSO: They can't go
18 outside of a company and stop a truck.

19 COMMISSIONER BROWNELL: Do you know how
20 dangerous it is to stop vehicles when you're not a
21 law enforcement? For one thing, there are—we have
22 been told there are many—drivers often carry cash
23 because some of these—the payments are made in cash.
24 And some of the drivers especially the ones that we
25 arrested carry guns because of the fact they carry

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2 cash. And it is very dangerous to start pulling over
3 vehicles, and you certainly couldn't do this unless
4 you were law enforcement. That's really not the main
5 focus of this in terms of coming up with a solution
6 that's going to work. It's really backgrounding the
7 companies and knowing who it is that's out there
8 operating.

9 CHAIRPERSON REYNOSO: Okay, so I want to
10 allow for Council Member Andy King from the Bronx to
11 ask a few questions as well.

12 COUNCIL MEMBER KING: Well, thank you,
13 Mr. Chair. I appreciate it and I really appreciate
14 this piece of legislation. Commissioner, thank you.
15 Thank you for being here. Thank you for your
16 testimony. You know, I used wonder why my mother
17 used to cuss at me and yell at me because it was cold
18 and say cut the heat down. [laughter] You know, we
19 just paid for it, but then I realized just from this
20 presentation I really believe that we were being
21 short of the oil because at times it would last a
22 month, and at times it would last two weeks. And it
23 wasn't like it was burning any faster, you know, or
24 leaving the switch on. So you just awakened me and
25 my eyes to what I've been personally dealing with,

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2 and I, you know, I definitely have to agree with the
3 chair, and to everyone here. It's—it's about how
4 we're all on the same page to make sure that the bad
5 actors don't get a chance to continue to operate.
6 Thirty years is a long time to defraud New York and—
7 and all of us here. So I—but I do say to those of us
8 who ae sitting here, all of you who have abided by
9 the rules and took care of your customers thank you.
10 Thank you, and thank you, and while this continues to
11 protect the small business person who is out there
12 servicing all of New York and doing the right thing.
13 However, we do need to address the scenario that
14 we're dealing with. You know, I don't know if I was
15 watching an episode of the Wise Guys listening to
16 these guys on the mic. You know, it's like no
17 regard, arrogance, disrespect and really just didn't
18 care who they were hurting in the process. So, I
19 just want to ask a couple of questions in regards to
20 since there is no oversight of this industry at all,
21 what we're hearing from you guys. I'm hearing from
22 you that you actually would have to try to under this
23 piece of legislation kind of create and
24 infrastructure first to actually start tracking
25 information, and if that is the case, what would you

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think the cost of that would mean? Do you need to
hire new staff to do that?

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COMMISSIONER BROWNELL: So first of all,
there really is a lot of regulation.

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COUNCIL MEMBER KING: Uh-huh.

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COMMISSIONER BROWNELL: So, but as I said
in the testimony the—the emphasis and rightly so has
been on safety and environmental concerns. The big
gap is in terms of integrity. So one of the reasons
why BIC is really the perfect place to do this is we
have all the units within BIC to do this. We simply
need to add a couple more people, and Peggy Tierney
(sp?) our Chief Staff has been working on that for
the last nine months with OMB, and—and has a sense of
exactly what it's going to take for us to do this so
that there is not a big lag if the legislation passes
for us to actually get up and running and be able to
process these applications in a timely fashion. So
we really have everything we need. We just need a
little bit more because obviously we're not taking on
a new industry.

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COUNCIL MEMBER KING: Uh-huh. Okay. You
mentioned the nine businesses were indicted. Could
you give us an update all what has happened to—what

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2 was the punishment and what happened with those nine
3 or--?

4 COMMISSIONER BROWNELL: My understanding
5 so the--what's called the discovery process in the
6 criminal cases takes a long time because there were
7 lots and lots of calls to listen to, lots of records
8 to be provided by the prosecution to the defendants.
9 My understanding in about a third of the individuals
10 and companies that pleaded guilty I know in my
11 conversations with the assigned prosecutors, who I
12 actually used to supervise, that they're in constant
13 negotiation with other attorneys. There's motion
14 practice that's going on. It takes a while. So
15 those--those cases are sort of normally winding--
16 winding their way through the criminal justice
17 process.

18 DEPUTY COMMISSIONER GENEL: But to be
19 very specific, 15 individuals have pled guilty in one
20 company at this point, which is about a third of the
21 defendants, and the other cases are continuing.

22 COUNCIL MEMBER KING: Is that jail time
23 or just kicked out of the industry?

24 DEPUTY COMMISSIONER GENEL: There has
25 been--some have been sentenced to various amounts of

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2 jail time, and some have been repaying large amounts
3 of money.

4 COUNCIL MEMBER KING: Okay, I want to
5 move to my next question. I learned through my dad
6 after awhile because we was finding it. We didn't
7 know it was being short, but we was looking at the
8 gauge on the top and we had a stick that would go all
9 the way into the tank, and start pushing up and down
10 and measuring, feeling weight, you know, when it was
11 light and when it--and I was able to figure out and
12 then call him right back and say something is wrong,
13 and then they would come back. Interesting that they
14 would come back and check oh, yeah, something was
15 wrong and then they would pump more, but they knew
16 what they was doing from the start--

17 DEPUTY COMMISSIONER GENEL: [interposing]
18 Yeah.

19 COUNCIL MEMBER KING: --after listening
20 to this for a year. What tools are--are out there
21 that you think we can give customers to protect
22 themselves from this? Is there anything that you can
23 offer them in how to protect themselves now?

24 COMMISSIONER BROWNELL: Tank gauges
25 actually aren't as expensive as you might think.

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COUNCIL MEMBER KING: Uh-Huh.

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COMMISSIONER BROWNELL: If I'm—even-I

live in a co-op. So I don't do that. I mean—I mean

our building has gotten the gauge. It's not a very

good co-op, but I would definitely invest in the

gauge, and then even after you ingest—invest in one

and get one, you have to make sure that it's, you

know, recalibrated on an annual basis or it's

actually working. And then the other thing to do

we're trying to do this with our super--but we only

have one employee for the whole building--is to have

him there whenever there's a delivery so that he's

watching exactly what they're doing. And I know that

that's a pain in the neck, and I know that very few

buildings probably ever do that. But what we found,

you know, during this investigation is that, you

know, for—for larger buildings I would suggest

there's really no excuse that you have the people to

do that especially given the potential for how much

you could lose from shorting. It simply doesn't make

sense not to take those measures.

COUNCIL MEMBER KING: Uh-huh. According

to—how does the—the carting and obtaining licenses

and this piece of legislation, if there's—is there—

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2 would you take up any additional costs if this
3 legislation is passed and if so would you incur the
4 costs, or would it be passed onto the customers?
5 What's your thoughts?

6 COMMISSIONER BROWNELL: Well, we don't
7 know what would be passed onto the customers, but I
8 would say this: I mean first of all nobody likes to
9 be regulate. I mean I don't even like to have to get
10 a new driver's license. It's annoying to have to do
11 that, but it's important, and I understand that it's
12 sort of added insult to injury that now not only are
13 you going to be regulated, but you have to pay the
14 person that's going to regulate you to do that. I
15 understand that sentiment, but quite frankly to—to
16 suggest, if it's being suggested—I don't want to put
17 something out there that hasn't directly been said,
18 although it might be. That the BIC regulation would
19 be to owners. That's just simply not the case. I
20 mean again, and I go back to the trade waste
21 industry. They're very—these two industries are
22 quite similar. You have companies of all different
23 sizes. In terms of how the fee structure will likely
24 be, it will be more expensive for a large company to
25 get BIC licenses because they have more people to

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background than a small company. But I—but I suggest to you that to say that \$5,000 for a couple years I know that's not nothing, but it's certainly not going to break the bank with regard to those companies. It's just—there's lots—you know, everybody uses oil pretty much.

COUNCIL MEMBER KING: [interposing] Uh-huh.

COMMISSIONER BROWNELL: And so—and the application process we know again will it be annoying? I guess it probably will, but we're going to work with people as we do now in the trade waste industry to make sure that they're provided with the kind of assistance they need to—to complete the applications.

COUNCIL MEMBER KING: Okay, I—I don't have any problems with anything that you're saying because in order for us to get it right, we need to get it right and get it right the first time so it—it gets rid of the bad actors. And for maybe some of us here to who might not see eye-to-eye right now. But hey, if we get some of the—get rid of some of the bad actors that might mean more business with those who were doing the right thing anyway.

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COMMISSIONER BROWNELL: Uh-huh.

COUNCIL MEMBER KING: So I think it all can balance out, but you know, Mr. Chair, I'd like for you to say how do we put forth legislation if it's not already on the books for those who might be found guilty for investing in this activity at all to a lifetime ban. You can't go to jail working for one—you come back after seven years and work for another company. You are banned from the industry altogether, and if your company is found guilty that they have to pay the cost of the city for doing the whole investigation. Because it takes out of your—you just said it was taking two years, a lot of manpower to get this done. So, you know, that should been paid (sic) and if someone is a bad actor—if-if you have staff that's out there because I—what I heard on some of those calls it was driver who might not have had a clue what was going on, but they called the boss to find out what they should do. So I wouldn't want to punish the local, you know, the driver who is just there, you know, just being held accountable saying you've got to do this. Or I'm a union person or I'm hard labor guy, and I've just got to do—the boss told me to do this.

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COMMISSIONER BROWNELL: Right.

COUNCIL MEMBER KING: I wouldn't want to jeopardize and throw them underneath the bus, but they—they have a responsibility. If they're put in that situation, they need to drop a dime immediately so that bad actor can go down.

COMMISSIONER BROWNELL: Right.

COUNCIL MEMBER KING: And I think if we pass—put some legislation on the table and hold the people accountable-- Three other people said they don't get tripped up and their families don't go down because somebody else is being greedy. You probably can do a better job in identifying and saving the industry rom itself. So I want to thank you, and I'm—I'm going to talk more about how do we do something similar to that, and that can help you and also help our brothers and sisters who are doing the right thing. So they will be held accountable for some nonsense that someone else done. So, I—I thank you for your time and I that's was my questions. I appreciate it.

CHAIRPERSON REYNOSO: Thank you Council Member King. We have Council Member Costa

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2 Constantinides, who has couple more questions. Go
3 ahead Costa.

4 COUNCIL MEMBER CONSTANTINIDES: Just very
5 quickly. About the transportation worker
6 identification credential card that they have--does
7 every driver have to be to get that in order to drive
8 an oil truck?

9 COMMISSIONER BROWNELL: So, and again
10 people from the industry can probably answer this
11 better than I can, but my understanding is that I
12 think there a five terminals in the metropolitan area
13 at least that New York heating oil supply companies
14 generally use in order to actually get on those
15 premises to pick up the oil at a--at wholesale to then
16 go and sell, they need a TWIC card. That's what it's
17 called in order to get on those premises because the--
18 - I think it's the Department of Homeland Security--

19 COUNCIL MEMBER CONSTANTINIDES:
20 [interposing] Right.

21 COMMISSIONER BROWNELL: --has determined
22 after 9/11 that those are particularly susceptible
23 places where really bad things could happen if bad
24 people get on this.

25 COUNCIL MEMBER CONSTANTINIDES: Uh-huh.

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COMMISSIONER BROWNELL: So that's where
the TWIC requirement comes from .

COUNCIL MEMBER CONSTANTINIDES: And that--
and they fingerprint them to get that card?

COMMISSIONER BROWNELL: Fingerprint them,
yes, exactly.

COUNCIL MEMBER CONSTANTINIDES: And that--
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COMMISSIONER BROWNELL: [interposing] We--
we would not get access to that.

COUNCIL MEMBER CONSTANTINIDES:
[interposing] We don't get access at this time?

COMMISSIONER BROWNELL: We've already--
we've been in--they've been very helpful with us.
We've talked to people locally. We've talked to
people in Washington. They're very helpful, but they
have--they cannot provide us with the links.

COUNCIL MEMBER CONSTANTINIDES: So that's
why you feel it's-- Okay, because I'm trying to
understand like it's just not--

COMMISSIONER BROWNELL: [interposing]
Right.

COUNCIL MEMBER CONSTANTINIDES: --it's a
fact of movement--

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COMMISSIONER BROWNELL: [interposing]

And—and you will need to get printed once. Right now the cost is—I think it's \$87.25 and after that, you don't have to do it again. It's not that big of a deal. When I was a federal prosecutor I had to go get printed before I could get hired.

COUNCIL MEMBER CONSTANTINIDES: I'm just trying to make sure we're not doing something that's redundant, but if you're—you're saying that the feds aren't sharing.

COMMISSIONER BROWNELL: They can't by the law.

COUNCIL MEMBER CONSTANTINIDES: They can't be. Okay. Well, we can always try to work with them--

COMMISSIONER BROWNELL: [interposing]
Yeah.

COUNCIL MEMBER CONSTANTINIDES: --to-to share. [laughs]

COMMISSIONER BROWNELL: No, they were very helpful. They were very helpful in many other areas.

COUNCIL MEMBER CONSTANTINIDES: Okay.

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2 COMMISSIONER BROWNELL: And they were
3 very interested to find out what the dispositions in
4 the criminal cases are for their particular records.

5 COUNCIL MEMBER CONSTANTINIDES: They come
6 trying to—again—again, make sure we're not only
7 telling you all that way. (sic)

8 COMMISSIONER BROWNELL: Right.

9 COUNCIL MEMBER CONSTANTINIDES: So, I
10 appreciate that, and that explanation is helpful.
11 Thank you.

12 CHAIRPERSON REYNOSO: Okay, now you—you
13 mentioned \$5,000 because that's sort of the trade
14 waste industry going through, but that isn't
15 necessarily—it's not necessarily the number that we—
16 we—we use.

17 COMMISSIONER BROWNELL: [interposing]
18 No, it has to be worked out with OMB. As I've
19 indicated, to the—from the Heating Association, if
20 this legislation is passed, one of the first things
21 we're going to do is put together kind of a working
22 group, which would certainly include them, and
23 actually probably wouldn't be a bad idea to include
24 some people from the Council. So as we go forward,
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2 we get the—the rules that are more specifically
3 effectively implement the legislation.

4 CHAIRPERSON REYNOSO: There is also
5 portion in this legislation regarding an audit. Who
6 would be conducting that audit? Because would that
7 be an expense that would incurred by the businesses?

8 DEPUTY COMMISSIONER GENEL: I'm not sure
9 that it's an audit. It's a—are—are you talking about
10 the independent monitoring? Is that? No, or that—
11 that we can request.

12 CHAIRPERSON REYNOSO: Exactly where you
13 guys would be able request an audit.

14 DEPUTY COMMISSIONER GENEL: We can
15 request record of all of the companies. This is the
16 way it works in trade waste also and this is—it's in
17 the legislations that all of the companies would be
18 required to maintain certain records, and we are—we
19 would have the right to audit them, and we're not
20 saying that that they have to go hire an auditor, but
21 we have auditors on staff at BIC, and one of the
22 things they do is conduct audits, on-site audits.

23 CHAIRPERSON REYNOSO: So you would give
24 them the tools necessary to keep their—meant to
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2 document their work appropriately and then if you
3 guys deem it so, can go in and audit them--

4 COMMISSIONER BROWNELL: [interposing]
5 Right. So--

6 CHAIRPERSON REYNOSO: --uniformly?

7 COMMISSIONER BROWNELL: Right, so we have
8 what six or seven auditors? I don't even know. We
9 don't have very many. So when we do an audit of a
10 trade waste company, we tell them we're coming. A
11 lot of times we'll actually go on site so that we
12 don't have to take any books or records away so that
13 the company can continue to operate, and we do it in
14 a way that doesn't disrupt the business. Since we
15 don't have that many people, we don't do it that
16 often. We--we almost always do it because we have our
17 concern or suspicion that there's something up with
18 the books and records. We don't just show up without
19 anything in a business and say give us your books and
20 records because as I said, quite frankly, we don't--we
21 can't do that. We don't have enough people for that.

22 CHAIRPERSON REYNOSO: Well, I--I really
23 thank you for your time here. I would--I would
24 actually appreciate it if you or your staff could
25 actually stay because I really want you to hear the

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testimony from--from the Heath Association and from
the Teamsters who are the representatives of the--the
folks in unions. And I want to make sure that all
their concerns actually are listened to so that we
can address them appropriate--in your way.

7

COMMISSIONER BROWNELL: Okay.

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CHAIRPERSON REYNOSO: Thank you,
Commissioner.

10

COMMISSIONER BROWNELL: Thank you.

11

CHAIRPERSON REYNOSO: I'd like to call up
now Rocco from the New York Heating Association, and--
and Demos from the Teamsters Local 553. [pause]
Well, guys, thank you for being here, and just note
that you guys are going to have not only admitted but
as--as much time as you think necessary to bring to--
to--to present. There's no time limits on your
testimony either. So please whenever you're ready,
go ahead.

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ROCCO LACERTOSA: [off mic] I appreciate
that. Good afternoon--

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CHAIRPERSON REYNOSO: [interposing] One
second. I don't think it's on. Is the red button
on--the red light on?

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ROCCO LACERTOSA: That one is yes.

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CHAIRPERSON REYNOSO: Alright.

ROCCO LACERTOSA: Thank you. Good afternoon, Chair Reynoso, and committee members. My name is Rocco Lacertosa, and I serve as the CEO of the New York Heating Oil Association, a 75-year-old trade association whose members for the most part are made up of family owned heating oil distributors and terminal operators located throughout the City of New York. Thank you for the opportunity to testify today. NYHOA has a strong track record or working closely with the City on numerous policy and operational issues including consumer protections and key environmental goals such as reducing sulfur content and increasing blends of bio-heat, which overwhelmingly passed at yesterday's City Council hearing. I want to be very clear. Our industry of honest, hard working, small, medium and large businesses from all five boroughs has a shared goal with the City of New York to protect consumers from fraudulent business practices and to promote accountability on the—in our industry. No one wants to see the bad actors weeded out as much as we do. However, this bill would destroy good people, and make it impossible for mom and pop union heating oil

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2 businesses to compete with global utilities. Placing
3 an already heavily regulated industry under the BIC
4 bureaucracy will regulate good actors out of
5 business, and will not accomplish our shared goal of
6 punishing the bad actors, mostly fuel transport
7 businesses from undercutting legitimate companies,
8 and ripping off the public. With Intro 1268, the
9 City Council is giving enormous unchecked power to a
10 single agency. The bill is strikingly broad. It
11 focuses on redundant background checks, paperwork,
12 fines, fees and bureaucracy when we should be
13 focusing on real enforcement. I'd like to point out
14 a few specific areas of legislation that raises
15 serious concerns in our view. Our industry is highly
16 regulated by 13 different city, state and federal
17 agencies including DCA, DCAS, the U.S. Transportation
18 Security Administration, a division of the Department
19 of Homeland Security, which administers the
20 Transportation Worker Identification Credential, also
21 know as a TWIC card. TWIC is a biometric ID for
22 accessing secure, fuel facilities and put in place
23 after 9/11. A chart outlining all these regulatory
24 requirements is included in your packets. Background
25 checks and regulation are not what is missing. DCA

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2 used to have regular spot checks, and I can give a
3 personal anecdote there. I started out in this
4 industry as a fuel oil truck driver, and it was
5 common practice to pull into a terminal and find
6 inspectors waiting there to check your truck out.
7 And also on the road I—I've—I've been intercepted by
8 DCA—by DCA inspectors and they'll look over the
9 truck, and check for broken seals, missing seals or
10 anything else that would be suspicious. So I—you
11 know, that's what is missing today. We recommend
12 that the city conduct spot checks in addition to
13 other enforcement rather than creating yet another
14 layer of bureaucracy. The DOI-BIC Report released in
15 November of 2015 highlighted fuel transportation
16 companies as well as drivers that engaged in various
17 schemes to short customers. The fact that the
18 thieves knew their trucks wouldn't be spot checked,
19 and only checked at scheduled inspection allowed for
20 the fraudulent activity. DCA already performs a very
21 stringent scheduled inspection at their facility.
22 However, there are no random fuel field inspections.
23 Let's tighten and enhance DCA and other existing
24 regulations. Furthermore, our industry is
25 increasing—increasingly using new technology to

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2 monitor the integrity of fuel delivery, which one of
3 my members will speak to today. We should be looking
4 at the technology and how it can be more widely
5 implemented in a way that works for commercial and
6 residential customers. The bill's requirements will
7 have far reaching economic implications for the
8 industry, placing a massive financial burden on
9 thousands of employees, and the heating oil industry
10 is unfair. We need only to look at other BIC
11 regulated industries such as the Hunts Point market
12 for a preview of what may be in store for workers in
13 the heating oil industry. According to a 2013 report
14 by CBS News included in your packets, advocacy-
15 advocacy groups such as Latino Justice were forced to
16 intervene on behalf of small businesses that were
17 being excessively fined, and routinely intimidated by
18 agents sometimes with guns drawn at their place of
19 work. This bill would cripple small heating oil
20 businesses. For example, the bill states that all
21 licensed dealers and deliverers shall maintain all
22 audited financial statements and records. While
23 larger heating oil dealers may conduct audits on a
24 regular basis, audits are not common practice for
25 small businesses because of the basic living costs.

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2 Additionally, compliance cost of this legislation and
3 requirements like audited financial statements would
4 provide an economic advantage to businesses located
5 in Westchester, Nassau County or New Jersey that
6 would not have such costly burdens. Other aspects of
7 the bill are strikingly subjective. With this bill,
8 the City Council will be empowering an agency with
9 the ability to deny applications and put small
10 businesses out of business simply because BIC feels
11 an individual does not have what it subjectively
12 believes is good character, honesty and integrity.
13 Furthermore, the bill will empower BIC to regulate
14 how businesses would bill their customers for
15 deliveries. Companies have different billing
16 systems, making this logistically challenging. This
17 overstepping of regulatory boundaries can have very
18 negative consequences for small businesses.
19 Overhauling operating procedures, fleet managing or
20 fleet management or revamping computer billing
21 systems is a costly and cumbersome operation. I'd
22 like to add that the legislation suggested BIC would
23 monitor and regulate overcharging, but the bill does
24 not define overcharging. BIC stepping into the
25 practice of regulation individual companies' pricing

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2 decisions is highly troubling. We—we—we need real
3 enforcement not burdensome red tape that will put
4 family owned legitimate businesses out of businesses—
5 out of business. Finally, NYHOA wants to work with
6 the City Council to aggressively fight fraud, but in
7 a targeted, fair, actionable way. We welcome the
8 opportunity for further conversation to discuss
9 pragmatic and feasible ways that we can work
10 together. Thank you.

11 CHAIRPERSON REYNOSO: Thank you. I'd
12 like you to speak and then we'll ask some questions.

13 DEMOS DEMOPOULOS: Good afternoon.
14 [pause] Good afternoon, Chairman Reynoso, Councilman
15 King and Councilman Constantinides. I'm Demos
16 Demopoulos, Secretary-Treasurer and Executive Officer
17 with Teamsters Local 553, which represents New York's
18 heating oil workers that have kept New Yorkers warm
19 during cold weather for over 100 years. We have a
20 thousand members in this industry, whose job could be
21 in jeopardy along with their pension and medical
22 benefits. The fuel oil industry is presently
23 overseen by several agencies. If someone commits
24 fraud in this industry, they will get caught and they
25 will be indicated. That is how it should be. My

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2 intention is to protect the good jobs for working New
3 Yorkers and good employers that provide those jobs.
4 Union companies, the good companies who make up the
5 majority of this industry will be hurt by this
6 legislation as it is currently written. I know this
7 industry. My father provided for a family of six
8 children growing up in Queens by driving an oil
9 delivery truck. I drove from 1978 until 1990 when I
10 became a business agent for the union. It is the
11 utmost respect for this committee that I ask you to
12 put this legislation aside, and work with us to
13 protect the heating oil jobs, and avoid any negative
14 effects to the jobs and benefits I speak of. One-one
15 point I'd like to make in particular if you don't
16 mind. I'm looking around this room, and there are a
17 number of my employers here, and some of them are
18 small, some of them are large. I'm proud to say that
19 we have a pension system that is solvent, and as you
20 all know, there are pension problems all across the
21 country. I'm proud to say I wish it was 100% funded
22 but it's 94% funded, which is really, really good.
23 If some of these large employers are driven out of
24 business, it will be a catastrophe for the 1,500
25 people and their families that are currently getting

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2 benefits, and the other 1,500 that are relying on
3 those benefits at some point in their life. It could
4 trigger a mass withdrawal, which would—it would kill
5 the industry, and a long with oil, along with jet
6 fuel, along with gasoline, which is everything that
7 the petroleum industry is. It's the life blood of
8 this city of this state, of this country, and we need
9 to do everything we can do to protect it.

10 CHAIRPERSON REYNOSO: Thank you guys for
11 your testimony. I just have a couple of questions.
12 In the—I don't know if the—in the indictment the—the
13 companies that were indicted if—if we actually know
14 their names. Do you guys know who those companies
15 are, this—the nine companies?

16 ROCCO LACERTOSA: I—all I know is that
17 they were primarily transportation companies, not
18 retail dealers like I have here today.

19 CHAIRPERSON REYNOSO: So does the New
20 York—so New York Oil Heating Association

21 ROCCO LACERTOSA: No, no.

22 CHAIRPERSON REYNOSO: Okay and are any of
23 those—any of those folks that were indicted union
24 shops?
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2 DEMOS DEMOPOULOS: Not that we're aware
3 of. As-as mentioned, transportation companies
4 meaning contractors that are hired to deliver the
5 product. We-we believe that many of those are the
6 ones that are involved in the scheming.

7 CHAIRPERSON REYNOSO: Okay. Did-did you
8 guys have any-any knowledge of possible fraud and
9 corruption in this industry prior to the indictment?

10 ROCCO LACERTOSA: Not until it came out.

11 CHAIRPERSON REYNOSO: Well, not-not the
12 knowledge that-so I guess what I'm asking is that
13 were you aware that there was trouble in your
14 industry when it came to shorting? Did you ever hear
15 of shorting prior to the indictment?

16 ROCCO LACERTOSA: I've-I've heard of it
17 prior to the indictment yes.

18 CHAIRPERSON REYNOSO: But-but it's not
19 something that you thought was widespread?

20 ROCCO LACERTOSA: No.

21 CHAIRPERSON REYNOSO: Okay. What about
22 the-the-the since this?

23 DEMOS DEMOPOULOS: I-I understand that
24 they're continuing investigations, but I do not have
25 any direct knowledge, but I know that over my years

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2 as a business agent any time I tried to organize any
3 of the companies, they wanted nothing to do—the—the
4 workers. And I suspect this because they were being
5 taken care of in other ways.

6 CHAIRPERSON REYNOSO: Right, I—I hear
7 you, and it makes it difficult for you, too. So,
8 you—you saw the presentation just the way we saw it,
9 and I want to hear other cares. For—for folks that
10 are not part of that industry, you know, the argument
11 is made very strongly by BIC here. We're talking
12 about \$10 million a year in the two years that they
13 were able to investigate. Outside of that, can you
14 imagine just New York City, exactly. Imagine maybe
15 ten years of this happening a \$100 million, taxpayer
16 dollars that are going down the drain. These folks
17 have the audacity to do this in homeless shelters, in
18 police stations, in hospitals. That is serious—
19 serious business here in the City of New York. When
20 we're talking about the issues that we're having
21 financially and being able to provide resources and—
22 and—and—and making sure that we—we're the best city.
23 We have the highest standards. For us to be losing
24 money in homeless shelter is a big issue for me. So,
25 I—I do want to say that DCA is obviously not doing

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2 what it's supposed to. It's having trouble, and you
3 know better than anyone maybe. You're going to find
4 out that the City of New York when it comes to
5 enforcement falls short more than—not only in the
6 heating oil industry, but in general. Enforcement is
7 probably the number one complaint whether it's
8 Sanitation, whether it's Education, now the heating
9 oil industry. Whatever it is, it's always an issue.
10 There's always a lack of resources for it. What's
11 never—what's never an issue is the BIC's ability to
12 investigate. I want to be clear, and I—I have been
13 chair for 2-1/2 years, and dealing with BIC now, and
14 the troubles that they've had or the repetition that
15 they've had in the waste industry I am familiar—I am
16 familiar with. But I can say that as of now, that
17 industry is—is almost completely clean of—of
18 corruption, right. They've—they've actually changed
19 the way it works. Folks are actually operating at
20 below the flat rate that's allowable, the max capped
21 rate that is allowable in the trade waste industry.
22 So I'm just saying that they weren't crippled, right,
23 and the trade waste industry is thriving. It's doing
24 well. It's not doing—it's operating I guess is what
25 I want to say, and the businesses are making money

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2 and they're probably more--they've--they've been
3 probably the most investigated group of businesses in
4 the city of New York.

5 ROCCO LACERTOSA: If I may, Mr. Chairman,
6 though--

7 CHAIRPERSON REYNOSO: [interposing] Yeah.

8 ROCCO LACERTOSA: --the difference
9 between that industry and this one is they don't have
10 the level of competition. The--the--the heating oil is
11 industry is not what it used to be. At one point we
12 had 8,000 members in the heating oil industry, and
13 now we're down to a thousand, and we had maybe just
14 in Queens alone during the '50s and '60s there were
15 over 100 mostly mom and pop oil companies. There's
16 one right now. One.

17 CHAIRPERSON REYNOSO: Don't you think
18 that part--part of that is problem is that these folks
19 are selling oil at a reduced rate because they're
20 stealing the oil and that--

21 ROCCO LACERTOSA: No, these aren't--these
22 are not these people.

23 CHAIRPERSON REYNOSO: Well, not--not you
24 personally.

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2 ROCCO LACERTOSA: No, but these are not
3 these companies.

4 CHAIRPERSON REYNOSO: I'm talking about
5 what the corrupt folks who are doing that, and making
6 it so that when I call mom and pop A from Queens and
7 say I need heating oil, and they're like we're, you
8 know, \$10 a gallon. I'm making this stuff up. I
9 don't know the numbers. \$10 a gallon, and then I
10 call-

11 ROCCO LACERTOSA: [interposing] It's not
12 there yet.

13 CHAIRPERSON REYNOSO: And then I call a
14 corrupt-and then I call a corrupt organization B,
15 and-and they-they tell me that they can do it for
16 eight bucks, and I go with them every single time.
17 And these are the folks are really hurting the
18 industry. I want to be clear that those are the
19 folks that are making it so that you can't even
20 compete or you are competing, you're competing for
21 pennies. The industry is competing for pennies.
22 This is going to-this could allow for-the regulation
23 could allow for the balance of-of the actual cost of
24 what it is to do this work, and probably bring in new
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2 people into this industry that are doing it the right
3 way as opposed to the bad guy.

4 ROCCO LACERTOSA: If that's the intent
5 then I'm sure the industry will welcome that but
6 again because of the possible added costs,
7 particularly with the larger companies, it might
8 drive them out of the market. I have one employer
9 that's here that's is probably the largest heating
10 oil company on the Northeast, and maybe they don't
11 have to do business here in New York, and you're
12 relying on everything else. But meanwhile what do I
13 do with those 300 families that are depending again
14 not only on a pay check, but also their benefits and
15 their future benefits?

16 CHAIRPERSON REYNOSO: Great. So I wanted
17 to ask--

18 ROCCO LACERTOSA: [interposing] And--and
19 the other costs of the--of these regulations will have
20 to be passed, you know, born by someone, and--and, you
21 know, it's going to have to be the customer. We
22 don't want to hurt the customer.

23 CHAIRPERSON REYNOSO: So I wanted to ask,
24 and I'm going ask--

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2 DEMOS DEMOPOULOS: [interposing] And just
3 so you know, Mr. Chairman, in our Labor Agreement if
4 anybody is caught dishonest they're immediately
5 discharged, and it's been in that contract fore years
6 and years and years.

7 CHAIRPERSON REYNOSO: And I want to
8 reiterate what the Commissioner said as well that,
9 you know, they--not in this industry itself not
10 everyone is a bad guy

11 ROCCO LACERTOSA: And--and I'll thank you.

12 CHAIRPERSON REYNOSO: The conversations
13 I've had with Rocco--

14 ROCCO LACERTOSA: [interposing] Thank
15 you, Commissioner.

16 CHAIRPERSON REYNOSO: You know, what I've
17 had with Rocco and it's--it's clear to me that your
18 just as upset as we are--

19 ROCCO LACERTOSA: [interposing] We are.

20 CHAIRPERSON REYNOSO: --and just as
21 concerned.

22 ROCCO LACERTOSA: Absolutely. Nobody
23 wants these people out of the business more than I do
24 and my members, believe me.

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2 CHAIRPERSON REYNOSO: And—and I do want
3 to talk to the commissioner about competition
4 eventually. We'll have a conversation. I don't want
5 folks from New Jersey, from Rhode Island and
6 Connecticut coming in here and—

7 ROCCO LACERTOSA: Westchester and—

8 CHAIRPERSON REYNOSO: [interposing] I
9 don't want them coming in here because—

10 ROCCO LACERTOSA: [interposing] Yeah,
11 yeah.

12 CHAIRPERSON REYNOSO: --we have to pay
13 \$5,000 for a business in a couple—and paying per
14 truck that we end up having to lose. We should have
15 a conversation about what that looks like as well.

16 COMMISSIONER BROWNELL: [off mic]

17 CHAIRPERSON REYNOSO: You're going to
18 have to say it on the record, Commissioner. Go
19 ahead.

20 COMMISSIONER BROWNELL: [off mic] Under
21 the regulation, the business--

22 CHAIRPERSON REYNOSO: [interposing] Wait,
23 wait. You've got to get on the mic here. Everyone
24 has to hear this at home as well.

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2 COMMISSIONER BROWNELL: Okay. Under the
3 regulation, the--the business could be located in
4 Westchester and Nassau County as many of them are.
5 You have to have to get a BIC license under this
6 legislation if you are doing business in the city.

7 CHAIRPERSON REYNOSO: [interposing] So
8 you could be from Connecticut, as soon as you--

9 COMMISSIONER BROWNELL: [interposing] You
10 could be from Minnesota, if you're doing business in
11 the city then you've got to get a BIC license. So
12 this is not going to somehow advantage companies that
13 are physically located outside of the city.

14 CHAIRPERSON REYNOSO: Okay, and then I
15 also want to say, though, I do want to after this
16 meeting see if we can have a conversation with
17 everyone in the room, and have a discussion about the
18 details that were presented from--from the industry
19 here. So that we could see where we go from here. I
20 do want them to sit down. I think that there's some--
21 some issues. I do want to bring up the audit
22 situation.

23 COMMISSIONER BROWNELL: Uh-huh.

24 CHAIRPERSON REYNOSO: So from what I
25 heard from the Commissioner again and I--yeah,

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2 Commissioner can—I'm going to keep you there because
3 I need you to answer some questions because you're
4 the expert here. The audit. From what I
5 understanding or what your understanding it, and you
6 explained it to me, correct me if I'm wrong, you're
7 concerned about having to do an audit, and a small
8 company that has to do an audit they've probably
9 never done it before.

10 COMMISSIONER BROWNELL: Right.

11 CHAIRPERSON REYNOSO: It's probably very
12 expensive or—and so forth. From what I understand,
13 the Commissioner is saying that the responsibility of
14 doing the audit is going to fall on BIC not on the
15 business.

16 ROCCO LACERTOSA: Well, I read the
17 legislation audited financial statements. So if—if
18 that's not the case—

19 COMMISSIONER BROWNELL: No, we would do
20 the audit, and the other thing about the price and
21 controls I can't remember.

22 CHAIRPERSON REYNOSO: I'm sorry. Can you
23 tell me about that part of it?

24 COMMISSIONER BROWNELL: We're not going
25 to regulate—the—under the legislation, we're not

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going to regulate the prices. The trade waste is the rate cap, which was instituted for very specific reasons right after the Trade Waste Commission was created because of the way that organized crime had set the prices. That's not going to be the case here.

CHAIRPERSON REYNOSO: So I want to in the legislation the auditing portion of it, that they were--they're speaking on. It needs to be more clearly stated that they will not be responsible for that, right? That there's a--that you would be able to audit them, but you will never request that an independent audit, that they got an independent audit and submitted to you. I just want to make sure that that gets clear--

COMMISSIONER BROWNELL: [interposing]
Yes.

CHAIRPERSON REYNOSO: --because it's a big point as I could imagine a mom and pop saying how do we audit? They probably do the books writing it in. They don't have computers. Like there's different styles that people--

CHAIRPERSON REYNOSO: [interposing] Uh-huh.

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CHAIRPERSON REYNOSO: --produce things, and I want them to have to figure that out. There is also a computer system concern that they have. Are you asking for uniformity as to how the records are kept in--?

COMMISSIONER BROWNELL: [interposing] No.

CHAIRPERSON REYNOSO: Okay.

COMMISSIONER BROWNELL: So that's up to the business to decide.

CHAIRPERSON REYNOSO: Okay.

COMMISSIONER BROWNELL: And again with six or seven auditors, the last thing we're going to be doing is showing up at very many businesses to conduct audits. We don't have the ability to do that, and we don't have the desire to do that unless there's specific concern we have that makes us think that an audit is important is to do.

CHAIRPERSON REYNOSO: Okay, and then the last thing that they said is that I--sorry I found like six things that were--and by the way very valid concerns here. These folks are not just asking not to be regulated. They have some real concerns. One of them is the information regarding the TWIC cards. They feel that that's a--it's a duplicate of efforts

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2 here when they're already doing something for
3 Homeland Security, and so I want you to reiterate to
4 address that issue. At this point, you are not—you
5 do not receive information from home, and you cannot
6 get Homeland's information.

7 COMMISSIONER BROWNELL: We can't. So,
8 it's—it's annoying. It's right now \$87.25 to do, but
9 I would suggest that that's not a deal breaker here
10 in terms of the inconvenience on the drivers in the,
11 you know, principals of the companies to get done.
12 You—you net—we're—we're setting it up and this is
13 something that BIC's Chief of Staff has—has—has been
14 working on that they don't even have to come to BIC
15 to actually get printed. There are a number of
16 places around the city and the state where you can go
17 and make an appointment. It's like going to the
18 dentists except hopefully not as painful to get
19 printed and get photographed and then all that stuff
20 gets provided BIC. But as you can well imagine, in
21 order to do any sort of an effective background, we
22 have to have the ability to see what, if any,
23 criminal history there is of the applicants. And
24 that's really the only way to do it.

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CHAIRPERSON REYNOSO: Something that they—they brought us was the cost of the license. I—I do want to say why is it that—who made the determination that the licenses for the trade waste industry had to be \$5,000?

COMMISSIONER BROWNELL: It doesn't have to be anything. I'm just telling you what it is in trade waste.

CHAIRPERSON REYNOSO: So—so I guess what I'm trying to say is I—I don't think—I don't think it's apples to apples here with the trade waste industry's organized crime corruption and the corruption that we have here even though they're both bad. And I just really want to have a conversation about what that feed looks like so that it's—it's something that allows us to do your—it allows you to do your job, but doesn't take away from the opportunities that we have in the business industry. So we want to make sure that we're in—we're in that conversation.

COMMISSIONER BROWNELL: Noah wanted to clarify something.

CHAIRPERSON REYNOSO: Yes.

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2 DEPUTY COMMISSIONER GENEL: Let me just
3 address the audited financial statement part of it.

4 CHAIRPERSON REYNOSO: Noah, say your name
5 on-on records.

6 DIRECTOR GLAZER: Noah Genel. I'm
7 General Counsel of BIC. Section 20-1015 says that
8 all licensed dealers and deliverers shall maintain
9 audited financial statements, records, ledgers,
10 receipts, bills and such other written or electronic
11 records as the Commission determines are necessary
12 for carrying out the purposes of this chapter. Many
13 of those details are going to be in our rules, which
14 will go through the CAPA process, and would be
15 available for public comment. And so as we are in
16 our trade waste industry, we don't always ask for
17 audited financial statements, and there may be
18 sometimes where they're necessary and there may be
19 many times when they are not necessary. But this
20 legislation does not say 100% that there are going to
21 be audited financial statements. There—they must
22 maintain them as the Commission determines necessary
23 for the purposes of this chapter. A lot of that will
24 be spelled out in the rules.

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2 CHAIRPERSON REYNOSO: So I want to just
3 be very clear that when it gets—goes out in the rules
4 that we—we're not asking them to modify the way they
5 do their records or their books. So much so that they
6 end up having to, you know, produce new billing
7 cycles, new billing ways and so forth. I've tried my
8 hand at Quick Books, and it's a very difficult
9 process to get through. I just want to be clear that
10 these guys have been doing business a certain way,
11 the right way. I want to be clear, the right way and
12 that's not what we're asking for them to modify.
13 And—and so I—and I apologize for this, but I just
14 wanted to ask those questions because they were
15 concerns, but this is their time to testify. So I
16 appreciate you guys coming up, and really answering
17 those questions.

18 ROCCO LACERTOSA: Thank you.

19 CHAIRPERSON REYNOSO: And I really want
20 to give them the opportunity to continue to make
21 their testimony. So go ahead.

22 ROCCO LACERTOSA: Mr. Chairman, I—I don't
23 want to turn it to a debate, but—but there—there are
24 a number of people in the industry that don't have a
25 brick and mortar building the way these people do.

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2 Okay. So they—it's just a phone number, and maybe a
3 computer, and an ad in a publication somewhere that I
4 sell oil, and call this number. No—no name of the
5 company or anything and, you know, people will engage
6 them. They'll get a profit from selling the oil, but
7 who knows who's making delivery.

8 CHAIRPERSON REYNOSO: Are you saying like
9 brokers? They're like brokers?

10 ROCCO LACERTOSA: They're not brokers,
11 but these are people that are selling oil without any
12 oil trucks, without any employees. So that could
13 complicate—complicate the matter as well.

14 CHAIRPERSON REYNOSO: So that should also
15 be a conversation.

16 ROCCO LACERTOSA: Yeah.

17 CHAIRPERSON REYNOSO: And the—and many of
18 my

19 ROCCO LACERTOSA: [interposing] And
20 Council Member King, if you got that oil from Barakat
21 Fuel on Jamaica Avenue, when I bought it there you
22 got every drop. I promise you. [laughter]

23 CHAIRPERSON REYNOSO: I—so I do want to
24 say in the beginning of my testimony I also said that
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2 this is the beginning of the legislative process, not
3 the end.

4 ROCCO LACERTOSA: Yes, I appreciate that.

5 CHAIRPERSON REYNOSO: We don't intend to
6 push anything through blindly and—and without being
7 thoughtful about that process, and I—you're always
8 get that from me.

9 ROCCO LACERTOSA: Thank you. I know
10 that.

11 CHAIRPERSON REYNOSO: And I want to say
12 the reputation of BIC I want to say that Commissioner
13 Brownell has been a lot different than what we've
14 traditionally seen in the past. I actually walked
15 Hunts Point Market about three months ago and when
16 they saw me they were concerned. They were like what
17 are doing here? Are you BIC? I said no I'm not BIC.
18 They were like okay. They feel good because they
19 feel that the over—the over reaching and the over
20 policing is not happening under Brownell's tenure the
21 way it was in the past. Because the Commissioner
22 actually feels that he only wants to do what he was
23 tasked to do, and no more. And we're going to
24 continue to make sure that if we do something here
25 that it is clearly outlined what the—the—the

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2 power of BIC would be, and that you guys are
3 introduced to the new age of regulation, and not what
4 we consider the—the traditional way. But I hear your
5 concerns. I know Costa has—Council Member
6 Constantinides has some—some things to say as well.

7 COUNCIL MEMBER CONSTANTINIDES: Thank You
8 Antonio, Chair Reynoso. [laughs] I—I actually feel
9 you should call me Costa. We're colleagues so, and—
10 and it's a lot better than Constantinides. [laughs]

11 DEMOS DEMOPOULOS: It's a lot easier.

12 COUNCIL MEMBER CONSTANTINIDES: It's a
13 lot easier, but I just wanted to go on the record to
14 say that what you were talking about before relating
15 to the audited financials if that's something we
16 could look at, this legislation more to move forward,
17 making sure that—that that—that—we codify that
18 particular—instead of living up to rule making, which
19 sometimes is outside of our purview, we have an
20 opportunity here to craft legislation, and—and
21 building that in. So I think that would be something
22 that you would want codified, correct?

23 ROCCO LACERTOSA: Def—definitely and—and,
24 you know, I like the definition of overcharging so
25 that little bit also.

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CHAIRPERSON REYNOSO: The Commissioner—

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I don't want to bring the Commissioner back up, but

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as I said, we're going to have—

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COMMISSIONER BROWNELL: [interposing]

6

Okay.

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CHAIRPERSON REYNOSO: We're going to

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meet—

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COMMISSIONER BROWNELL: [interposing] I

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just wanted to be on record.

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CHAIRPERSON REYNOSO: But I do want

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clarity in that because that window is going to be a

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flat rate at the top, and that anything above that

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happens, what is overcharging? Because, you know,

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people might be willing to pay more in some areas,

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and you—and that's your right. You know, I paid

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fifty cents for chips in Brooklyn. I pay for them a

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dollar here in Manhattan. So I—I respect that. So I

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want to have that conversation about what that means

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so we're clear. It may not be written clear as well.

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COUNCIL MEMBER CONSTANTINDIES: Thank

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you, Mr. Chair. I appreciate the opportunity to

23

chime in. Thank you. I look forward to working with

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you and—and BIC and the industry as well.

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2 CHAIRPERSON REYNOSO: Again, so I just
3 want to for full disclosure, I had a conversation
4 with the—the New York Oil Heating Association, and I
5 do want to say that you guys came in very respectful
6 understanding what—you want things to be part of the
7 solution.

8 ROCCO LACERTOSA: Uh-huh.

9 CHAIRPERSON REYNOSO: Obviously not a
10 part of the problem, and we're going to extend that
11 courtesy back to you at any point in this.

12 ROCCO LACERTOSA: You know, we appreciate
13 that, and when we just, you know, to be clear, we
14 reached out to BIC when this—when this all occurred
15 because we want to, you know, to be part of this.
16 Again, I—I don't want to be repetitive, but I'm going
17 to be repetitive. We want this, you know, corruption
18 out of the industry more than anybody else does
19 because it hurts all of our good companies here. And
20 I—I think that the Demos will also would agree on
21 that and everybody else here.

22 DEMOS DEMOPOULOS: Absolutely.

23 CHAIRPERSON REYNOSO: And I think Council
24 Member King has—

25 ROCCO LACERTOSA: [interposing] Sure.

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CHAIRPERSON REYNOSO: --a question.

Council Member.

COUNCIL MEMBER KING: So, I just want to add my one cent in. As the--before coming to the Council, I worked for a union, and my wife is still in a union. Julia is still a member 20 years in the union. And I understand that any time there's regulation or new regulation coming for us. How does it work for us. And a lot of times I our first response as protecting our membership is to push back, you know, as opposed to saying let's sit back and see if any of this makes sense. We know that there's a problem here, and how do we as partners whether it's the company, government, unions working together to make sure that we all sustain the issues of the day. So I'm asking you because as I read some of the testimony of today--I won't go through it, but I--I don't--I would ask as we continue to have more of this conversation because that's the bottom line having the conversation that we keep our membership in a comfortable space. So they don't think that they're supposed to fight just because something new is on the table, and--and everything is not doom and gloom. Because as we just sat here for the last

1
2 five, some things got cleared up. But your
3 testimonies reflect that—that that wasn't the case
4 when membership started getting—filling a different
5 kind of emotion. So, and as opposed to getting our
6 membership all flipped upside down over a piece of
7 legislation that we actually are going to work it
8 through so that at the end of the day all of you are
9 doing the right thing and taking care of you
10 families, and not doing wrong, that you're going to
11 be okay. But it's just the bad actors is going to be
12 kicked to the curb. So that's all my conversation
13 when you continue to have conversations with your
14 membership and let them know that this is going to
15 work out alright for us. But we need to make sure
16 that we continue to build membership because once you
17 get rid of some of the bad actors, there's going to
18 be more food on the table for the people who are
19 doing the right thing. So I just wanted to add that
20 in—in my closing remarries.

21 ROCCO LACERTOSA: Thank you.

22 CHAIRPERSON REYNOSO: Thank you guys
23 again. I really appreciate your time, and now we
24 thank.

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ROCCO LACERTOSA: Thank you for the opportunity.

CHAIRPERSON REYNOSO: Absolutely. We have Jerry McDon-McDonald from Star Gas; Nick Cornopolis from Petrol, Inc. and Star Gas, and David Stern from Approved Oil, and I apologized if I butchered any of those names. [background comments] And I'll give it to the sergeant-at-arms and they'll- they'll get it to us. Thank you guys. [background comments, pause] So I don't know if guys came in together or coordinated as to who is going to speak first or last, but I could just randomly go. There you go. So we'll start from the on the left and move to the right.

DAVID STERN: [interposing] And that's everybody in this group. (sic)

CHAIRPERSON REYNOSO: Make sure your-

DAVID STERN: We're doing it good.

CHAIRPERSON REYNOSO: Make sure your-make sure your mics are on and that you guys speak as close to the mic as possible so people at home could hear you as well. Thank you.

DAVID STERN: Good afternoon, Chairman Reynoso and members of the Committee on Sanitation

1
2 and Solid Waste Management. My name is David Stern.
3 I'm the Senior Director of Service and Sales at the
4 Approved Oil Company. Thank you for the opportunity
5 to testify this afternoon to provide—provide you with
6 comments on Introduction 1268, a local law to amend
7 the New York Cap Charter and the Administrative Code
8 of the City of New York in relation to regulation of
9 the heating oil supply industry by the Business
10 Integrity Commission. I want to talk about myself a
11 little bit. I was born into the fuel oil business.
12 My father owned and operated Stern Brothers Fuel Oil
13 Company. I worked for him for many years. The
14 company was founded in the '40s, and was sold in
15 1985. I haven't worked in the family business since
16 I was 16. I've been around oil trucks, service vans
17 in the industry in general since was 16 years old.
18 I'm 59. In 1985, our business was sold to Empire
19 State Fuel, then to Hess Corporation and finally to
20 Approved Oil Company where I work today. Approved
21 Oil headquartered in Brooklyn employs approximately
22 250 local residents who live, work, and worship in
23 the communities throughout the five boroughs that we
24 service. Our customers are still primarily private
25 homeowners and consist of family, friends, neighbors,

1
2 synagogues, churches and small businesses. Approved
3 Oil is a community-based and family-owned business.
4 We operate our own fleet of oil trucks and employ
5 truck drivers and service technicians all whom are
6 local union members. We are all aware of the
7 circumstances that led up to the introduction of the
8 bill being considered today, and the reason for
9 today's hearing. During my time in the industry,
10 I've learned the ins and outs of the heating oil
11 supply business. I've interacted with various city,
12 state and federal agencies that regulate the industry
13 and have a good—and I've seen good and bad actors.
14 Approved Oil takes great pride as most of the mom and
15 pop run organizations do, in operating this business
16 and serving its customers with integrity. After all,
17 these people are our friends and neighbors. We fully
18 condemn the unscrupulous actions of the heating oil
19 trucking companies, and—and I must—I must emphasize
20 the trucking companies are not the fuel oil
21 companies. They aren't. The fuel oil companies are
22 these organizations that were start—started and still
23 run in most cases by the family. We own and operate
24 our own vehicles. We employ our own people. The
25 truck companies are carters. They bring oil to, you

1 know, based on contracts with other companies, and it
2 has nothing to do with the small mom and pop
3 organization that just delivers to the local family
4 and friends. For that reason, Approved Oil would
5 like to—would support measures that would increase
6 enforcement on those bad actors. Unfortunately,
7 however, Introduction 1268 is not such a measure.
8 The core problem and illegal activity that was
9 uncovered by recent investigation of companies in the
10 heating oil supply industry was made very clear in
11 the November 2015 Joint Report of the Department of
12 Investigation and Business Integrity Commission was
13 tampering with heating oil delivery trucks. That is
14 the crux of the problem. The report detailed
15 elaborate schemes to short change customers by
16 manipulating meters, diverting heating oil from
17 customers' tanks and the like. All of these actions
18 were illegal and the individuals and companies that
19 illegally tipped them were prosecuted. The Joint
20 Report enumerated more than a dozen measures that
21 both DOI and BIC determined the short accountability
22 and mitigate the risk of being shorted. It also
23 indicated that DCA has taken the lead in instituting
24 new measures and strengthening its inspection process
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1
2 to eliminate these schemes in the City of New York.
3 If even identified prophylactic measures undertaken
4 by some agencies that were effectively utilized to
5 prevent those agencies from being shorted.
6 Introduction 1268 does not codify any of the
7 recommendations in the joint report and offers no
8 alternative measures that would prevent bad actors
9 from undertaking these very same schemes today. Nor
10 does it take away regulatory authority from the
11 agencies that currently oversee—oversee the heating
12 oil supply industry. It simply provides a complex
13 license assistance and specifics—specifies that
14 activity, which is already illegal is additionally
15 unlawful under the Administrative Code. The threat
16 of criminal penalties did not prevent the problems
17 that were uncovered last year. Why would we expect
18 the additional penalties in Introduction 1268 to
19 prevent them now? Additionally, the proposed
20 legislation does not distinguish full service in
21 operated companies from commercial trucking
22 companies. Okay, our history's business models and
23 customer bases could not be more different. The
24 additional bureaucracy of another layer of regulatory
25 oversight beyond what currently exists would be

1
2 extremely burdensome for small and medium size
3 business. It is unreasonable to expect these small
4 operations to comply with numerous licensing
5 requirements, fees and complete discussion by the
6 regulator to impose an independent monitor to be paid
7 for the licensee. The real focus of any legislative
8 action in this action should be providing the
9 agencies that currently regulate the heating oil
10 industry with the proper resources to identify and
11 protect—prevent illegal business practices. We are
12 also concerned by the prospect that creating
13 advantaged competitors that are located outside of
14 the city to poach local business. We welcome
15 reasonable oversight, and transparency in our
16 industry, and we would hope that any legislation with
17 their customer and legitimate local business alike.

18 CHAIRPERSON REYNOSO: Thank you for your
19 testimonies. We have Nick or Jerry.

20 JERRY MCDONALD: Okay, I'll take it.
21 Good afternoon, Chair and committee members. My name
22 is Jerry McDonald and I represent Star Gas Partners,
23 a full service energy provider specializing in the
24 sale of home heating products and services to
25 residential and to customer and commercial customers.

1
2 We also service and sell and heating oil and air
3 conditioning and the equipment. In New York City we
4 provide ultralow sulfur heating oil, the cleanest
5 heating oil in the industry combined with biofuel,
6 which makes it even cleaner and better for the
7 environment. [coughs] Star Gas is a publicly traded
8 master limited partnership that is the nation's
9 largest retail distributor of home heating oil based
10 upon sales operating throughout the northeast and the
11 mid-Atlantic region. We are listed on the New York
12 Stock Exchange under the symbol SGU and follow
13 strictly regulatory-regulatory energy inventory
14 controls of Sarbanes-Oxley. One of the things that
15 you see relative to our company is the record keeping
16 that we have imposed on ourselves through Sarbanes-
17 Oxley is about as stringent as-as we can get. Under
18 Petro Home Services, we have operated in New York
19 City for over 100 years, and the business really had
20 its beginnings when a lot of people heated their
21 homes with coal, and we were there through the
22 transition to oil. So we've been in New York City
23 for a very long time. Our operations in New York
24 City are strong. This is a publicly traded company,
25 one that prides itself on ethical conduct-conduct and

1
2 adhere to strict inventory controls and compliance
3 regulations. We welcome and very much want more
4 transparency in the industry. We support increased
5 transparency and enforcement of existing laws. I
6 think it's important to note that when you do have
7 bad players in this industry, we're the ones getting
8 phone calls from customers, why do you charge me X
9 per gallon when I can get it from so and so for
10 whatever. And very often the customers know that
11 when they're dealing with truckers and people of that
12 ilk that it's not a level playing field for
13 ourselves. So highlights of our operations include
14 residential and commercial products and services that
15 we provide to New York City, and they include oil
16 delivery, equipment installation and service, natural
17 gas and air conditioning service and installation,
18 energy audits and ultra-low sulfur diesel fuel gas,
19 bio-fuels, equipment and installation and service.
20 Additionally, we are working with several different
21 vendors to develop a tank monitoring device that
22 would ensure accurate deliveries to residential and
23 commercial customers alike. And I think that's one
24 of key points here. If-if we looked at strict
25 enforcement on a regular basis on the road, and we

1 had a tank monitoring device, I think everything that
2 was discussed her earlier would go away. One of the
3 problems there—there are some tank monitoring devices
4 out there right now. The accuracy of some of them
5 does is not really what we would like to see as a
6 standards before we would deploy it. But we are
7 working with the Advanced Energy Center at Stony
8 Brook University and we have several engineers that
9 we work with. We also work with different vendors.
10 I think that—we think that they're close to a very
11 accurate device, and the transparency of such a
12 device would be something along the lines, like if
13 you've got a delivery, if you were at work, and you
14 were getting a delivery, you could get something on
15 your cellphone that would show the before and after
16 of fuel tank, and the amount of gallons that were
17 delivered. And that's something that wouldn't
18 require a person to be there, but obviously in big
19 buildings if—if customers want that, that would be
20 something that they could do. But the technology is
21 getting to the point where we believe we're close on
22 that. We have professional drivers hired. They
23 average over 20 years of experience, and they deliver
24 heating oil and diesel products. We do not
25

1 subcontract any of our deliveries to subcontractors
2 in-in the city, and we maintain control of our
3 product at all times.

4
5 About our regulations, best practices and
6 regulatory measures are in place to ensure the safe
7 delivery of heating oil to our customers. These
8 practices include, but are not limited to back-
9 background checks on-are performed on a all employees
10 before they are hired. GPS systems are on every
11 vehicle that we own and operate. Our drivers inspect
12 their trucks in the morning and the afternoon to make
13 sure all equipment is t peak efficiency, and we have
14 paperwork that the drivers need to fill out that
15 shows that they did an audit on the truck before they
16 left in the morning, and after they returned to the
17 building in the P.M. There are supervisors that
18 conduct on-road inspections to ensure that our
19 employees and equipment are operating safely and
20 accurately. Sometimes we will what we call do on-on-
21 the job supervision of drivers. We will ride with
22 them for the whole day, and at other times we'll do
23 unannounced audits of drivers on an area where we'll
24 walk up to the driver as he's making a delivery and
25 make sure-making sure that he's following all

1
2 procedures, that he's checking the address, checking
3 the tag to make sure it's our customer, and
4 delivering using all of our methods. We have annual
5 meter inspections that are conducted by the New York
6 City Department of Weights and Measures. All of our
7 trucks and meters are fully compliant and we have an
8 excellent working relationship with the city and the
9 state. About our repu—reputation and record for
10 excellent service, we helped the New York Stock
11 Exchange remain in operation after Super Storm Sandy
12 and we are trusted by major banks, hospitals, Fire
13 Departments and institutions that provide emergency
14 generator services when they're required. Whenever
15 there's a weather situation that's coming up, we
16 immediately call the New York City Office of
17 Management, and we make sure that they know that
18 we're available for whatever needs that the city may
19 have as a result of weather that becomes a problem.
20 We are a New York Clean Heat Partner, which requires
21 vigorous vetting in order to become such a partner
22 with New York Clean Heat. Our position is that we
23 would like to advocate for the City of New York to
24 provide existing agency resources to thoroughly
25 investigate and increase the number of spot checks on

1
2 a daily basis. We believe that increased enforcement
3 of current rules and regulations is needed, and will
4 combat the issue at hand more readily than requiring
5 additional licenses and registrations. Thank you.

6 CHAIRPERSON REYNOSO: Thank you for your
7 testimony.

8 NICK CORNOLIS: So I have no statement
9 to-to ready. My name is Nick Cornopolis. I've
10 worked for Petro for over 27 years as a Delivery
11 Managers. I'm here to answer any help-questions that
12 you might have.

13 CHAIRPERSON REYNOSO: Council Member King
14 has a few questions.

15 COUNCIL MEMBER KING: Yes, I've just got
16 to make like-thank you. Thank you for your
17 testimony. Again, I want to go back to when we were
18 addressing the union's concerns. There's an issue
19 here, and while we're saying that from their
20 testimony that you don't think this piece of
21 legislation does what we it intend it to do to crack
22 down on issues, the problems, the theft. First, I
23 would like to know-my question would be what would
24 like to see done, and reminding us again that DCA
25 has-has had an issue of being able to oversight.

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2 This piece of legislation is trying to create a
3 system of oversight. So one agency possibly can say
4 hey we got this because when you do have agencies
5 that have their hands, their tentacles all over the
6 place, they can't manage it. So, we're trying to
7 narrow it down. So I want you just to help us.
8 Other than just saying no, what do you offer to
9 figure out how—because there's—because there's a
10 problem. So, please.

11 JERRY MCDONALD: If we have rigorous
12 enforcement and auditing on the road, you would catch
13 the people that were bad players. That—that we
14 believe that plus the government of tank monitoring
15 in the future would—would be the two things that we
16 would say that would—would work. Now, the problem is
17 that like all the people that are going to testify
18 here today, we want the bad players out of the game
19 because there will be more business for us. They
20 would all be legitimate business. Our—our customers
21 because we provide an automatic delivery service,
22 they trust us to know when to make deliveries to them
23 so they don't run out. So we have a—I think all of
24 us probably have a pretty sophisticated system to
25 understand how much oil you use based on degree days,

1 based on weather. So we make sure we don't miss you.
2 And--and our--and our customers rely on that as a--as a
3 result, but if we get on--if there's on-road
4 enforcement, all these games that people are playing,
5 they would get caught a high enough percent of the
6 time and then whoever has that track record of being
7 caught even more than once or once

9 COUNCIL MEMBER KING: [interposing] Uh-
10 huh.

11 JERRY MCDONALD: --the spotlight would go
12 on them.

13 COUNCIL MEMBER KING: So as I listened to
14 the testimony of our Commissioner and my colleagues
15 here, it appears that BIC is probably--probably the
16 best agency probably to enforce. Other agencies
17 haven't been able to manage that because I figure
18 that's probably got to a place where we are. So, if
19 maybe you can in the future we can figure out how-
20 what expertise that you all have to help us get to
21 that place. Because what you're asking for makes a
22 whole lot of sense with law enforcement. But if DCA
23 can't do it, we'll just, you know, it's phantom
24 conversation. So how do we give it to somebody who
25 actually can do it?

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2 JERRY MCDONALD: See, I—I would like to
3 go back to Rocco's point. When this topic first came
4 up a few months ago, we offered to have anybody from
5 BIC come to our facility, ride with a driver, look at
6 our internal controls, look at our recordkeeping. I
7 do think that because the businesses are here—that
8 here today are legitimate, we have the best practices
9 that would lead to the solution.

10 CHAIRPERSON REYNOSO: And I think that
11 that's part of like—it's—no presence (sic) right?
12 That's the unfortunate part. There is not bad guy
13 here, right? [laughter] It wasn't perfectly clear,
14 and—and we know that, and you—you have standards but—
15 but we want to make the model right? But like these
16 standards that you're—that you're outlining here are
17 extraordinary and I assume most of the businesses in
18 here abide by standards that are similar to this, but
19 it's still the bad guys that are the problem. What
20 we're saying here is that it took two cases 30 years
21 apart, right? So—so what we assume, what I'm going
22 to assume not—what I assume is that in between those
23 30 years, DCA did do its job, and we could—we could
24 have a meeting with DCA on this issue. Later on here
25 their reasoning as to why this doesn't happen, but

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2 you hear the concerns of enforcement for non-
3 enforcement type agencies, right? That DCA is a
4 special type of agency. They're—they're not
5 providing licenses like to—to operate these—to
6 operate these vehicles. They're inspecting them for
7 environmental and so forth and other issues. Not for
8 sure, right? That's not what they do. They don't
9 investigate shoring. They—they make sure that a
10 truck is abiding by the rules and regulations set
11 forth by, you know, EPA and—and the—and the federal
12 government. I don't think—I really don't—I—I want to
13 be clear. I don't—I don't think and I'm not trying
14 to push legislation that's going to put more onerous
15 regulations on you that you—I don't think you can
16 manage. Everything you're doing is going to make your
17 life—your—the processes by which you receive this
18 registration are very easy. I admit there's going to
19 be a cost to it, and that's the only thing that I see
20 that's going to be a problem in any way, shape or
21 form for these businesses. So what we need to do is
22 make sure that whatever that cost is, that it's
23 reflective of the work that BIC is doing, and not
24 necessarily just a cash cow. On that, we would have
25 a conversation with you guys about it to make sure

1
2 it's in line, but outside of that, you guys are going
3 to pass these registration issues with flying colors
4 if you're doing the right thing. That's what I'm
5 trying to say. I don't think—I think we're—that BIC
6 as the boogie man is that—is what we got to break
7 down, right? If you got it—if we remove ourselves
8 from that. I won't allow that to happen so long as
9 I'm the chair, but BIC as the boogie man we have to
10 move away from that and start getting to a place
11 where these bad guys were there. They were
12 disrespectful. They're stealing from again. I got
13 to keep saying it. Police stations, schools and
14 homeless shelters, \$10 million a year for the ones
15 we've caught. We're not even talking about the ones
16 they don't—we don't have the resources that—that—
17 what's his name? I'm sorry. Cy Vance doesn't have
18 the resources to keep going after this industry.
19 They just don't have it. BIC does and BIC can
20 prevent it from happening. That's why we're also
21 trying to do. I just want to say before I close.
22 It's proactive, not reactive, right? DCA would be a
23 reactive stop right? Something happens, they react
24 to it. What we're saying is before we even let these
25 guys in or the suspect things get on the road, we're

1
2 going to catch them before then. You were a part of
3 this business that used to short. You're not going
4 to be able to do business in New York. If you are
5 the owner of this business, you're out of the game
6 forever. Like those types of things are going to
7 happen, and those are the people that are more likely
8 to continue to do those practices than not. Not you
9 guys. So I think we're going to get to a place where
10 we have enough regulation so that we get the bad guys
11 out, and not—and not so much that we affect their
12 business on a daily basis. That's our goal. I'm
13 just saying that that's our goal. I think we're—we're
14 going to be able to achieve that.

15 NICK CORNOPOLIS: [off mic] I just wanted
16 to say that the—the commercial truck that's being—the
17 rogues in our business quite frankly are comfortable
18 and confident with the fact that there is no random
19 checking of their equipment. They know this. [on
20 mic] I'm sorry. If there were random and regular
21 checks without warning, it would stop because they—
22 they would know that it was impossible to hide. It
23 would just weed out the problems. The other thing I
24 wanted to say without any other legislation. The
25 other thing I wanted to say is if I'm not mistaken,

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2 TWIC membership requires an FBI ground-background
3 check. So to suggest that an additional background
4 check would supersede the FBI background check from
5 Homeland Security I think is ludicrous.

6 CHAIRPERSON REYNOSO: I just--so just to
7 be perfectly honest, Homeland Security is not looking
8 to see if the guy from 1997 stole oil and is back in
9 business.

10 DAVID STERN: Their record does.

11 CHAIRPERSON REYNOSO: Huh?

12 DAVID STERN: Well, the criminal record.

13 CHAIRPERSON REYNOSO: Right, it--but
14 they're not preventing that guy from working. What
15 they don't want is a terrorist to be able to walk in
16 there and blow up the place, right. So they have two
17 different--two different I guess goals or--or
18 positions. Like we're not going after terrorism.
19 We're going after corruption in the heating home oil
20 industry. Homeland could care less about how you got
21 it out. Not you guys, how the bad guys are
22 proceeding with stealing oil. That's not the
23 investigation that they're going to do. So I think
24 it's slightly different authorities. I get what
25 you're saying. If we could take the information from

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Homeland Security and give it to BIC, it would make

3

our lives easier, but we obviously can't do that. We

4

don't have the authority. We're pre-empted by law.

5

DAVID STERN: I'm saying that the TWIC

6

members do not have a criminal record. If they have

7

TWIC—if you have a TWIC card, you do not have a

8

criminal record.

9

CHAIRPERSON REYNOSO: Are you saying that

10

guy that was prosecuted in 1997 and is back in the

11

business after this investigation?

12

DAVID STERN: Felony prosecution, I would

13

say no.

14

CHAIRPERSON REYNOSO: That he doesn't

15

have a TWIC card either?

16

DAVID STERN: Well, he would have it—he

17

could not have a TWIC card. That's what I'm trying

18

to say.

19

CHAIRPERSON REYNOSO: So the guy that got

20

indicted at that moment, he wouldn't have a TWIC

21

card?

22

DAVID STERN: If he was—if he was

23

convicted, I would say no.

24

CHAIRPERSON REYNOSO: Okay. Well, we'll—

25

we'll look into that as well.

1

2

DAVID STERN: Okay.

3

CHAIRPERSON REYNOSO: Alright.

4

COUNCIL MEMBER KING: To be continued.

5

[laughs]

6

CHAIRPERSON REYNOSO: And again, I just want to reiterate that this process is not over, and that we'll continue to keep you a part of it, and I see Approved Oil all over my district, so your—your trucks are really clean, man.

10

11

DAVID STERN: Right. [laughter]

12

13

CHAIRPERSON REYNOSO: I mean they are. Listen, I'm part of it, I-I—there's a lot of trash, there's a lot of trash, there's a lot of trash in our—in my district and these trucks are terrible. They run around dirty. They're polluting and approved. The ones I actually see are green with a big A, very clean. They look like the know what they're doing.

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DAVID STERN: Thank you very much.

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CHAIRPERSON REYNOSO: When you're on the—when you're actually pumping the oil through the sidewalk, there's actually like a platform over it. It's done the right way. You don't—you're not being lazy about any of it. Very, very well done. So

1

2

just—that's just a—a note that I see that is, and

3

you're a different breed of—of—of industries and the

4

trash industry.

5

COUNCIL MEMBER KING: Can you clone

6

yourselves?

7

DAVID STERN: Can I clone myself?

8

COUNCIL MEMBER KING: Can you clone

9

yourselves so everybody know who you are.

10

DAVID STERN: There are many other people

11

just like me who—who have oil.

12

CHAIRPERSON REYNOSO: I believe it. So

13

we don't—we don't have Star in Williamsburg I guess.

14

It's only Approved Oil. You've got to get in the

15

market, now, but thank you guys. I appreciate your

16

time and I hope that you guys see our attempts here

17

to really be thoughtful about how we move about this

18

process. Thank you. Well, we've got two more

19

panels. [background comments] Okay, George

20

Hamilton, Allison Harvey or Heaney. Sorry, and

21

Nester Arsay (sp?) from Scaggs—Scaggs Wharf.

22

Alright. [background comments, pause]

23

ALLISON HEANEY: Huh, good afternoon. I

24

want to thank you all for having us here this

25

afternoon, and I know it's been long day, so I'm

1
2 going to make my comments as brief as possible. I do
3 want to give you a little background. My name is
4 Allison Heaney. I've been the President of Scaggs-
5 Walsh since 1994, and I've been working full time in
6 the industry since '91. I grew up in the industry.

7 CHAIRPERSON REYNOSO: [interposing] I
8 hope you're taking advantage of that MWBE programs.

9 ALLISON HEANEY: I'm trying to get
10 qualified, but there are so many bad actors that I
11 have literally been tortured for the last five months
12 in trying to get my application passed through. I
13 really am a woman, and I am in the business.

14 CHAIRPERSON REYNOSO: So I'm going-by the
15 way, I'm going to person-personally reach out to you
16 and make sure that I could be a partner in making
17 that happen.

18 ALLISON HEANEY: Thank you so much I
19 really appreciate that.

20 CHAIRPERSON REYNOSO: [interposing] And
21 I'm sorry for all the male dominated businesses.
22 [laughter]

23 ALLISON HEANEY: No need to apologize.
24 They've-they've been their whole lives. They're so
25 lucky. So anyway, I-I'm a little bit unusual in that

1
2 I grew up in the industry, stated, you know, washing
3 trucks when I was five, servicing fuel oil burners
4 when I was 14 until I was 17, and then when I came
5 full time to the company, I did go ahead and get my
6 CDL, and I do deliver fuel oil and drive an oil truck
7 as well. So I feel very qualified to speak to you to
8 day. Our company started in 1933, and I can assure
9 that we are not still in business because of our poor
10 reputation. It's because we work very hard. We have
11 87 hardworking employees who have never been asked to
12 steal, who have never stolen, and anyone who has ever
13 been even thought of stealing has been asked to
14 leave. I am not unusual. Many of my colleagues in
15 my industry are just like me. We are—I am the mom of
16 the mom and pop, and we go to work everyday. We
17 serve our customers. We keep them warm. We care
18 very much for them and do not have any need to bilk
19 them out of stolen fuel oil. There are some bad
20 actors in this industry, but I do take great
21 exception to being compared to the trade waste
22 industry. I've worked in this company now and paid
23 the bills in this company for over 26 years, and I
24 know very well what it was like to deal with trade
25 waste 26 years ago and today, and although it is

1
2 different, I would not say—I would still say it's far
3 from perfect. I still am not allowed to change trade
4 waste companies. That means to me that there is no
5 competition in that industry, and although they are
6 very heavily regulated, they're still not the true
7 essence of the business that I think that we'd all
8 like to have. In my industry my customers are my
9 customers at will. They purchase oil from me as long
10 as long as they trust and want me to make their fuel
11 oil deliveries. If and when they ever suspect that
12 anything is not right, it could be that they don't
13 like the way that the serviceman was dressed or the
14 fact that the driver pulled the hose over their rose
15 bush. They leave me and they go elsewhere, but I can
16 assure you that no one every leaves me because they
17 think that I've stolen their fuel. And again,
18 Councilman King, I am sure that you were not getting
19 that that oil from Scaggs-Walsh way back when because
20 that is not something I would ever tolerate. The
21 issues that brought us all her today concern me as
22 much as they concern you, and those who are not
23 playing fair are hurting me and my business and my
24 workers, and it is of the greatest importance to me
25 to keep them whole. It is true that there are parts

1
2 of this industry that I no longer take part in
3 because of the fact that I cannot compete. You don't
4 see me delivering to very many giant schools or
5 hospitals or apartment buildings in Manhattan because
6 my pricing keeps me out of that, and part of that may
7 have to do with the fact that I have never stolen a
8 gallon of fuel nor do I intend to. But what I do
9 believe is that to some extent those who set the
10 pricing structures in those buildings are equally
11 culpable for what happens because when you put your
12 business out to bid, and only choose the very lowest
13 price, you very often get what paid for. And so,
14 when you are looking at trying to clean this up, you
15 might want to look at how your process of getting
16 fuel oil, and your procurement process has worked to
17 put the very bad actors in business and in control of
18 that portion of the business. Unfortunately, I don't
19 think that the proposal that we are looking at today,
20 1268, does anything to stop those bad actors. If it
21 did, I would be happy to comply. I personally am
22 fingerprinted by three different agencies, both the
23 Transportation Work ID Card, the Hazardous Materials
24 Endorsement on my commercial driver's license, and
25 the Department of Buildings for my oil burner

1 installer's license. I have never been arrested,
2 nor have any of my drivers, nor have my employees who
3 all must have the TWIC card. But it seems to me that
4 the TWIC card and all those licensing procedures were
5 in place two and three years ago when all these bad
6 actors were indicated. And so, what we really need
7 to do is get back to basics, and talk about where
8 enforcement can actually come from, and perhaps DCA
9 is not the right group, although they do have the
10 right tools. In my comments that I gave you, I liken
11 the process right now to the police suggesting that
12 anyone who is committing a crime come to the precinct
13 and turn themselves in. That is what happens with
14 DCA right now. We are asked to bring our trucks once
15 a year, which we dutifully do. The good actors
16 always bring our trucks in, and we get our license-
17 our seals, and then we bring them in again next
18 year. And if at some point our meter breaks when we
19 go to get the meter fixed, we have to return to DCA
20 and have them reseal it. However, there's a lot of
21 time in those 364 days, and what integrity I have
22 certainly does prevent me from doing the crime. But
23 this obviously not working with some of these bad
24 actors. When you look at the history 15, 20, 25

1 years ago, there were field inspections. I can also
2 assure you that none of my drivers are actually
3 carrying guns, and many, many, many agencies enforce
4 us who don't actually carry guns. We have
5 enforcement, from the Coast Guard not carrying guns,
6 from the EPA not carrying guns, from the Department
7 of Environmental Conservation not carrying guns. So
8 I do not believe that law enforcement people have to
9 be the ones doing this. They have to have the
10 authority, which DCA has to check our trucks and make
11 sure that they are delivering the right oil. There
12 is, in fact, a mechanism called a prover, which in
13 fact, many of us have in our garages to make sure our
14 trucks are delivering the proper amount of oil, that
15 used to drive around and actually be stationed at
16 different locations every day with the Department of
17 Consumer Affairs. And they would test 400 gallons of
18 fuel from the tank of the—the delivery truck to make
19 sure it was delivering the proper product. This
20 would make a lasting change. I also want to say that
21 although I understand that nine companies were
22 indicated, I want to point corruption is not rampant
23 in my industry. If you look at the millions upon
24 millions of gallons of fuel oil delivered in New York
25

1 City every single day and throughout the year, the
2 amount of gallons that you found having been
3 criminally stolen are a minor fraction. And yes, \$10
4 million is a big number, and it is disgusting that
5 they would steal from homeless shelters and hospitals
6 and schools. But unfortunately, they stole from
7 where they could. You have an—and Commission
8 Brownell actually mentioned that we have an excellent
9 suggestion by the MTA that they have the best system
10 in combatting this corruption. Why would we not try
11 this craft legislation, which mimics their—their
12 rules, and the way that they have figured out how to
13 crack down and prevent corruption from those
14 buildings. It seems that we don't need to reinvent
15 the wheel, and we also don't need to steal the wheel
16 from the trade waste industry, which has nothing to
17 do with our industry. We have a system. MTA has
18 come up with it. Perhaps we need to polish it.
19 Maybe we need to tweak it, but that is the system
20 that we should be going with. Not added regulation.
21 Again, if I thought it would work, I'll go. I'll pay
22 my \$5,000. I'll pay for each one of my employees to
23 get fingerprinted, but that's not going to make a
24 difference. I really want to help you and help
25

1
2 Commissioner Brownell in crafting a solution that
3 will end this problem. Thank you very much.

4 CHAIRPERSON REYNOSO: Thank you and just
5 before we get to the next testimony, I do want to let
6 you know that yesterday the Mayor signed into
7 legislation new MWBE procurement rules that allows
8 him to actually move away from having to choose the
9 lowest responsible bidder in cases when MWBEs are
10 also competing for contracts with the City of New
11 York. Which gives him discretion and authority to
12 actually skip over the lowest possible bidder in
13 terms to give businesses to MWBEs and they can reach
14 their 20% mark, which is what they're going for. So
15 just know that hopefully with the ways we're changing
16 procurement, you actually get to compete, and that we
17 don't need to worry about these what I call a race to
18 the bottom folks winning these contracts, however.

19 ALLISON HEANEY: Thank you.

20 CHAIRPERSON REYNOSO: Thank you for your
21 testimony as well. Alright.

22 GEORGE HAMILTON: Hi. My name is George
23 Hamilton. Also, thank you for allowing me to speak
24 today. I was born and raised in College Point. I'm
25 57. I've been married for 34 years. I have two

1
2 children and one grandson. I've been lucky enough to
3 employed at Scaggs-Walsh since 1982. I have moved up
4 through the ranks and now I am the Oil Department
5 Manager. I take pride in making sure my customers
6 receive accurate and timely deliveries. As was
7 previously brought up by other people, they expect
8 automatic deliveries. They're depending on us to
9 take care of them. They don't want to watch it.
10 They want us to deliver the oil when they need it,
11 and that's what they pay for and that's what they
12 expect. I am making—I make sure--[coughs] I'm sorry--
13 that all the trucks meet whatever regulatory--
14 regulatory inspections are needed, which is DCA, the
15 Fire Department. We take pride in bringing them to
16 DCA. We take pride in passing. We take pride in
17 passing the Fire Department. We try to keep our
18 trucks up as well as we can maintained, and making
19 sure the customers were also happy because some
20 customers do come out and they want to look, and they
21 want to see. Some customers do know there are
22 supposed to be DCA inspections that go on that, and
23 they want to see it, and we take pride that
24 everything is clean and they're able to see it.
25 Okay, we perform daily reconciliation checks on all

1
2 of our trucks. That means whatever inventory we have
3 at the beginning, whatever we fuel on, whatever we
4 end up at the end, we take their tickets. We add
5 them up. Everything has to come out to the same.
6 Okay, we periodically empty the trucks to make sure
7 that, too, everything comes out to the same. There's
8 no gains, losses. It's supposed to be the same or
9 very close. Alright, we do that all the time every
10 day, every truck. Every truck is checked by the
11 drivers. We have one here. They check it before
12 they go out. They check it after they go out. They
13 have totalizers that they actually put on the truck,
14 how much they loaded so they know that basically as
15 they empty out it's supposed to equal how much they
16 loaded. Okay, I also review what's called an
17 exception report everyday. Okay, that's where at the
18 end of the day we post all our deliveries. The next
19 day I print what's called an exception report. If
20 for some reason a customer's delivery doesn't fit to
21 what the computer says, we need to investigate why.
22 It's not the customer telling us this. This is us
23 seeing something wrong.

24 CHAIRPERSON REYNOSO: Can I just say—I'm
25 sorry, please.

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GEORGE HAMILTON: Yes.

CHAIRPERSON REYNOSO: That I think—I mean the previous businesses did the—the same thing. Unfortunately, at this moment I feel like the—the good players that are obviously in this room feel like this is an indictment against them. And that you guys are—are educating, you're informing me of processes that you have in place to prevent stealing from going on or the shorting from going on. And I want to be clear and say it's just like the Commissioner said, just like I said we in no way believe that the people would be the folks that were going after or that we think have issues with how they—they operate. This is not about that. This is about catching the bad guys, the bad fish, and in this process when we do move forward with it if this legislation passes, what you're saying is going to make it so that you guys are part of the people that get moved—moved through quickly in this process. And this doesn't affect you day-to-day. So I—I—I—because operationally I want you to know that I trust that the work that you've done since 1982 is up to code, up to snuff and it's probably—obviously because you're still here working with them, and it's

1 something that's been exemplary because your-your-the
2 bosses still has-has you in place. So I don't want
3 anyone to sit here, and think that we in anyway think
4 that, you know, the companies that have come before
5 us are the problem. I apologize if you feel that
6 way. I just want you to know that that's not our
7 intention.
8

9 GEORGE HAMILTON: No problem. Okay, so
10 then I'll skip some of my other testimony, and what
11 I'll get into is when you were talking about
12 licensing or whatever for people who operate in New
13 York, I don't think that works now, and I don't think
14 it will ever work because there's a lot of people
15 operating in New York not in just this industry, in
16 every industry that's not licensed in New York
17 whether you need to be or not. So, how are you going
18 to stop a truck that's not licensed from crossing
19 that invisible line coming into New York making a
20 delivery and jumping back over that invisible line?
21 You can't unless you're back to Trump's policies.
22 You're going to build a wall? They're not going to
23 build a wall. Alright, so you can't stop it. Okay,
24 so those companies if they don't want to pay your
25 license, they'll get a business address somewhere

1
2 else and come in and do business anyway. It's always
3 been. It always will be. There's no such thing as a
4 non-corrupt industry. Every industry including
5 religious, churches, synagogues, whatever, everything
6 has corruption. There's no way to stop all of it,
7 and my point is unless, and I agree back to everyone
8 else here, the way to stop it, or at least curb it---
9 Let's not say stop it because that's never going to
10 happen, to curb it, is get DCA whether it's more
11 money, more trucks, more employees, however, it's
12 going to work, take money from Peter to pay Paul,
13 however we're going to do it, that's where it will
14 help. You need to randomly stop them when they're
15 not expecting it. If that means DCA works from 10
16 o'clock at night to 8:00 in the morning when they
17 don't want to work, that might be what it is. Or
18 maybe there's a new agency that works with DCA.
19 Somebody else has the authority. Maybe part of the
20 Police Department has the authority, maybe somebody
21 else. You need to be able to say pull over. I'm-I
22 need to check this.

23 CHAIRPERSON REYNOSO: All right so--

24 GEORGE HAMILTON: [interposing] That's
25 what you--that you need spot random checks. Like I

1
2 said, you're never going to stop people from coming
3 into New York doing business when they're not
4 supposed to. You can't.

5 CHAIRPERSON REYNOSO: Alright, we're
6 going to have—we—we need to have a follow-up meeting
7 with DCA obviously. So you guys gave us an answer as
8 to why--

9 GEORGE HAMILTON: [interposing] DCA is
10 great.

11 CHAIRPERSON REYNOSO: --they haven't
12 been--

13 GEORGE HAMILTON: They misunderstand.

14 CHAIRPERSON REYNOSO: No, they're
15 terrible actually. I want to be perfectly clear.

16 GEORGE HAMILTON: [interposing] No, when
17 I say great, at their facility they work hard, and
18 they--

19 CHAIRPERSON REYNOSO: [interposing] I
20 hear you—I hear you.

21 GEORGE HAMILTON: --and they do credit
22 catching (sic) and they do all of that.

23 CHAIRPERSON REYNOSO: But—but we're—so I
24 want to say you guys are suffering like lack of
25

1 enforcement has led to, you know, 20 years of
2 whatever is corrupt or broken.

3
4 GEORGE HAMILTON: [interposing] I don't
5 know if they have the funding. I don't know if they
6 have the funding.

7 CHAIRPERSON REYNOSO: That's what I'm
8 trying to say is that they're--they're--DCA needs to be
9 here to answer for their own crimes, and I think that
10 other agency that you're talking about is called BIC.
11 I personally think that. That's what--what I'm trying
12 to tell you.

13 GEORGE HAMILTON: Well--well, you have
14 trucks that are out in the street randomly checking
15 trucks. If you don't, and

16 CHAIRPERSON REYNOSO: [interposing] I
17 trust the process. I hear what you're saying.

18 GEORGE HAMILTON: If you don't, you
19 can't--but as I said--

20 CHAIRPERSON REYNOSO: [interposing] and I
21 hear what you're saying. I hear what you're saying.
22 Rafael Espinal is the Chair of DCA. I'm going to be
23 calling him and saying listen--

24 GEORGE HAMILTON: [interposing] Yeah, I'm
25 aware of Espinal.

1
2 CHAIRPERSON REYNOSO: [interposing] And
3 anyone who can beat up DCA, you guys may be able to
4 talk to him, or also tell him I beat up DCA. So you
5 don't get in trouble, [laughter] and then you have
6 that here, but you need to know why this is happening
7 right? Like the lack of enforcement allows for this
8 to fester, but it's gotten so-so-so powerful or so
9 prevalent. Even though you don't think it's
10 everywhere, but the people that are doing it, are
11 doing it. And it's \$10 million a year for the City
12 of New York. I want to be clear, we think it's like
13 \$63 million. We think it's a lot more a year that's
14 happening, but for the city it's losing money at \$10
15 million a year. These guys are able to not just--

16 GEORGE HAMILTON: [interposing] [off mic]
17 It's way more. [on mic] We-we agree. Yes.

18 CHAIRPERSON REYNOSO: Nestor, and you're
19 next.

20 NESTOR ARSAY: Thank you. My name is
21 Nestor Arsay. I grew up in Ozone Park, and I
22 presently live in Glendale, Queens. I've been an oil
23 driver for 18 years. I started out in Johnson Oil,
24 and shortly after Scaggs-Walsh purchased the company.
25 I'm happy with them. We're a great company. Every

1
2 day when I come into work I have a lot of paperwork,
3 which I fill out, and a manifest on how many gallons
4 that I put in the truck, invoices. I get about 25
5 deliveries a day, and as I go, you know, about my day
6 the ticket is in, cranked, and everything is
7 accounted for, you know, from 109.4 I mean down the
8 line. So at the end of the day, I write down all my
9 numbers, and everything is subtracted and basically
10 everything is matched, and when I give it to my
11 supervisor he double checks. He sees that everything
12 is going, you know, fine, and I go about my day.
13 Now, years ago I remember when Consumer Affairs
14 pulled me over about 15 years ago, it was really
15 simple. They didn't like chase me down or anything.
16 They actually waited for me to pull my hose, engage,
17 pump the oil and--and Consumer Affairs is right there.
18 So I go back to the truck, you know, I crank my
19 ticket, and he said let me see the ticket. He looked
20 at the ticket. He said everything matched, and he
21 let me go. It takes one minute. I think if DCA goes
22 around randomly, they'll catch their guy, the bad
23 guy. And believe it or not we, you know, there's a
24 bunch of oil terminals throughout the Tri-State area,
25 and all the drivers we do talk amongst each other.

1
2 And once you get the rumor of Consumer Affairs is
3 cracking down, the bad guys are going to hear that,
4 you know. I-I truthfully believe that's what you
5 need to do is enforce Consumer Affairs more. Maybe
6 just get more patrol, you know, guys out there to-to
7 check up on these guys, you know. It upsets me to
8 see something like that that these guys are doing
9 something like that because it makes a guy like me a
10 family man, an honest man. You know, it gets me
11 upset. It actually pissed-pissed me off, you know.
12 Thank you for your time. That's all I have to say.

13 CHAIRPERSON REYNOSO: I-I appreciate your
14 time in doing the work that you guys do, and I'm glad
15 that you're just as upset as we are. I know we have
16 different ways and how we feel like we can get there,
17 and then we're going to keep talking and figure this
18 out. And I do want to say just with the rumors in
19 them it gets hot. That's what I asked Commissioner
20 Brownell when I first got this. It was presented to
21 me. I said, well, now I could imagine everybody went
22 up to code, and everybody is within the tie clips at-
23 at their-their best, and that didn't necessarily
24 happen. I want to be clear that there-shortly
25 thereafter we publicly put this out in the biggest

1 bust in the heating oil industry, but just four
2 months later there was another--another group of
3 people that were arrested for the exact same thing,
4 and it's almost like they're not learning from their
5 mistakes. I--I feel like they think that--that because
6 we saw the beginning of the presentation that said
7 that they do it so often. It happens so naturally,
8 so normally that they think it's--that they're not
9 doing anything wrong. They don't know it's a crime
10 because they do it. It's so private. So I just want
11 to be--be mindful that I thought the rumors would
12 help, too, and I told them, you know, after you do
13 the first one, you never need to do another one, and
14 everybody straightens out. And then he called me two
15 months later. He's like congratulations, we got a
16 couple more folks. I said that's ridiculous, and he
17 said he calls it stupid, and I agree. Those folks
18 they're stupid, and we're trying to figure out a way
19 to go after them.

21 ALLISON HEANEY: Could I just add one
22 thing to my testimony. I, you know, Commissioner
23 Brownell obviously a very reasonable man, very
24 learned, and very--he seems very fair, and from what
25 you've said, he's really done an excellent job in

1
2 perhaps bringing the BIC group into line, more into
3 line with where you're Council would want it to be.
4 But we must be—we must remember that not anyone in
5 this room will necessarily still remember this
6 conversation in five years, let alone 10 or 15 years,
7 but this legislation will persist. And so, when we
8 read that both my driver, Nestor, as well as myself
9 and George will all be judged by the BIC group not a—
10 not a group that was chosen by the people. Not a
11 group that was elected, but an arbitrary group of men
12 and women who will be the arbiters of integrity,
13 honesty and good character. And they will somehow
14 attempt to quantify whether I deserve to remain in
15 business, whether George deserves to continue to feed
16 his family, and whether Nestor deserves to continue
17 to deliver oil, the only thing he's done for his
18 entire life. And in their sole discretion, those are
19 possibly the most concerning words in the entire
20 bill, and yet they're repeated I think no less than
21 17 times in their sole discretion. I do strongly
22 believe that must not be legal because I have been
23 born and grown up in America where I believe that we
24 have a system of checks and balances. So whereas I
25 absolutely want to give your group the ability to

1
2 stamp out as much corruption as you possibly can, I
3 do not think that we should be voting for a group of
4 just a few men and women to decide if they agree that
5 our honesty, integrity and good character is adequate
6 in their sole discretion. So please when you look at
7 the bill, please somehow quantify that so that the
8 color of my shoes or the color of George's hair or
9 his demeanor or-or Nestor's, you know, clothing that
10 day does not have some bearing on whether or not he
11 deserves to continue to make a living for his family.

12 CHAIRPERSON REYNOSO: Thank you. Thank
13 you for your testimony. I appreciate. This is our
14 last panel. Allen Cohn, and I can't read that.
15 [background comments] We're going to call up Daniel
16 S. [laughter] You know, we're going to have-oh,
17 okay, Showalter. [background comments, pause]
18 Alright. So, guys, go ahead. Anyone who wants to
19 start, go ahead.

20 DANIEL SCHILDWACHTER: I'll start.

21 CHAIRPERSON REYNOSO: Alright, you can
22 start.

23 DANIEL SCHILDWACHTER: Most of my
24 comments have probably been said all over. I'm just
25 going to read what I have. My name is Daniel

1
2 Schildwachter. I'm President of Fred M.
3 Schildwachter and Sons, and we're located in the
4 Westchester Square section of the Bronx.
5 Schildwachter was started by my great grandfather in
6 1904. So 112 years ago. We are the fifth generation,
7 family owned and operated company and the oldest in
8 the Bronx. Schildwachter started as a business
9 delivering ice to homes and businesses by horse and
10 carriage. In the early '20s we started a state-of-
11 the art manufacturing-ice manufacturing plant, which
12 was built on our Webster Avenue site. In the 1930s,
13 we added a fuel oil terminal on Ferris Place, which
14 is where we're located today. We have been supplying
15 residential, commercial, and wholesale customers with
16 fuel oil and diesel fuel. In 2002, we expanded our
17 business to include bio products that we custom blend
18 for our customers to automatic blending racks.
19 NYHOA, of which we're active members has brought to
20 my attention the proposal of the BIC's requirements
21 to operate our business. We are not crooks. There
22 are bad apples in every basket, and I hope the FBI
23 and the NYPD have found them. The proposed law would
24 not solve anything when it comes to protecting the
25 consumers, customers-our customers from fraud. This

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would only apply to companies that are based within New York City limits. However, what about the companies based outside selling fuel oil within the limits. It should apply to all. The current proposal lacks complete enforcement and penalizes companies based in New York City. We—we already have New York State and federal government licenses to operate our businesses. I myself have a New York State commercial driver's license with a Hazmat endorsement. To have this I need an FBI check. I have TWIC card, which requires again an FBI background check. With this proposal, you'll want another one. Why? For who? To me it's unnecessary. Who is determining the character of myself or the members of my company? Do they have the character to determine my character? This will be a wasted effort to enforce. New York City already has two agencies looking at us from the Fire Department and for safety of the vehicle and New York—and the Consumer Affairs Department will check to the accuracy of the meters. We need more field inspections at terminals, and also spot checks on the road. We need every fuel truck that does business in—in NYC and New York City to

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2 have weights and measures permit enforcement, which
3 are not required.

4 CHAIRPERSON REYNOSO: Thank you for your
5 testimony. Sir.

6 ALLAN COHN: Hi. My name is Allan Cohn.
7 I'm President of Cohler Fuel Oil. I was brought up
8 in this business, and worked my way up the old
9 fashioned way. We're a small company. We employ
10 only five or six people. We're members of New York
11 Oil Heating Association, and of the Union Local 553.
12 But, we may be small, but we service close to 1,000
13 homes, businesses, homes of worship and apartment
14 buildings. We work hard to make sure all our
15 customers get 100% of the fuel that they're supposed
16 to get. We use electronic meters that offer great
17 protections, and transparency for us and the customer
18 and the consumer. We use GPS tracking, which shows
19 when the truck—where the truck is, and when it's
20 delivering fuel, and where it's delivering fuel, and
21 every day drivers bring back their tickets. We
22 compare their tickets individually in order of
23 delivery ticket number and sequence number compared
24 to the totalizers on the truck, which are printed on
25 a—on a—on a route sheet, and shift report that comes

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2 out of the electronic meter. We work hard for our
3 customers. The last seven years have been difficult
4 for a company like us to survive due to reduced
5 volumes from high fuel prices. We've had to tighten
6 credit and let numerous customers go. There's been
7 huge increases in our operating expenses, higher
8 insurance premiums; rising health insurance premiums,
9 labor costs; and not to mention the burden of all our
10 required paperwork; petroleum business tax; truck
11 mileage tax; heavy vehicle use tax; hazardous
12 material registration; the yearly reporting of
13 gallons and other—and—and breakdown of commercial and
14 versus residential to the Energy Information Agency,
15 and New York City for Local Law 43. The additional
16 expense of time and money and being subjected to the
17 oversight of the BIC Commission will indeed a
18 tremendous additional burden. Our company and every
19 other legitimate fuel company, which is by far the
20 vast majority of fuel companies in New York City
21 representing the vast majority of gallons delivered
22 in New York City have suffered as a result of these
23 scoundrels, these companies that have ripped off
24 consumers. We have lost customers, great customers
25 and all we've had to reduce our operating—fair—fair

1 margin to—to a minimum just to keep our customers who
2 want to leave and go to these shady companies. So,
3 we're all happy if—if they—if—if the enforcement
4 would crack down on them. We all are and you know
5 that. We all want to express our gratitude for the
6 efforts of the DCA, the Police Department and all the
7 agencies that—that have cracked down on them. I was
8 happy to see it happen. I know everyone in this room
9 was, but I believe that in America every person is
10 responsible for his or her own actions. For example,
11 as I wrote, the shady business dealings or crimes
12 from a mobster from whatever ethnic group deserves to
13 be scrutinized by the law and punished to the fullest
14 extent of that law. However, we would never condemn
15 and punish all people from that mobster's ethnic
16 group, and that's why everyone here resents being
17 dumped into the same container as—as these thieves.
18 And what—those companies that are convicted I believe
19 they should be subjected to—to the Business Integrity
20 Commission absolutely without a shadow of a doubt,
21 but not everybody. I don't see one basically anyway
22 and I respect what you're trying to do, but I don't
23 see any way that—that this legislation is going to
24 stop any company or driver from committing fraud.
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2 It's just not going to—it's not going to do it. You
3 need certain upgrades in the Consumer Affairs
4 inspection, including spot inspections. I agree with
5 that 100%. I remember going out on a truck when I
6 was kid, and—and the driver being pulled over and
7 tested on the spot, and we passed, of course. We
8 pride ourselves on what we do. Not every person
9 does, but spot checks—my—my father, rest his soul,
10 had a great philosophy. He said hire honest drivers
11 and watch them like a hawk to keep them honest, and
12 that's what the DCA stopped doing in any major way
13 probably 30 years ago, which led to an avalanche of
14 transportation companies that work for three cents a
15 gallon, five cents a gallon. I've told customers
16 that have come to me that how come this guy is
17 selling at fifty cents a gallon less than you? I
18 said well do the math. The average truck delivers
19 maybe seven, eight thousand gallons a day on a cold
20 winter day times three cents a gallon? They're
21 losing money. You don't have to be an accountant to
22 know that. So, what I'm trying to say is we're—we're
23 all on the same page, but I think we're heading in
24 the wrong direction with this legislation to be
25 effective. New York City took the lead with biofuel

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2 and bio-heat, and I think we should take the lead in
3 upping our game in terms of requirements from the
4 Consumer Affairs and—and other operators. That's my
5 opinion, not necessarily those of everyone in the
6 industry. New York—I think the New York Oil Heating
7 Association together with New York City officials,
8 and maybe you guys. Maybe it's—it's DCA to come
9 together and—and find additional security measures to
10 protect New York City consumers from these bad
11 actors, from these shady companies, which would
12 promote the reputation of our essential industry that
13 I'm very proud of. And show consumers that both our
14 industry and the New York City cares about fair
15 measure and honesty. I believe we're in this
16 together, and I—and I agree with you, we need to work
17 together. There's a few things I think I'd like to
18 mention. Consumer Affairs, Weights and Measures
19 should be required to physically inspect every fuel
20 truck for possible illegal bypass valve and bypass
21 lines, every single time a truck comes in for a meter
22 test. I've personally met inspectors. I've been
23 down in—in the city testing site, and I've spoken to
24 the inspectors and I say my truck passed inspection,
25 right? They said yes, you guys are good. I said so

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2 tell me why didn't you go under the truck or on top
3 of the truck and check for a bypass line? It's not
4 required. That was my answer. I have another issue
5 I brought up to the inspectors. I said why aren't
6 there seals on the access panel to the air eliminator
7 on each truck? Why should shady companies have
8 access to it? It's not required was the answer. Why
9 isn't it required? This conversation goes back close
10 to 20 years ago, and I've had it more than one time.
11 That's how upset I am about these bad "actors" quote,
12 unquote. Okay, they've hurt my business, and they've
13 hurt consumers, and yet what I see with the Business
14 Integrity Commission with good intent is not going to
15 address any of these issues unfortunately. And I've
16 been out in the field. I've been on oil trucks. I
17 work on burners, and I'm in the office, and I—and I—I
18 can't see how this way of approaching it is the
19 answer to weeding out people. The internal float
20 mechanism or the air eliminator, which was
21 manipulated by some of these companies by magnets,
22 alright. Shouldn't they be made of non-ferrous
23 materials, aluminum or brass that don't react to
24 magnets? Absolutely. If it's available, it should
25 be done. I personally feel that electronic meters or

1 registers are—are something that the industry should
2 be moving towards because it gives a lot of
3 transparency. It has a timeout feature that
4 automatically stops a delivery. After one delivery
5 is finished the driver can't finish the delivery in
6 another location. It—it gives you the date of the
7 delivery, the—the time of the delivery. Alright, all
8 transparent for—for a consumer or a city agencies or
9 whomever to see. So, it—it's actually giving me eyes
10 on the truck, and giving that—that additional
11 protection. There are ways of modifying standard
12 meters that will give you protection. I'm not going
13 to waste your time. It's written down. There are
14 issues with that, but that's my opinion. I think
15 also New York City officials, DCA or whomever should
16 have the right to stop and examine a truck's delivery
17 tickets during the course of a day, and see are the
18 tickets in proper sequence numbers. Is there
19 anything unusual about the tickets? Have the found
20 any duplicate tickets on the truck? Things of that
21 nature. They should have the right to do that, and
22 as I mentioned spot checks, spot checks, spot checks.
23 You can't write that off. I've seen it work, and
24 everybody in this room has seen it work, but funding—
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from what I understand, funding was cut back, and it was too expensive. Nobody wanted to, you know, leave their place of-of business in Brooklyn from DCA. I'm not-I'm not sure of the reason, but those days, those methods worked. So, together with my colleagues, I take the responsibility of honest fuel deliveries, and a clean, respectable reputation very seriously, as you could tell. I just don't want to see the city use collective punishment on all of us. It will only weaken our already overburdened companies. Thanks for your time.

CHAIRPERSON REYNOSO: Thank you guys for your presentation. At this moment, this is the-the final panel, and like I said, this is going to be a legislative process, and this is the introduction of that process, and hopefully in some time we'll see it through as-as a team together. I'm open to that. You've already heard from the Commissioner that he's open to that, and hopefully we can have more conversations and really come to a place where I hope we're as close as possible on the same page. But thank you for your time, and this meeting is adjourned. [gavel]

COMMITTEE ON SANITATION AND SOLID WASTE
MANAGEMENT

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date October 13, 2016