

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON ENVIRONMENTAL PROTECTION

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HELD AT: Council Chambers - City Hall

B E F O R E: COSTA G. CONSTANTINIDES
Chairperson

COUNCIL MEMBERS: Stephen T. Levin
Rory I. Lancman
Donovan J. Richards
Eric A. Ulrich

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

Vincent Sapienza, Commissioner
NYC Department of Environmental Protection

Angela Licata, Deputy Commissioner Sustainability,
NYC Department of Environmental Protection

Eric Landau, Deputy Commissioner
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Gus Sirakis, Assistant Commissioner
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Gateway National Recreation Area
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Dr. Paul Mankewicz, Chair
Water Conservation District

Willis Elkins
Newtown Creek Alliance

Julie Welch, Program Manager
Stormwater Infrastructure Matters Coalition

Joan Lianaki, Senior Attorney
National Resources Defense Council, NRDC

2 CHAIRPERSON CONSTANTINIDES: Hi, good
3 afternoon. Good to see you all, commissioner.
4 [laughs] I'm Costa Constantinides, Chair of the
5 Environmental Protection Committee and today the
6 committee will hold this hearing on Intro 1346, a
7 Local law in relation to water pollution control
8 including provisions relating to stormwater
9 management and control of discharges from storm
10 sewers. [pause] Give me a moment. I'm a little
11 under the weather here. [laughs] [coughs] Some of
12 the areas of the city have a separate sewer system
13 consisting of two different systems of sewer pipes
14 with one system of pipes that carry wastewater from
15 buildings to water treatment plants, and other system
16 pipes known as Municipal Separate Storm Sewer System,
17 MS4, that carries water from the streets to local
18 waterways. When it rains in the city in the areas
19 that are served by the MS4 system stormwater collects
20 and flows through-across impervious surfaces
21 including sidewalks, streets and parking lots picking
22 up pollutants such as oil, chemicals and pathogens
23 along the way. This polluted stormwater runoff
24 enters the MS4 sewer system, and is discharged
25 directly into the city's waterway. This discharge

1 with polluted and unpolluted water could have a
2 negative impact on the quality of the city's
3 waterways and can an adverse effect on plants, fish,
4 animals and people who use these waterways. The
5 Clean Water Act of 1972 was enacted to protect and
6 restore these waterways from certain types of
7 stormwater discharges as well from wastewater
8 dischargers into water bodies nationwide.

9 Enforcement of the Clean Water Act of New York State
10 was delegated to the State Department of
11 Environmental Conservation. In 1990, large cities
12 such as New York City have been required to obtain a
13 permit for discharge stormwater from MS4, and since
14 1999, all urban areas have been required to obtain
15 such permits. Up until August 2015, these DEC
16 imposed requirements were incorporated into the State
17 Pollution Discharge Elimination system. Permits that
18 DEC had obtained or to operate the 14 DEC wastewater
19 treatment plants. On August 1, 2015, DEC issued a
20 new comprehensive MS4 Permit to the city, which
21 includes new requirements, which significantly
22 expands the city's obligations to reduce the entrance
23 of pollutants into the city's MS4 sewer system. On
24 the New MS4 Permit, there are 14 city agencies that
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1 have significant obligations. DEP is responsible for
2 coordinating interagency efforts in order to meet the
3 city's MS4 requirements. To implement the
4 requirements in the MS4 Permits, DEP must develop a
5 stormwater management program, and submit it for
6 approval to the State Department of DEP. The MS4
7 Permit also requires that by August 2017, the city
8 must demonstrate that it has adequate legal authority
9 to administer the programs that are necessary for the
10 city to comply with MS4 Permits including authority
11 to prohibit and elicit discharges, prohibit spills,
12 require compliance and take enforcement action;
13 implement and-- maintenance of control measures.
14 Receive and collect information and inspect.
15 Accordingly, the Mayor transmitted proposed
16 legislation to the Council on November 16, 2016, with
17 the design to ensure that DEP has the full authority
18 it needs to implement the stormwater management plan,
19 and promulgate associated rules pursuant to the DEP
20 issued MS4 Permit. This legislation is the subject
21 of today's hearing. This legislation fulfills the
22 requirement of the MS4 Permit, but the city must
23 demonstrate adequate legal authority to implement and
24 enforce the terms of the permit, and provide the city
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2 the authority to act in a regulatory capacity to over
3 and enforce requirements regarding activities that
4 have potential to contribute pollutants to stormwater
5 runoff into the water bodies surrounding the city.
6 With the enactment of this legislation, the city
7 takes measureable steps to restore our local
8 waterways, a long subject of degradation and
9 impairment. The city is surrounded by more than 500
10 miles of waterfront. This a solid achievement. I
11 look forward to hearing from the Administration. We
12 are joined today by two of my colleagues from Queens,
13 members of the committee Council Member Rory Lancman
14 and Donovan Richards. Commissioner. [pause] Now, if
15 you could swear him in, please.

16 LEGAL COUNSEL: Can you please raise your
17 right hands? Do you swear or affirm to tell the
18 truth, the whole truth and nothing but the truth
19 today?

20 COMMISSIONER SAPIENZA: I do. Okay, good
21 afternoon. Thank you Chairman Constantinides and
22 members of the committee. I'm Vincent Sapienza the
23 active Commissioner of New York Department of
24 Environmental Protection. Joining me here today is
25 Angela Licata who's our Deputy Commissioner for

1 Sustainability, Eric Landau who is our Deputy
2 Commissioner for Public Affairs and Communication.
3 There's additional DEP staff here who can help answer
4 questions, and we're also joined by Assistant
5 Commissioner Gus Sirakis from Department of
6 Buildings. So thank for the opportunity to testify
7 in support of Intro 1346, which seeks to ensure that
8 the city has adequate legal authority to implement
9 and enforce the terms of the municipal separate storm
10 sewer system or MS4 Permit that was recently issued
11 to the city by the New York State Department of
12 Environmental Conservation. The permit, which was
13 issued in August of 2015, requires that the city
14 undertake a series of actions with the goal of
15 reducing pollutants that discharge to the MS4 system
16 and from city facilities that drain directly to
17 surrounding water. Executive Order 429 from October
18 of 2013, conferred upon DEP the authority to act on
19 behalf of the city, and to coordinate the efforts of
20 city agencies with respect to the city's MS4 Permit.
21 Thus, the focus of the proposed legislation is to
22 provide DEP with the authority to fulfill this role
23 both memorializing DEP's coordinating role and
24 establishing new authority for DEP to administer and
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enforce certain permit required programs. The permit builds upon the city's work in conjunction with its regulators to continually improve water quality in surrounding waterways. The city's has invested over \$10 billion since the early 2000s towards this important effort, and today's harbor water quality is the best it's been in over the 100 years that we've been testing it. As you know, the city is served by both combined and separate storm sewer systems. In the combined area, which comprises approximately 60% of the city, DEP has implemented three major efforts to reduce combined sewer overflow. First, DEP implemented a series of Best Management Practices or BMPs to enhance the functioning of the combined sewer system. Second, DEP has committed \$4.2 billion over the past ten years towards CS Control. This includes \$2.7 billion in commitments towards the construction of gray infrastructure projects such as CSO tanks. And in addition, DEP is implementing its \$1.5 billion green infrastructure program, which retains, detains and uses stormwater by means of a suite of BMPs. Additional investments will be made as a result of the CSO long-term control planning processes. The remaining 40% of the city known as the MS4 area is

1 served by a separate storm sewer system that carries
2 stormwater runoff directly to the harbor rather than
3 to enforcing it go to the sites. (sic) The MS4
4 Permit regulates certain activities in the city MS4
5 area. In order to comply with the terms of the
6 permit, the city must demonstrate to DEC by August 1,
7 2017 that it has adequate legal authority to
8 administer all permit requirements. This bill
9 includes amendments to the New York City Charter,
10 which will clarify DEP's role in coordinating the
11 city's implementation of the permit, and to the
12 Administrative Code, which will grant DEP the
13 authority to administer three of the programs
14 required under the permit. The proposed revisions to
15 the New York City Administrative Code will provide
16 DEP and other pertinent city agencies the adequate
17 authority to comply with and administer the MS4
18 Permit requirement. Upon reviewing the city's
19 current legal authority, the Law Department
20 determined that supplemental legal authority in three
21 MS4 programs is warranted for the industrial and
22 commercial stormwater sources, for construction and
23 post-construction stormwater management, and for a
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2 list of discharge protection and elimination, and
3 I'll go through each of those individually.

4 The Industrial and Commercial Stormwater
5 Sources Industrial and Commercial Stormwater Sources
6 program addresses the discharge of pollutants of
7 concern to the MS4 from industrial and commercial
8 sites and courses. Under existing State Permitting
9 Program, the MS4 Permit requires the city to take on
10 certain enforcement roles that were previously held
11 by DEC. In doing so, the permit requires the City to
12 prepare and maintain and into the program upset
13 sources, and to develop a plan to inspect and assess
14 them to determine whether they generate significant
15 contributions as pollutants to impaired water, and
16 whether they are in compliance with the state permit.
17 Responsibilities for the regulated community will
18 remain the same as those under existing state law.

19 The bill proposes the adoption of the new
20 Subchapter 5-A Title 24 of the New York City
21 Administrative Code providing DEP with the authority
22 to inspect unpermitted facilities in the separately
23 sewerred portions of the city in the MS4 area to
24 determine if the should be referred to the State for
25 permitting; to inspect permitted facilities to ensure

2 that they are in compliance with the permit, and have
3 the requisite stormwater pollution prevention plans
4 of streets, which under state law they must develop
5 and maintain on site. The new subchapter clarifies
6 that facilities must make streets available to DEP
7 for inspection; to receive and collect information
8 from permitted facilities; to take enforcement
9 action; and to require installation, implementation
10 and maintenance of control measures to ensure
11 compliance with applicable state law.

12 The Construction Site Stormwater Runoff
13 Control and Post-Construction Stormwater Management
14 Program requirements still lie (sic) from an existing
15 state permits, and apply to site development and
16 redevelopment activities that result in a land
17 disturbance of one acre or more in the MS4 area. The
18 MS4 Permit requires the City also to take over the
19 review and enforcement role of this program. In
20 doing so, the permit requires the city to develop,
21 implement and enforce a program to address stormwater
22 runoff from construction activities, and to establish
23 and update an inventory of post-construction
24 stormwater management practices as well as to inspect
25 those practices to ensure that they are performing

properly. This program will initially affect construction sites that disturb more than one acre of land, but that one acre threshold may be reduced following a study that is required under the MS4 Permit. As with the first program, the responsibilities for the regulated community will generally be similar to those under the existing state law. Accordingly, the proposed law will regulate stormwater discharges from construction sites within the MS4 area. Under the proposed legislation, DEP would enforce existing state law relating to the review and acceptance of streets prior to the commencement of construction in the MS4 area; issue permits for covered construction activities in the MS4 area; require compliance with construction and post-construction stormwater management control described in the approved streets including long-term maintenance of post-construction facilities; inspect construction sites and enforce compliance of approved streets during construction; and require maintenance easements on private property allowing inspection of post-construction stormwater management facilities to ensure that they are properly maintained throughout their useful life and

2 replaced when necessary. The MS4 Permit requires the
3 city to examine the lot size disturbance threshold
4 that will trigger construction and post-construction
5 requirements. Currently, that threshold is one acre,
6 but DEP anticipates that I think inclusion of the lot
7 size from a—a reduced lot size will be implemented
8 that will increase the number of regulated
9 construction sites. Through the rule making process,
10 DEP will establish permit application requirements as
11 well as suite (sic) acceptance and review procedures.
12 DEP is mindful of the need to ensure that the new
13 permanent process is simple and efficient, and it
14 provides that a permanent system that will
15 expeditiously process applications and permits. The
16 legislation requires DEP to specify time periods for
17 reviewing streets in a period. (sic)

18 Conforming revisions of DOB's Building,
19 Plumbing and Construction Code and DOT's Code are
20 also being proposed. Illicit Discharge Detection and
21 Elimination Program, IDDE, requires the city to
22 develop, implement and enforce the program for the
23 detection and elimination of illicit non-stormwater
24 discharges into the MS4 area. DEP's existing IDDE
25 program is robust and—and it applies to the citywide

1 system in the MS4 area. These changes proposed to
2 DEP's existing legal authority include adding a new
3 subsection to the Administrative Code explicitly
4 prohibiting unauthorized non-stormwater discharges to
5 storm sewers. Facilities affected will be those that
6 discharge prohibited non-stormwater effluence into
7 MS4 system. Upon passage of this legislation, DEP
8 will be proposing rules to implement three programs
9 that I have discussed. The rules will be promulgated
10 pursuant to the City Administrative Procedures Act,
11 which provides notice of ample opportunity for
12 comments to all who will be affected by the new rule.
13 Our goal is to start this process in the spring of
14 2017. DEP's engagement with and outreach to the
15 large number of stakeholders has been active, and
16 continues as the development of the Stormwater
17 Management Initiative progresses. We have briefed
18 Council staff, community boards, environmental
19 organizations, engineers, architects and developers,
20 affected unions as all of our sister agencies, and
21 the Economic Development Corporation and Industrial
22 Business Zones. We will also be following up on the
23 Lot Size Threshold Study in collaboration with the
24 Urban Green Council and the Real Estate Board of New
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2 York. We look forward to continuing collaboration
3 with the Council in putting this comprehensive
4 program in place, which is the next step towards
5 making New York Harbor even cleaner. So again, I
6 want to thank you for the opportunity to testify, and
7 the staff is here to answer any questions.

8 CHAIRPERSON CONSTANTINIDES: Thank you,
9 Commissioner. I have two questions, and then I'll
10 pass it over to my colleagues. How much pollution do
11 industrial, construction and commercial sites
12 currently discharge into the city's MS4 and that
13 program there? (sic)

14 COMMISSIONER SAPIENZA: Well, Mr.
15 Chairman, we—we have or I guess it's almost 30 years
16 now an industrial pre-treatment program that
17 regulates the discharges from businesses into local
18 sewers, but—but most of the regulation is for what
19 goes into combined sewers and sanitary sewers, and so
20 we have good data on that. We're going into the
21 combined—into the separate storm sewer system, which
22 is now being regulated. We'll be part of that
23 program, and there will be data collection, and we
24 will have a better idea of what's going on.

2 CHAIRPERSON CONSTANTINIDES: But, are you
3 able to quantify the environmental benefits that
4 this—that this law will have?

5 COMMISSIONER SAPIENZA: I don't know if
6 anybody wants to answer that. Angela, if you have
7 it?

8 DEPUTY COMMISSIONER LICATA: No, not at
9 this point. I mean what we know based on the
10 analysis that we're doing for the long-term control
11 plans under CSI is that we can turn off our CSO
12 discharges, and determine that we still won't achieve
13 water quality standards in all water bodies. So we
14 do know that our resources are having an effect on
15 the water quality in these water bodies. So that
16 would be something that we would look to get more
17 data on as we go forward.

18 CHAIRPERSON CONSTANTINIDES: Okay. There
19 will be an environmental benefit, right?

20 DEPUTY COMMISSIONER LICATA: Yes.

21 CHAIRPERSON CONSTANTINIDES: We--we can
22 say that. [laughs] You know, you—you can't quantify
23 it but there will be something right? We're moving
24 in the right direction. This bill would specifically
25 prohibit all non-stormwater discharge into separate

2 storm sewers other than allowable runoff. Can you
3 provide us with a sense of what DEP might define as
4 allowable runoff?

5 COMMISSIONER SAPIENZA: Through the rule
6 making process we're going to define what can be
7 discharged into a separate storm sewer system, and
8 obviously we're looking at things that just may
9 normally be on surfaces like streets there may be
10 sand, there may be gravel. You know, there may be
11 some animal that is—but if there are discharges, I
12 would absolutely say there's chemicals stored in—in
13 some facilities yard. Those may be even limited or
14 prohibited.

15 CHAIRPERSON CONSTANTINIDES: And how do
16 you—how do you look at wetland as a—as the attempts
17 made to preserve existing wetlands? Will they see
18 and oppose the legislation as natural retention areas
19 to stormwater? How—how do we retain those wetlands
20 in there?

21 COMMISSIONER SAPIENZA: Yeah, so—so, as
22 you know, Council Member we—we have a pretty robust
23 rebuilt (sic) program, and we've been using to try to
24 reduce the amount of runoff that either gets into the
25 sewer system or—or is released untreated in local

2 waterways and, you know, we will continue with that
3 program to protect the natural area.

4 CHAIRPERSON CONSTANTINIDES: This is my
5 last question before I pass it over to my colleagues.
6 Variances, do you still see them being granted to
7 permit stormwater runoff and under what
8 circumstances? [background comments]

9 DEPUTY COMMISSIONER LICATA: That's
10 really one of the main reasons why they're taking
11 such a hard look at this lot size threshold is we
12 want to make sure that when we lower that threshold
13 from one acre, which we're most certainly going to
14 do, the real trick is to figure out what is the best
15 breaking point on that lot size threshold. We want
16 to make sure that those lots are able to install the
17 best management practices that would have a real
18 effect on polishing the stormwater. So we want to
19 make sure that we don't have any unforeseen
20 consequences on those sites, and end up having
21 variances out of the norm, and compliance as the
22 exception. So that's one of the reasons why we're
23 taking a very hard look at that.

24 CHAIRPERSON CONSTANTINIDES: And—and then
25 we'll sort of touch on that point. We know it's

2 probably—we're kind of already talking about if it's
3 going to be less than an acre each time that we're
4 working on that, right? We recognize that that's
5 enough. It's about places on the land and that we—we
6 sometimes the number is yet to be cited. (sic)

7 COMMISSIONER SAPIENZA: [off mic] So, it
8 would be that data collection and analysis. We're
9 not going to know what space, but it's—it's near the
10 curb so to speak on what the lot size special
11 interest are.

12 CHAIRPERSON CONSTANTINIDES: Okay, and
13 this time I'll pass it over to my colleague Donovan
14 Richards.

15 COUNCIL MEMBER RICHARDS: Thank you, Mr.
16 Chairman. Alrighty, we're back.

17 COMMISSIONER SAPIENZA: [off mic] Yeah,
18 good to see you.

19 COUNCIL MEMBER RICHARDS: Twilight Zone.
20 [laughter] So, very—this is obviously necessary
21 legislation, and I'm very happy that DEC and DEP I
22 mean really working to really eradicate and—and work
23 for a really—real solutions on this issue. So, first
24 question I—I have is so when we're talking about
25 compliance and enforcement, can you just give us a—an

2 example of how we're going to move differently here?
3 Are you going to hire new staffing to really make
4 sure that we are finding the bad actors, and-and-and
5 so can you just go through that, or is this the same
6 50 inspectors that we speak about every year who are
7 going to be tasked now with overseeing this process?

8 COMMISSIONER SAPIENZA: Yeah, so there
9 are a couple of programs that had been monitored and
10 enforced by New York State DEC that through this
11 permit are being turned over to us. One of them is
12 monitoring our construction sites, and the other is
13 regulation of industrial and commercial facilities.
14 Through what we contemplate in the rulemaking, which
15 will come within the next year. So there will be
16 inspections done by-by city employees of those sits.

17 COUNCIL MEMBER RICHARDS: Are city
18 employees DEP employees or--?

19 COMMISSIONER SAPIENZA: So we-we
20 contemplate them being DEP employees. There-there
21 will be a period, Council Member Richards, more of
22 the ramp-up phase of this when we're doing a lot of
23 auditing and a lot of inspections--

24 COUNCIL MEMBER RICHARDS: Uh-huh.

2 COMMISSIONER SAPIENZA: --to determine
3 which facilities need to be regulated, where you may
4 bring in some outside help--

5 COUNCIL MEMBER RICHARDS: Uh-huh

6 COMMISSIONER SAPIENZA: --outside help,
7 but it--when we get to the steady stage, it's expected
8 that there will be--

9 COUNCIL MEMBER RICHARDS: [interposing]
10 So you anticipate hiring outside contractors to help
11 pick up the workload, and we don't have any
12 anticipation of--

13 COMMISSIONER SAPIENZA: [interposing] No,
14 we don't--

15 COUNCIL MEMBER RICHARDS: --how many?

16 COMMISSIONER SAPIENZA: --we don't have
17 an answer on that, but the steady state program we
18 expect that there's probably going to be somewhere
19 around 4,000 facilities that need to be inspected on
20 an annual basis. And so, you know, if you look at a
21 typical inspector can go to two sites a day or 500 a
22 year. It's, you know, probably less than 10 (sic)
23 inspectors would be needed.

24 COUNCIL MEMBER RICHARDS: Uh-huh, and
25 what is--so just getting into the violations. So

2 people get violations everyday. It doesn't mean they
3 pay them, and even if they do pay them, they may
4 continuously build—you know, do the same thing. So
5 can you just speak to what is the penalty for repeat
6 violators?

7 COMMISSIONER SAPIENZA: Yeah, so, again,
8 through the rule making we're going to determine what
9 level of enforcement there—there would be, but as—as
10 we typically do now, we can issue either an order to
11 a business or a homeowner or a letter to—to comply,
12 and then notices of violations, which were
13 adjudicated at the Environmental Control Board, and
14 the—the Administrative Law Judge would issue fine.

15 COUNCIL MEMBER RICHARDS: So these would
16 be civil? Okay, and can you speak to—so in terms of
17 the fines for agencies under these authorities
18 businesses, developers or private individuals that
19 are legally discharging into the system, how will
20 this legislation aid DEP in ensuring that we're
21 really focusing in on these bad actors, and I know
22 you're going to go through the rule making process,
23 but will there be more stringent fines on them, or
24 can you just speak to those a little more.

2 COMMISSIONER SAPIENZA: Yeah, I-I just
3 think that, you know, DEC--

4 COUNCIL MEMBER RICHARDS: [interposing]
5 Or, will it just be fines?

6 COMMISSIONER SAPIENZA: Well, you know,
7 D-DEC, you know, is resource limited and, you know,
8 how often they get out to inspect these sites, and--
9 and monitor them, you know, it's-it's a question for
10 them to answer but, you know, I just think that DEP
11 will, you know, have the ability to be out at sites
12 more frequently to do more inspections, do more
13 reviews and just make sure that everybody is
14 following their sort of--

15 COUNCIL MEMBER RICHARDS: [interposing]
16 And can you speak to the coordination between DEC and
17 DEP?

18 COMMISSIONER SAPIENZA: Yes, so we--

19 COUNCIL MEMBER RICHARDS: [interposing]
20 Do you speak regularly?

21 COMMISSIONER SAPIENZA: We do and we've
22 been speaking, you know, a long time before this
23 permit was issued just to negotiate the terms of
24 this, but we're-we're in constant coordination with
25 them. On a regular basis they or we find, you know,

2 a facility that's—that's discharging and are non-
3 compliance, and we work together to do enforcement.

4 COUNCIL MEMBER RICHARDS: And I think
5 this legislation goes a little bit beyond what DEC
6 proposed. So can you just speak to how much further
7 are you going out of the scope of what DEP
8 recommended?

9 COMMISSIONER SAPIENZA: Yeah, so-so we
10 actually, Council Member, by August of 2018, we have
11 to submit a stormwater management plan to DEC that's
12 going to outline essentially everything that DEP
13 contemplates being in the program, and that's subject
14 to DEC's review and approval but—but there are, you
15 know, different components to—to what we see is going
16 to be in that plan. I want to—as we mentioned,
17 monitoring and enforcement of construction sites, of
18 commercial and industrial facilities. We're going to
19 take a good hard look at municipal facilities as
20 well. There's over a thousand facilities that—that
21 are, you know, owned or operated, leased by city
22 government and we're going to take a good hard look
23 at those. There's a lot about—we have a lot of
24 training and education we want to do. So those—those

2 are all going to be part of this plan that we submit
3 in 2018.

4 COUNCIL MEMBER RICHARDS: So, it can
5 return, but I—I just certainly want to say that, you
6 know, I know we get into the conversation of fines
7 all the time. It doesn't mean that people will
8 comply. So I'm hoping that we're really going to be
9 bold here, and really come up if we're going to just
10 pick the fines and really speed fines that will
11 really help curtail this issue because otherwise, you
12 know, some of these organizations they don't mind
13 paying a—a small fine. If it's going to be a \$100,
14 they will probably keep with it, keeping doing what
15 they're doing--

16 COMMISSIONER SAPIENZA: [interposing]
17 Right.

18 COUNCIL MEMBER RICHARDS: --and pay the
19 fine. So I'm hoping that we're really going to come
20 up with some real stringent fines to ensure that
21 everyone is complying if that's the course that we're
22 going to continue.

23 COMMISSIONER SAPIENZA: And no offense,
24 we're going to work with the stakeholders and the
25 Council to develop that enforcement program. Deputy

2 Commissioner Licata just mentioned to me that we can
3 do a cease and desist.

4 COUNCIL MEMBER RICHARDS: [interposing]
5 Oh, beautiful.

6 COMMISSIONER SAPIENZA: A recommendation.

7 COUNCIL MEMBER RICHARDS: Stop work
8 orders, too--

9 COMMISSIONER SAPIENZA: Right.

10 COUNCIL MEMBER RICHARDS: --since they
11 are going to stay with the Department of Buildings as
12 well.

13 COMMISSIONER SAPIENZA: A real problem if
14 they do it.

15 COUNCIL MEMBER RICHARDS: Alright, and
16 how often have you--so you haven't done that yet
17 either obviously.

18 COMMISSIONER SAPIENZA: We've done on--on
19 the--the industrial pre-treatment side where we have,
20 you know, facilities discharging into combined or
21 sanitary tours. There have been from time to time
22 been a few facilities that have not complied with
23 permits, and we have done--it's--it's very interesting
24 about once every three years. This is just the way--
25 generally that gets your attention and--

2 COUNCIL MEMBER RICHARDS: But generally I
3 would assume that this is happening very often and
4 that's why we're here today, right?

5 COMMISSIONER SAPIENZA: Well, so right.
6 So—so this program is to regulate and it be worse to—
7 to discharges into the septic storm system, but we
8 contemplate that a lot of the programs that either—
9 either exist today, or are done through our
10 industrial pre-treatment programs, but this type is
11 into sanitary and combined to it will be similarly
12 enforcing it.

13 COUNCIL MEMBER RICHARDS: Very good.
14 Good. Thank you. Thank you, Mr. Chairman.

15 CHAIRPERSON CONSTANTINIDES: Thanks,
16 Council member Richards. [coughs] Now, we're being
17 lost today on the—one of the other. So we should—I
18 mean we could talk forever, but it's Bronchitis and
19 Strep Throat. I don't think, however, I—[laughter] I
20 have to observe my.

21 COMMISSIONER SAPIENZA: Have some water,
22 Mr. Chairman.

23 CHAIRPERSON CONSTANTINIDES: I—I have.

24 COMMISSIONER SAPIENZA: There you go.

25 [laughter]

2 COUNCIL MEMBER RICHARDS: The baby look,
3 right?

4 CHAIRPERSON CONSTANTINIDES: I-I-I hear
5 you. [laughter] I'm not getting too close, but I
6 think with my colleagues that we have to do both
7 here. We have make sure we get it right, and we have
8 to look forward to more dialogue on how we can get
9 this right to solve the correct time. This is—they
10 like fixing the time on this prior steps, and with
11 that, I appreciate your time, Commissioner, and—and
12 I'll be call up the State. Alright, so, Ulrich.

13 COUNCIL MEMBER ULRICH: You ain't getting
14 of that easy. Hold on a minute.

15 CHAIRPERSON CONSTANTINIDES: Council
16 Member Ulrich.

17 COUNCIL MEMBER ULRICH: Thank you, thank
18 you. No, there's no-no, not yet. Next week.
19 [laughter] So first of all, I apologize for being
20 late. They have another hearing going on
21 simultaneously so I know some of the members are up
22 and down. One of my staffers actually just sent me a
23 text saying can you ask the Commissioner about the
24 Rockaway Waste Treatment Plant. [coughing] Years
25 ago DEP was working on a study to decide if they were

1 going to invest in upgrades in this plan or if they
2 were going to just continue to have problems and send
3 that waste into Brooklyn. Did--did that study ever
4 final? Was that data finalized?

6 COMMISSIONER SAPIENZA: I can--I can speak
7 to that, Council Member. So the Rockaway Wastewater
8 treatment plant was last upgraded in the 1970s. It's
9 starting to get to the end of its useful life. We--we
10 were looking at whether to invest a hundred or so
11 million dollars into upgrading that facility, or
12 because the flow rights there are really so low, and
13 how that's just passed through another plant just--to
14 just convert that treatment plant into a--a company
15 facility, and take the effluent or the wastewater
16 from the Rockaway Peninsula, and send it to another
17 treatment plant. The study that we did looks like
18 the costs are essentially a wash one way or the
19 other. So that's why we're kind of still
20 deliberating on in which direction to go.

21 COUNCIL MEMBER ULRICH: So when do you
22 see a decision might be made?

23 COMMISSIONER SAPIENZA: Probably in 2017
24 at some point.

2 COUNCIL MEMBER ULRICH: In the upcoming
3 fiscal year you're saying.

4 COMMISSIONER SAPIENZA: Yeah, it's
5 probably going to be a fiscal—a fiscal '18 design--

6 COUNCIL MEMBER ULRICH: Right

7 COMMISSIONER SAPIENZA: --as to whether
8 it's an upgrade to the plant or—or a upgrade. (sic)

9 COUNCIL MEMBER ULRICH: Or a--

10 COMMISSIONER SAPIENZA: [interposing] Or
11 a conversion.

12 COUNCIL MEMBER ULRICH: --retrofitting
13 through a pumping station.

14 COMMISSIONER SAPIENZA: Yes.

15 COUNCIL MEMBER ULRICH: I mean the smell
16 is horrendous. You know that. When—when you come
17 over the bridge, when—when the plant is not
18 functioning properly or I don't know if it's seen.
19 You build the capacity. It's just it's—and there's a
20 high school right across the street. It's Scholars'
21 Academy in Beach Town right there on the block, and a
22 lot of the teachers there are complaining that they
23 can never open their windows on nice days when the
24 smell is particularly—is raging. (sic) So hopefully,
25 something happens and we're looking forward to that,

2 and will the study be made public at any point or is
3 that--?

4 COMMISSIONER SAPIENZA: Yeah, it-it will.
5 I mean we've had a couple of names of that community.
6 We're making that somewhat public. I-I just want to
7 mention on the odor. So we're acutely aware of the-
8 the issue there. You know, we get the complaints
9 directly. Two years ago we spend a million dollars
10 to cover some of these-the tanks that were most
11 odorous. So I think that's helped with that. So
12 going forward, we want to try to get that rezoned?
13 (sic)

14 COUNCIL MEMBER ULRICH: So we'll be
15 looking forward to it, and thank you for your
16 fantastic work. I have no complaints. Your team
17 does a phenomenal job in my district, and I think
18 that's partially due to the fact that actual
19 commissioner lives in my district. So anyway, but-
20 and it's just a few blocks from me, but anyway, but
21 no, by and large, you know, DEP does a phenomenal
22 job, and I want to not only thank you, but the
23 workers and the-the folks who work for DEP, you know,
24 and in some of the most extreme weather conditions
25 coming out to our districts and our communities to,

2 you know, flush out the catch basins or fix a broken
3 water main. I mean 24/7 they're—they're always there
4 and they do a great job, and, you know, I think that
5 sometimes it's probably a thankless job in some ways.
6 But we certainly appreciate it, and I appreciate all
7 the work you're doing. Waste treatment plants and
8 all the environmental folks and everybody has to do a
9 great job. Thank you very much. Thank you, Mr.
10 Chairman. We pass Salamanca. Thank you.

11 CHAIRPERSON CONSTANTINIDES: Thank you,
12 Council Member Ulrich and Commissioner.

13 COMMISSIONER SAPIENZA: Thank you. Thank
14 you. [pause] Alright, next up, Felice Farber from
15 the General Contractors Association; Pamela
16 Pettyjohn, Coney Island Beautification Project; and
17 Josie from the Waterfront Alliance I think. Read the
18 last names right there. Oh, right. Sorry about
19 that. [background comments, pause] Today my concept
20 is that you try to get it right. [laughter]

21 LEGAL COUNSEL: Can you please raise your
22 right hand? Okay, do you swear or affirm to tell the
23 truth, the whole truth, and nothing but the truth
24 today? Thank you. [pause]

2 FELICE FARBER: Thank you, Chairman
3 Constantinides and members of the Environmental
4 Protection Committee. I'm Felice Farber, Director of
5 External Affairs for the General Contractors
6 Association of New York. We appreciate the
7 opportunity to comment today on Intro 1346. The DCA
8 represents the city's unionized heavy civil and
9 public works contractors that build in the city's
10 parks, roads, bridges, water and wastewater network
11 and other public facilities. We support the city's
12 efforts to seek legislative authority to implement
13 the requirements of the state and municipal storm
14 sewer system permits. We look forward to working
15 closely with DEC and the Council to protect New
16 York's waterways and ensure compliance with all
17 environmental regulations. With this issue of types
18 and class, we urge the Council to take their time in
19 reviewing and moving forward with its neighboring
20 legislation. There are several issues that must be
21 addressed, and we believe that we can certainly work
22 out a resolution to this. First, Intro 1346 clearly
23 spells the requirements for a developer to obtain the
24 necessary construction permits and to retrain this
25 strip.(sic) The requirements of the MS4 permit also

2 apply the Public Works project, the requirements of
3 city agencies should also be clearly spelled out in
4 the legislation, which is now through this
5 contractor's responsibility to develop a swift post-
6 date in which significant financial exposure are part
7 of the directions in the city are to consultants on
8 the required prevention measures. Second, the bill
9 sets forth opportunities for the city to issue a stop
10 work order or a cease and desist order, and to the
11 question raised before, we strongly believe that
12 there must be some enforcement measures. And it's
13 not clear the difference between the two and what
14 factors would trigger either action. There is also
15 no opportunity to cure before either of these sort of
16 actions are taken or any sense of the range of non-
17 compliance that would be required to issue the stop
18 work order or a cease and desist order. While many
19 of these issues will be addressed in the rule making
20 process, a clear framework must be laid out and
21 authorized in a resolution. Finally, the bill allows
22 for the imposition of both criminal and civil
23 penalties. Criminal penalties are quite severe and
24 there must be some guidelines or framework spelled
25 out in the legislation to resort to the actions that

2 would right some levels of criminal violations. Such
3 a significant consequence cannot be left wide open
4 for rule making. We appreciate the opportunity to
5 comment today and we look forward to working with the
6 Council and Administration on this important
7 legislation.

8 CHAIRPERSON CONSTANTINIDES: Thank you.

9 Okay, if you would.

10 PAMELA PETTYJOHN: [off mic] -[on mic] of
11 Coney Island's Beautification Project. We have an
12 environmental organization that works with youth in
13 our community. We're in Coney Island. So we have
14 children coming out, and we have—we use the Coney
15 Island Creek. MS4 is—is—the Coney Island Creek is a
16 part of the MS4 program. We are in favor of it, but
17 in recent development of the Beach Haven dumping over
18 was it four million gallons of raw sewage into the
19 creek where our children are kayaking, and we're
20 holding environmental studies. People are fishing,
21 people are being baptized in these waters. This was
22 discussed to the DEP and DEC, but Council Member
23 Richards point was what are they—you know, what are
24 the ramifications when these things are—I mean with
25 the buildings. There were 16 buildings that were

2 dumping direct sewage into the creek where people are
3 using it to fish and swim and what-not, but what are
4 the ramifications? What are the fines? I think that
5 part of that—that situation should not just be a
6 monetary form or fine, but they should be responsible
7 for cleaning up what they—they—I mean so this is a
8 very expensive project here, and they should be
9 responsible for the remediation of this work when
10 they're caught doing this. And some of the other
11 things I've spoken with DEP and DEC is that they're—
12 they're limited in their scope. We have one of the
13 largest NYCHA buildings—cluster of buildings in Coney
14 Island, but they're restricted from figure out where
15 their sewage is going, and I'm happy to hear today
16 that they're actually able to investigate on private
17 property. So some of those was Seagate. They were—
18 DEC said they weren't allowed to go on private
19 property to investigate. We are very concerned at
20 Coney Island about what's being dumped in our
21 streets. We're using these streets for educational
22 programs, and we would—we really welcome the MS4
23 program, but I thin that we need to be attentive a
24 little more, and if it's funding that they need, they
25 need more people to find out where this, you know,

2 well who would be in this district dumping, then I
3 think that should--I mean, not we, I'm not City
4 Council--but maybe you should consider that they are
5 an important part find out who's doing this. It's
6 not just that we seal them. People were jumping
7 directly into the creek. Thank you very much.

8 CHAIRPERSON CONSTANTINIDES: We do take
9 it very seriously so thank you for your testimony.
10 Your next.

11 JOSE SOEGAARD: Good afternoon, Chair and
12 the members of the committee. I'm Jose Soegaard,
13 Director of Policy and Programs for the Waterfront
14 Alliance, a non-profit civic organization committed
15 to restoring and revitalizing the New York Harbor and
16 the surrounding waterways. I'll read the brief
17 summary of our written statement. Clean water is a
18 critical concern for millions of people across of
19 island metropolis. Thanks to progress spurred by the
20 Clean Water Act and capital improvements by the city
21 and the state, there are more people boating, fishing
22 and swimming and more fish, shell fish and bird
23 populating the water. Yet, while toxins have been
24 reduced considerably, significant problems persist
25 caused by generations of pollution and neglect. We

2 still have a long way to go in order to meet the
3 standards of fishable and swimmable waters. It is
4 important to frame this challenge as not only
5 protecting, but improving our waterways. Healthy
6 habits sponsor social welling and improve the
7 regional economy. Across our region, networks of
8 civic groups and concerned citizens have contributed
9 to improving our habitat through each clean-up,
10 oyster restoration programs, citizen based water
11 quality testing and much more. The cooperation among
12 local, state and federal government is critical.
13 DEP, DEC, and EPA all have a role in the management
14 of CSO discharges and long-term control parents (sic)
15 to mitigate these challenges. As MS4 areas also
16 contribute pollution to our waterways, they should be
17 held to the same standards as CSO discharge. Earlier
18 this year, we learned of a new draft enforcement
19 order between the city and the state regarding LTCPs,
20 CSO permitting and other enforcement activities. We
21 were coasting authorities to a letter offered by
22 River Keeper, NRDC and others to DEC requesting
23 greater public and stakeholder involvement in these
24 plans. That letter aired serious concerns about
25 possible limitations on capital investments for clean

1 water infrastructure as the agreement was based on
2 expenditure targets rather than outcome based
3 targets. There is great danger of codifying growth
4 under investment in clean water infrastructure going
5 forward and it is incumbent on the Council and this
6 committee to shine on this secret agreement. We
7 recognize the city's ongoing work to address these
8 challenges through large scale infrastructure
9 projects as well as smaller interventions through
10 pre-permeability. We called for greater review and
11 oversight by this committee on the city's efforts to
12 meet its long-term goal for both effective and
13 widespread implementation of green infrastructure or
14 or GI, as controlling—as controlling stormwater at
15 its source is essential to reducing CSO and pollutant
16 runoff in our waterways. We also acknowledge that
17 incentives to property owners to make investments in
18 their own buildings, and it can produce better
19 outcomes. Our Waterfront Edge Design Guidelines
20 program or WEDG, incorporates points towards best in
21 class certification for applying best practices in
22 stormwater management. The City should expand
23 incentives for porous pavement, green rooftops and
24 other natural strategies through tax credits and
25

2 lower usage fees while at the same time also
3 rethinking how rate payments can accurately reflect
4 the property's contribution to discharging pollution
5 rather than use it. The challenges faced in DEP
6 should not be borne by that agency alone. As DOT,
7 DOB and DDC must all have a responsibility to support
8 GI development and stormwater management that
9 contribute to clean waterways. A frequent concern
10 among waterfront stakeholders is the absence of
11 centralized offices in the city that coordinate both
12 policies and funding for water dependent uses and
13 activities across the city. We encourage the
14 creation of a single local government such as the
15 Mayor's Office of the Waterfront to serve this
16 coordinated function, and hope that the recent
17 Waterfront Management Advisory Board can serve as a
18 first step in that direction. Taking care of the
19 environment is the responsibility of everyone,
20 developers, engineers, politicians, teachers,
21 scientists, all of us in this room just as waterfront
22 access is a right shared by all. We thank you for
23 the opportunity to present this testimony today, and
24 look forward to working with to protect our waterways
25 for future generations. Thank you.

2 CHAIRPERSON CONSTANTINIDES: Thank you.

3 [coughs] I-I mean I wholeheartedly agree with you
4 that we-most of this committee, that's one that it
5 takes very seriously. We've had several
6 conversations in the past and look forward to
7 continuing that conversation and working with the
8 city and trying to get this right. On-on-on this
9 legislation, which I-I look forward to working with
10 you on that, and well, all of you to how we can make
11 this legislation right, working with the-the
12 Administration and, of course, on the larger issue of
13 seeing clearance on this like doing our waterways
14 right. I think that's a much-a larger topic for a
15 committee hearing for another day, which we certainly
16 will have. You good? Okay. Thank you.

17 JOSE SOEGAARD: Thank you, Chair.

18 CHAIRPERSON CONSTANTINIDES: [pause]

19 Alright, so Sean Dixon for our Riverkeeper if you
20 want to step forward. Daryl Clemmons, Northshore
21 Waterfront Conservancy; and Larry Swanson from the
22 School of Marine and Atmospheric Science, Stony
23 Brook, New York. [pause] [coughs]

24 LEGAL COUNSEL: Can you please raise your
25 right hands? Do you swear or affirm to tell the

2 truth, the whole truth and nothing but the truth
3 today?

4 PANEL MEMBER: I do. [background
5 comments, pause]

6 DARYL CLEMMONS: Good afternoon, Chair
7 Constantinides and Council Member Richards and the
8 Environment Protection Committee. Thank you very
9 much for allowing us to speak today. I'm Daryl
10 Clemmons (sic) with the North Shore Waterfront
11 Conservancy of Staten Island. I'm going to read our
12 statement to the committee. On behalf of the North
13 Shore Waterfront Conservancy of Staten Island, Inc.
14 and the North Shore Waterfront Environmental Justice
15 Community by the advocate on behalf of, we are in
16 favor or more oversight being placed on businesses,
17 industries and what has been discharged into creeks,
18 ponds, rivers and bays that are throughout the
19 surround and surround Staten Island. We believe that
20 before any tank of water is discharged is allowed
21 into our creeks, ponds, rivers and bays, which for
22 Staten Island are known free resources for its people
23 population, business and an industrial discharge it
24 must first undergo filtration and treatment on site
25 and then been routed into our sewer treatment plants

2 for further treatment before being discharged into
3 our waters. At no point in time should any business
4 or industry be allowed to discharge directly into
5 Staten Island's waters especially the impaired ones.
6 There should also be a provision in the Intro that
7 when a business or industry is caught, and is known
8 as prime offender in illegally committing pollution
9 crimes that their licenses for operating be revoked
10 and that the owners or operators cannot start up a
11 similar business under a different name. We notice
12 that there is no mention in how variances are being
13 issued for development projects that are adjunct to
14 impaired waters. For example, with the Heal (sic)
15 and retail space in St. George, Staten Island, the
16 developers would see the variance is discharged
17 directly into the program's collar (sic), a known
18 impaired river. We believe that there should be
19 policy, or at the very least guidance that would be a
20 fair language in whether variances should be issued
21 and under what circumstances and how this can be done
22 so that it does not further complicate the pollution
23 problems of impaired water.

24 Stomwater Management Programs: There is
25 also no mention in the Intro of how existing wetlands

2 should be used as—as much desirable natural retention
3 areas for stormwater especially those wetlands that
4 are near existing residential communities. We
5 believe there should also be a means in the intro of
6 getting private property owners that may own these
7 wetlands not to develop them, but instead to work
8 with the city in keeping them in their entirety and
9 in their natural state so that they can continue to
10 provide a vital public service in stormwater runoff
11 retention and flood protection to the existing
12 communities. New York State DEC's regulations
13 involving freshwater wetlands are 45 years old, and
14 do not take into consideration the present
15 devastating impact of climate change as it relates to
16 existing urban communities today. Whether the rest
17 of New York City recognizes it or not, we live in a
18 watershed. It is essential in protecting Staten
19 Islanders living in low-lying overdeveloped areas on
20 the North Shore and keeping their heads above water,
21 that the City and New York City DEP is going to have
22 to go to bat, less open by New York DEP and take a
23 much more aggressive approach in dealing not only
24 with our topography issues, but in dealing with
25 climate changes, heavier rainfall by featuring our

1 existing wetlands as part of our Island's stormwater
2 retention program. It was done for Mid Island with
3 the Blue Belt. It needs to be expanded and done for
4 the North Shore, too.

6 Post Construction and Stormwater

7 Management: In 2016, I was fortunate enough to go to
8 a conference in Portland, Oregon. While I was there,
9 I visited a few communities to investigate their
10 post-instruction stormwater work. Portland has a
11 similar village topography as Staten Island and
12 apparently their residential and commercial areas
13 have been plagued by urban flooding. This solution
14 was take—was to take the initiative of not only using
15 a stormwater drainage system, but also to use
16 bioswales and to place rain gardens in the front and
17 back yards of private residences at no expense to the
18 property owners to help with downhill stormwater
19 management/retention. This program is considered
20 essential by the Environment Services City of
21 Portland to then move forward to meet the EPA's Clean
22 Water Act deadline. In this regard they are—they are
23 like—excuse me—in this regard they light years ahead
24 of the City of New York in dealing with post-
25 constructions stormwater system, and in this Intro we

2 should be matching Portland, Oregon's actions to
3 provide a better stormwater management service to
4 Staten Island. Heavier rains downpours are flooding
5 streets and properties on Staten Island, demand that
6 the city and DEP not address the stormwater problem
7 with a one-size-fits-all approach. The grading and
8 the catch basin system that is on the North Shore is
9 inadequate and is not meeting the needs of our
10 community. This has been an ongoing complaint that
11 we've made to DEP to which they have tried to pass
12 the problem onto New York DOT. We're having a very
13 hard time understanding that if this somehow falls
14 into both of their jurisdictions why are they passing
15 the buck back and forth to each other like eight-
16 year-olds? We would like to know how DEP as lead
17 agency is going to mitigate this problem because we
18 need a storm—we need storm drains that can carry the
19 water underground to containment areas for
20 filtration, then to the sewer treatment plant for
21 further cleaning and released into surrounding
22 waters. The technology is available? Why is DP-DEP
23 reluctant to use it? We have an urgent stormwater
24 infrastructure situation that needs to be fixed now.
25 Thank you for your time and considering, and we look

2 forward to seeing mitigation that successfully moves
3 us into a sustainable position.

4 CHAIRPERSON CONSTANTINIDES: Thank you,
5 Ms. Clemmons. (sic) I really appreciate your candor.
6 [laughs]

7 DARYL CLEMMONS: I'm from Ohio. I don't
8 know any other way to be.

9 CHAIRPERSON CONSTANTINIDES: [laughter]
10 No, we--which--which--who is your council member in that
11 situation?

12 DARYL CLEMMONS: It's Council Member
13 Debbie Rose.

14 CHAIRPERSON CONSTANTINIDES: She's went--
15 I'm--I'm going to put you over there with her, too.
16 Let me speak with her as well--

17 DARYL CLEMMONS: Thank you.

18 CHAIRPERSON CONSTANTINIDES: --and follow
19 up. I know she's willing. (sic)

20 DARYL CLEMMONS: Thank you.

21 LARRY SWANSON: [off mic] Good afternoon,
22 and thank--[on mic] Good afternoon. It's a pleasure
23 to be here and be able to address this important
24 issue of stormwater. I'm Larry Swanson and I'm the
25 Interim Dean of the School of Marine and Atmospheric

2 Sciences at Stony Brook University, and I want to
3 just start by refreshing people's memories a little
4 bit. If you go back to 1987 and 1988, the beaches of
5 New Jersey and New York were closed periodically
6 because combined sewer overflows because of
7 stormwater, and just to put that into context, during
8 the month of July of 1988, there was about 6.7 inches
9 of rainfall that particular year. That's only about
10 double what the normal monthly rainfall is, and since
11 about 2011, we've had at least two occasions or maybe
12 more in which we've exceeded that 6.7 inches of
13 rainfall in one single day. So, the—the lady to my
14 right here is absolutely correct in that we can
15 expect greater rainfalls with greater intensity as—as
16 time passes by. In fact, the National Center for
17 Atmospheric Research just recently released a report
18 pinpointing the Northeast as being an area that will
19 have the increased and greater intensity of rainfall.
20 It just came out this past summer or early. The
21 other thing is with regard to costs, in that
22 particular occasion in 1987-1988, the cost of—of
23 these events generated by New York City were on the
24 order of \$1.4 or about \$4 billion in both New York
25 and New Jersey. That's the total expenditure losses,

2 and if you go back and look at the attendance at
3 Jones Beach, the attendance of—in 1987 went up in
4 1988 about 1.3 million visitors, and it took five
5 years for attendance to climb back up because people
6 were just afraid to go to—to dirty beaches. More
7 recently, both in Florida and Cape Cod and the
8 Chesapeake Bay, it has been noted that property—
9 individual property values, home values are closely
10 tied to water quality values, and so not only is this
11 an issue for keeping our coastal waters clean, it's
12 also quite relevant with regard to individual
13 property value and--and ownership.

14 I want to applaud the city for the
15 aggressive approach that they took with regard to
16 removing and tracking water waste brine as a means of
17 deicing in the city. I think that is an admirable
18 step in the correct—in the right direction, and that
19 complements extremely well what EPA has done with
20 regard to not allowing tracking of wastewater to go
21 int--public wastewater to these treatment plants. So
22 that's—that's a great step forward.

23 Let me now just mention a little bit
24 about wetlands because I know that did come up.
25 Natural wetlands are an invaluable resource for all

2 of New York, New Jersey and Long Island, and I must
3 say that all three areas have lost successive
4 wetlands over the last 100 years. A lot of it is
5 because we just didn't know the value of wetlands,
6 but we continue to need wetlands, and the question
7 has arisen as to whether or not we should use natural
8 wetlands for stormwater retention and for treatment.
9 I don't think there's any question but what wetlands
10 can provide a service with regard to stormwater
11 treatment, but I think we would need to be very
12 cautious, and I'll tell you why. It's very likely that
13 when you disturb an area that's freshwater wetlands
14 that you can get invasive growth. All you have to do
15 is look around the fringe of Jamaica Bay, and you
16 will see that there is phragmites as opposed to what
17 was growing there a 150 years ago specifically
18 *Spartina* and *Alternanthera*. So invasives are a
19 problem. It's also been shown that chemicals from
20 wastewater facilities including stormwater and CSOs
21 as well as wastewater sewage treatment plants
22 introduced nitrogen in various ways and in various
23 quantities. And there is some connection in the
24 scientific literature to suggest that that nitrogen
25 helps release hydrogen sulfide, which can be toxic.

2 In fact, the roots are the very marsh plants that we
3 so value. So, putting wastewater, stormwater into
4 natural wetlands certainly can be done, and it
5 could be some benefit from that. But you have to be
6 partial to just how much. The other thing is that
7 the debris and sediment is very often discharged
8 through stormwater systems into natural wetlands and
9 that, in fact covers every sediment that are
10 released, and perhaps will change not only the flora,
11 but prevent the flora from growing properly. So use
12 of wetlands while it can be done, I think it has to
13 be done very, very cautiously. Now, just to go back
14 to the final page and I will try to wrap up a little
15 bit. If you look at my summary here are the things
16 that I think the city should do continuing to work
17 on, and I applaud the DEP for being aggressive in
18 many ways in this regard, and they had some huge
19 discussions. But first of all, I think when you look
20 at stormwater, one of the things you have to do is
21 also consider that it's absolutely essential to keep
22 the streets clean because the very debris that we're
23 talking about getting into the waterways it is debris
24 that has been tossed into the streets and just in
25 everyday litter. I think I need to emphasize more of

2 the importance of capturing and then obtaining and
3 reusing rainwater that does—does fall, and I think
4 every property owner has the responsibility to try to
5 retain that precipitation on their own property. We
6 need to try to work more limiting impenetrable
7 surfaces. Seventy-two of the city is already covered
8 with impenetrable surfaces, and this prevents the
9 leaching of water back into the soils and the ground
10 water in some cases. We need to complete and retard
11 flows of stormwater. It's the velocity of the
12 stormwater that helps to erode the—the embankment and
13 so forth that eventually gets into either the
14 wetlands whether they be natural or manmade or
15 eventually into our—our rivers and—and harbors. And
16 we need maybe to continue to push on using the green
17 roofs, rain gardens, swales and constructive wetlands
18 where—where appropriate, and probably to do that more
19 aggressively even than it's—than it's being there
20 now. Finally, I think that the before stormwater is
21 released there's the opportunity to use hardware. I
22 don't favor the use of hardware because it does—has
23 the additional burden of costs, and—and—but even more
24 importantly maintenance. But using swirl
25 concentrators to relieve debris and sediment is

2 extremely important. You've got a side benefit of
3 some toxic materials being attached to sediment
4 particles so that it's cleaner than the water we have
5 replaced as well. And finally, the idea of using
6 retention basins or systems like are under Flushing
7 Bay to store stormwater so it doesn't—you can—after
8 the storm passes, you can put it back to the sewage
9 treatment plant. That has real benefits as well.
10 Lastly, I want to encourage you to distribute
11 stormwater broadly. This is extremely important
12 because we have changed the physics of water movement
13 in and around New York Harbor by introducing large
14 point sources of—of fresh water into saline
15 solutions. It's helping to contribute to problems
16 particular in Western Long Island Sound with hypoxia
17 and so forth. So when you put roughly 860 million
18 gallons of per day into the East River, and you can't
19 help but change the physics and the movement of—of
20 water through the system, and this is true in other
21 places as well. So distribute, distribute,
22 distribute. I think it is extremely important.

23 I'd also like to point out the value of
24 education, and in the testimony that I have provided
25 there are several figures representing things that we

2 have done with the city in the past. I encourage you
3 to continue education, and not only of what we have
4 done, but I don't think there has been anything that
5 has been as impactful with regard to the environment
6 that is the wonder desiccated apple that the city has
7 approximately 20 years ago when we were going through
8 the drought. So that kind of thing really hits
9 people where it counts, and helps everybody be a
10 better environmental steward. So I'll be glad to
11 stop there and answer questions if appropriate.

12 Thank you.

13 CHAIRPERSON CONSTANTINIDES: Thank you.
14 I-I appreciate your insightful testimony. Thank
15 you. Next please.

16 SEAN DIXON: Thank you very much. My
17 name is Sean Dixon. I'm the New York City Staff
18 Attorney for Hudson Riverkeeper. I want to go off
19 message a little bit and-and continue the
20 conversation on the wetlands very briefly. Wetlands
21 along with oysters are nature's water filters.
22 Unfortunately, wetlands here, which are such a strong
23 part of our stormwater—the way that we have to
24 address stormwater are governed by a wide variety of
25 competing interests. That includes the Army Corps,

2 the DEC, the DEP, and they're affected by everything
3 from trash to small disturbances at that site that
4 we're going to be discussing with the implementation
5 of this law. When wetlands move, which they do.
6 They move throughout the system, they rise. It's
7 nature way of staying well. In New York City,
8 however, they can't rise because they run into homes,
9 they run into lots, they run into concrete parcels
10 and they're drowned by garbage. So one of the things
11 that I think that comes from this--this meeting today,
12 this hearing is the need, the clear need to have a
13 vision that's--that's run by New York City for New
14 York City of our wetlands that are remaining, and I
15 think that this committee is a great committee to
16 take on and with work with all the agencies, all the
17 disparate agencies that deal with that issue.
18 Getting back slightly on topic, I want to continue by
19 thanking Chair Constantinides and Council Member
20 Richards as well as the entire committee for inviting
21 us to testify today. And overall, I want to say that
22 Riverkeeper supports this bill. We also support
23 DEP's efforts to build this new stormwater pollution
24 management and enforcement program. The DEP's
25 separate storm sewer system team many of whom are in

2 the room today have been working for the past year
3 and a half diligently to make sure that there is
4 robust community involvement, and a lot of
5 transparency in their work towards developing-
6 developing this stormwater management plan. Along
7 those lines, we support this bill. And that said, I
8 think that this bill even with that MS4 system in
9 place, it's something that-that should be broadened.
10 And so we're here today to respectfully request that
11 the Council broaden the lens through which it looks
12 at this bill, and this action and what we are here
13 today discussing. From performance standards
14 governing long-term stormwater detention and
15 retention as well as nonconsequential solution,
16 groundwater recharge, material handling and storage,
17 and equipment maintenance, this bill highlights a
18 host of-of pathways for managing, controlling and
19 ultimately eliminating pollution from our waterways.
20 New York city has a very clean-a very clear team
21 water interest in managing construction and post-
22 construction activities, and that includes all of the
23 systems that are baked into this bill today for
24 compliance and long-term management and oversight of
25 what we're building everyday throughout the city.

2 The point that I want to make, though, is that this
3 is true in MS4 areas as well as combined sewer areas.
4 When it rains, combined sewer systems are another way
5 that direct discharges get to our waterways from
6 whatever they are on the streets. Riverkeeper for 50
7 years has been working in the city and the entire
8 Hudson River on among other things cities that ensue
9 enforcement of the Clean Water Act and enforcement
10 issues just like this, and we have seen site after
11 site throughout all of New York, which a lot of
12 members of the public that just signed today can
13 attest where they're—they're in a combined sewer
14 system, but it's an industrial facility. It's a
15 green roof that's not working well. It's a site
16 where stuff is running off. Indeed in a lot of
17 places it's breaking off in parcels, anxious to get
18 into our waterways, that's something that I think
19 leads to the ultimate conclusion that we need—we need
20 this Council to and this committee to broaden this
21 bill beyond just in the core areas, and include a lot
22 of things that go on in the combined sewer systems.
23 As we heard earlier, the Illegal Discharge, Detection
24 and Elimination program that the city is very proud
25 of and rightly so is seen as something that's

2 important enough to—to work throughout the combined
3 and Separate Storm Sewer Systems. So we believe, and
4 we think that—that you would agree that green
5 infrastructure maintenance, industrial site
6 management, post-construction standards, these are
7 all things that are similarly important enough to
8 work across all of the different stewardships of the
9 city because they affect all of the people, our
10 economies and our clean water future. So it's
11 unfortunate then that this bill especially Section 5A
12 and others limit the application of a lot of the
13 really genius innovations that the DEP is bringing
14 forward in this bill to adjusting in the core area.
15 And we would ask that the City Council broaden this
16 bill to include the rest of the city and to make sure
17 that all of the ecosystems function as designed and
18 intended. I want to wrap up by mentioning a little
19 point on enforcement, and so in an era of declining
20 budgets in the city, state, federal levels,
21 enforcement tends to be the first thing along with
22 oversight that gets cut. Riverkeeper asks when you
23 guys are considering the city budget, when you're
24 fighting for environmental protection and waterfront
25 issues, that you give the DEP the tools that it needs

2 to fully implement this programming. You also need
3 to—we also need to work together to make sure that
4 the DEP can walk all of the city's development
5 projects through these new systems. That's very
6 important as well. We want everybody to be on board
7 with this, and we need to make sure that the DEP can
8 help bring all of the industrial and commercial
9 operators into compliance with the Clean Water Act
10 eminently and immediately. The DEP also doesn't just
11 need funds to work on this externally. It needs the
12 ability to drive internal New York City compliance.
13 So moral support by the committee, and I think a lot
14 of legislative oversight support for all of the work
15 that's being done in other departments such as Design
16 and Construction, Buildings, Transportation, Parks,
17 the Economic Development Corporation, and Housing
18 Authority is required there. The DEP is trying to
19 help these agencies do things in a way that helps the
20 whole city move forward in better stormwater
21 management, and we need to make sure that these other
22 agencies are doing everything that they can to assist
23 the DEP. That they are ensuring that the DEP can
24 ensure that these other agencies and their actions
25 aren't working counter to the DEP's initiatives that

2 are being built through this program today, and all
3 the other DEP efforts to have this cumulative smart
4 stormwater management system. Finally, I'd like to
5 close by getting into the enforcement question a
6 little bit more. The—the funds in this bill at
7 \$10,000 are a far cry from what we go after when the
8 citizens do the—when we activate our citizens through
9 authority right under the Clear Water Act to go after
10 these very same polluters, and that's \$37,500 a day
11 maximum under the Clean Water Act. This is something
12 I think that as Council Member Richards alluded to
13 earlier, I think directly, is that a lot of times
14 these entities that are polluting are—are willing to
15 pay smaller fines, and they move right on.

16 Riverkeeper every year brings about a dozen or two
17 dozen different enforcement actions per season.

18 Maybe 20 or 30 citizens per year on just this exact
19 type of polluter, and we see in roughly I would say
20 my loose judgment about 30 to 40% of the time, these
21 actors are on their way out of that facility in the
22 way they're—they're away. They don't mind having
23 something hanging over the heads of the corporation
24 that isn't going to exist in six months anyway. I
25 would say, however, there's two-thirds of the

2 entities that we work with that genuinely want to do
3 the right thing. So there's an opportunity here to
4 work with all of these industries—commercial entities
5 to provide for a system that is—that functions. But
6 we have to make sure that we watch for these bad
7 actors. We watch for the—the--the—the site managers
8 that don't care about the community or the waterway,
9 and that's where the full force and the weight of the
10 Clean Act should be brought to bear on those—on those
11 sites. We would like to close by echoing the
12 concerns that you'll hear from NRBC Coalition,
13 everything that was stated by Waterfront Alliance and
14 other partners of ours and—and just really close on
15 this enforcement question that—that as the DEP
16 mentioned it's not just about that first assessment.
17 It's about ongoing assessment. There are so many
18 sites that we had a settlement under the Clean Water
19 Act with that we have to go back time and time again
20 because they're constantly walking back to things
21 that they promised they would change. This is an
22 ongoing system that needs a lot of support from DOT
23 so they can do an amazing job for our city. Because
24 the DEP is getting handed this very large complex
25 program from the state, and we're willing to work

2 right there with them right there with the Council to
3 make sure that it's a success. So, in closing, we'd
4 like to again acknowledge our appreciation for the
5 DEP's work today, and all the—the leadership in the
6 Council, and we can be of any assistance, we're at
7 their disposal, at your disposal. Thank you.

8 CHAIRPERSON CONSTANTINIDES: Thank you,
9 and quickly with this panel [coughs] I think based on
10 the crux of your testimony that you're I favor of
11 this legislation with a few changes, budget
12 enforcement, but that needs to be a larger
13 conversation around the CSO, and—and from our
14 perspective. But that's a position that's you—all
15 three of you would agree on?

16 MALE SPEAKER: [off mic] Wetlands.

17 CHAIRPERSON CONSTANTINIDES: On wetlands.
18 Yeah, oh, yeah wet lines yes, yes. [laughs]

19 LARRY SWANSON: I—I guess one of the
20 questions I had about the—the legislation I didn't
21 see anything that was in here about supplying money
22 to implement, and maybe that's a short—maybe I didn't
23 read it correctly, but it seems to me that their
24 resources they're needing to actually carry out what
25 is being suggested.

2 CHAIRPERSON CONSTANTINIDES: Okay.

3 SEAN DIXON: Yeah, I would—I would add to
4 that is that there's—there's a lot of things that
5 you've heard in—in previous budget testimonies and in
6 previous meetings that we've had. There are so many
7 complex parts of this wastewater. Riverkeeper works a
8 lot as well on the drinking water supply for—for New
9 York City, and I think that we need to bring that
10 same level of consideration to the whole system that
11 we do to get clean amazing best in the country tap
12 water to our residents in our cities and the toilet
13 (sic) that—that we can [laughter]. If we bring that
14 to the wastewater system to care about our
15 waterfronts, to care about our beaches, I think that
16 we're going to need that level of complexity there.

17 COUNCIL MEMBER RICHARDS: Chair, you
18 spoke to--

19 CHAIRPERSON CONSTANTINIDES: I only have
20 one of those. I've never seen--

21 COUNCIL MEMBER RICHARDS: [interposing]
22 You spoke to enforcement. Can you just go into a
23 little bit of things you recommended in your
24 testimony a little more? And do you think civil

2 fines are good enough? I mean not that I want
3 anybody to go to jail but, you know--

4 FELICE FARBER: [interposing] Well, I
5 think so.

6 COUNCIL MEMBER RICHARDS: Do you think
7 criminal--

8 FELICE FARBER: [interposing] I think
9 it's--

10 COUNCIL MEMBER RICHARDS: --as well, you
11 know, but there--there may be a need for that, you
12 know.

13 FELICE FARBER: There may be. I agree
14 that there probably is a need for a criminal
15 activities team to actually people do more than to
16 pay a fine, but in some cases you have people who are
17 just--they're just bad actors period, and it doesn't
18 matter how many times the community calls and says
19 that this developer or this business is illegally
20 discharging and, you know, by the time 311 gets there
21 and is forwarding the message on to the various
22 agencies, hours have passed before someone comes out
23 to inspect it. But it's an ongoing chronic problem,
24 and they need to do jail time. They need to lose
25 their license to operate. You know, we need to get

2 people who are—who respect the communities and
3 respect the law. And Staten Island is notoriously
4 the wild west when it comes to pollution and
5 contamination issues. It's—it's a free-for-all there
6 every day and we do tours along the North Shore, and
7 people are surprised about the illegal activities
8 that take place there, and they think that sometimes
9 when we do these tours, that we it up for decision.
10 I'm just like no, this is what it is. This is what
11 it's like here.

12 COUNCIL MEMBER RICHARDS: But you didn't
13 have anyone stage that?

14 FELICE FARBER: No, no stage. No this
15 is--

16 COUNCIL MEMBER RICHARDS: [interposing]
17 Alright.

18 FELICE FARBER: --just what's going on.

19 COUNCIL MEMBER RICHARDS: And you
20 wouldn't recommend a license right

21 FELICE FARBER: No, no, no.

22 COUNCIL MEMBER RICHARDS: Maybe something
23 like 15 years days or something that?

24 FELICE FARBER: Oh, no, I—I don't think
25 it should be. I think well 15 days is nice.

2 COUNCIL MEMBER RICHARDS: Okay.

3 FELICE FARBER: You know, but--

4 COUNCIL MEMBER RICHARDS: Starting, okay?

5 FELICE FARBER: Starting. [laughs] But,
6 you know, it wouldn't--it wouldn't hurt their feelings
7 if they were there for like a year or two.

8 COUNCIL MEMBER RICHARDS: Yep.

9 FELICE FARBER: You know.

10 COUNCIL MEMBER RICHARDS: [laughs] And
11 hopefully the food doesn't taste like discharge, but
12 that's another question for another day.

13 FELICE FARBER: Well, you know.

14 COUNCIL MEMBER RICHARDS: But thank you
15 so much for your work, and all that you're doing and
16 the work that you--you're doing, and I think that this
17 is great that you're reporting. Obviously, you know,
18 our big concern is going to be enforcement like in
19 every category that would be, you know, and so thank
20 you. Thank you, Mr. Chairman.

21 LARRY SWANSON: Can I make one last
22 comment?

23 CHAIRPERSON CONSTANTINIDES: Absolutely.
24
25

2 LARRY SWANSON: There was a discussion a
3 few minutes ago about the Rockaway Sewage Treatment
4 Plant.

5 CHAIRPERSON CONSTANTINIDES: Uh-huh.

6 LARRY SWANSON: I don't remember exactly
7 much is discharged, but it's about probably 40
8 million gallons a day that is discharged by the
9 Rockaway Sewage Treatment plant. If it's used as a--
10 as a pumping station, I'm concerned about where the
11 effluent would go, and I would plead with you to not
12 allow the effluent to go back up to the north end of
13 Jamaica Bay, and further alter the physical transport
14 of water of materials through the Bay system.

15 CHAIRPERSON CONSTANTINIDES: Mr. Swanson.
16 Thank you, thank you. Thank you all for your
17 testimony. I appreciate your time. [pause] Let's
18 see the next panel is Jennifer Nersesian, National
19 Park Service; Willis Elkins, the Newtown Creek
20 Alliance and Paul Mankewicz. If you can all step
21 forward, please.

22 LEGAL COUNSEL: Can you please raise your
23 right hands? Do you swear or affirm to tell the
24 truth, the whole truth and nothing but the truth
25 today?

2 JENNIFER NERSESIAN: I do. I'm Jennifer
3 Nersesian, Superintendent of Gateway National
4 Recreation Area, the Department of the Interior's
5 National Park Service. I'm here to offer the
6 following comments on behalf of the park and its role
7 as natural resource steward of major portion of the
8 Jamaica Bay Estuary including the Jamaica Bay
9 Wildlife Refuge. The National Park Service and
10 Gateway National Recreation Area appreciate the
11 opportunity to testify today regarding Introduction
12 No. 1346, a Local Law to amend the New York City
13 Charters, the Administrative Code of New York, the
14 New York City Common Code and the New York City
15 Building Codes relative to stormwater management and
16 the control and discharge of internal sewers. (sic)
17 The National Park's Service mission is to-to preserve
18 unimpaired the natural and cultural resources of the
19 National Park system for the enjoyment, education and
20 inspiration of this and future generations, and is
21 supported by the goals of the Jamaica Bay Watershed
22 Protection Plan, the JBWPP. Stormwater discharge
23 control and the management under-under 1346 is in
24 keeping with the spirit of the JBWPP. In order to
25 fulfill the more specific park mission to protect

1 significant park resources and create high quality
2 opportunity for visitors to enjoy. Gateway Resource
3 Managers and resources have been working
4 cooperatively with key non-government groups, city,
5 state and federal agencies to assist with the
6 implementation of best managing practices to reduce
7 storm--stormwater runoff, and minimize water and
8 sediment contamination in Jamaica Bay and State
9 Island. When Local Law 71 was passed, we were
10 pleased to have members of our staff participate for
11 the National Park Service on the Advisory Committee
12 that was created by the law under the leadership of
13 then Councilman James Genaro. We've been encouraged
14 by the spirit of cooperation that Local Law 71
15 inspired and due to the efforts of many government
16 and non-governmental entities we remained optimistic
17 about the future of Jamaica Bay's aquatic ecosystem.
18 We continue to view the overall goal of restoring and
19 sustaining the water and sediment quality and
20 ecological integrity of Jamaica Bay as the highest
21 priority for Gateway National Recreation Area, its
22 wildlife, it's millions of exhibitors in the city of
23 New York. The National Park Service is encouraged by
24 the progress made since the JWPP was released and
25

1 implemented. This newly introduced Local Law
2 underscores New York City Council's commitment to the
3 overall plan objective especially with respect to
4 Ecosystem Restoration Project results. (sic)
5 Although further research is needed to find a clear
6 link between cause and effect pertaining to salt
7 marsh and other habitat loss in Jamaica Bay,
8 restorative measures have yielded over 120 acres of
9 re-established salt marsh and other estuarine
10 features over the past 12 years. Jamaica Bay remains
11 one of the largest and most productive coastal
12 ecosystems in the Northeastern United States, and
13 includes the largest tidal wetland complex in the New
14 York Metropolitan area. The functions and values of
15 this resource, the fishing wildlife have been well
16 documented, and are also well known by those
17 concerned including yourself. The National Park
18 Service therefore applauds the Planned Water
19 Pollution Control and Improvement including the
20 reduction of nitrogen and reduction of nitrogen
21 discharge from wastewater treatment facilities over
22 the next ten years. This is a very encouraging
23 continuation of improvements to the overall water
24 quality of the bay and its watershed. From a
25

resource management perspective the National Park Service is greatly concerned about getting over the water-water quality hurdle as quickly as possible because most of the resource management strategies being developed in the bay are contingent upon good water quality for success. Once the Bay's waters and sediments are improved to a sustainable high level of quality, ecosystem restoration efforts such as shell fish and sea dash (sic) bed that have been absent from the bay for decades will no longer be viewed as timeless endeavors. Partners will be more willing to support these and other ecosystem restoration efforts, and the future of the bay again will be bright. We encourage DEP and all involved partners to take the next big step towards the sustainability and plan to reduce the-reduce nitrogen loading by another 50% by 2030. The National Park Service is also encouraged by the implementation of pilot projects such as the Wastewater Treatment Plant Albans (sic) Brothers, the padded base and restoration including stormwater tanks and tidal (sic) allotment creation, the Green Infrastructure Plan and streetside swales and hence treatment pilot. All these and other pilots that that include

1 watershed conditions will contribute to the goals of
2 the plan. The one missing element sediment
3 contamination abatement is perhaps one of the most
4 challenging technology, and in terms of being in
5 public support. As the JW-JDWPP mentions, nearly 50%
6 of Jamaica Bay sediments are contaminated at various
7 levels. Since the sediments represent a critical
8 habitat interface with the water column, and are
9 capable of supporting the basis for aquatic food web,
10 improving the bay's sediment quality must be viewed
11 as the second critical element along with water
12 quality improvements in our quest for a healthy and
13 sustainable estuarine ecosystem. We, therefore,
14 encourage DEP and all involved partners to focus on
15 this important task in coordination with the National
16 Park Service and the rest of our partners. The MPS
17 and Gateway greatly appreciate the work and support
18 of New York City Council Committee on Environmental
19 Protection. We look forward to sustained mutual
20 support promised to the Council and the many other
21 partners involved in protecting and enhancing the
22 Jamaica Bay Estuarine Eco System. We're extremely
23 grateful for the dedication of the knowledge shared
24 by the many talented staff members throughout the
25

2 agencies, universities and organizations. In the
3 spirit of the original intent of Local Law 71, we urge
4 you to support any and all immediate actions
5 contained in 1346 pertaining to the most critical
6 concern at hand, the continued reduction of water and
7 sediment contaminants in the Bay as well as
8 implementation of other key steps to reduce
9 stormwater runoff and other management-best
10 management processes recommended by the-the Watershed
11 Protection Plan Advisory Committee throughout the
12 Jamaica Bay Watershed. I thank you again for your
13 support and interest in this endeavor and for the
14 opportunity to submit this testimony.

15 CHAIRPERSON CONSTANTINIDES: Okay, thank
16 you. Next up.

17 DR. PAUL MANKEWICZ: [coughs] Good
18 afternoon. I'm Dr. Paul Mankewicz. I'm the Chair of
19 the Water Conservation District. I'm also the-one
20 the guides in the premier group. (sic) I started
21 here-here in the Urban Soil and particularly with
22 different colleges. So even though I greatly
23 appreciate this wetlands focus, I'm going to talk
24 about soils and something that actually is not in one
25 of the four regulations now, but probably ought to

2 be. And it's a kind of insurance that maybe can
3 protect us against the jail time proposed earlier
4 because it is also a good idea right to-- What
5 people can do is we walk away with nothing in place
6 to touch the water. And if you take a look at--please
7 throw this away and I think it's one of our typos--but
8 if notice and look over to the right there it's
9 basically a stormwater infrastructure and catch basin
10 system I put into DEP, and that solid capacity is
11 something like 10,000 gallons. I tell you this
12 because what we need to do is look at every
13 construction site, and every landscape, and before
14 you finish up on the ground, you should have
15 something like that in place to capture the runoff.
16 There's no sediment that comes through the shale
17 system into the bay. There's demassification in the
18 groundwater. Basically, exactly the pollutions that
19 otherwise are like almost unremovable pain (sic) on
20 the behavior of the bay are gone because they become
21 planted literally on the landscape itself. So what
22 I'm laying out here is--is they--it's 27,000 gallons of
23 water per inch of water over anything--about 1,000
24 gallons, an inch of water over a brownstone. We have
25 to simply before people put a shove in the ground to

2 build anything scale the green infrastructure so it
3 captures even a 50-year zone for six inches of water
4 over the whole landscape. Then, when they leave, we
5 have 19,000 tons per day of waste, glass and
6 concrete. It can be used to build an aquifer. The
7 low band loss of the native erupt (sic) remediation
8 produces every year about 100 tons of absolutely
9 pristine soil, the positive here by glaciers 18,000
10 years ago. It's as clean as you'll ever see. We can
11 basically create clean soil, and match the systems
12 where they turn every 32 gallons of water we capture
13 into literally air conditioning for the city itself.
14 The MS4 section of New York, about a tenth of the
15 city it's bigger than the city of New York. It's
16 about the same flow of our parks and our NYCHA
17 housing stock. (sic) It's got a huge capacity, but
18 we actually have to make sure the water—if the water
19 goes into it there is no protection against the water
20 potentially pollution our receiving waters. Unless
21 we build it now into the group before anybody does
22 anything more, they will account for at one inch.
23 One inch is really way too little. Probably more
24 like three, four, six inches. I built that a long
25 ago that somebody catches a 100 years from now. But

2 aim high and then you can get—you can ration it down.
3 If you already have a hole in the ground, and there's
4 bad actors in the garbage community, they can walk
5 away, but we already have the capacity to capture the
6 runoff when they're gone simply by building, and the
7 test is extremely complicated. You take a coffee
8 can—a coffee can, you cut the bottom off, you stick
9 it in the ground, you pour water into it, and over an
10 hour's time at least six inches could go into that
11 swale system. If it's not that, then it's not big
12 enough. There's not enough macro force, and then do
13 water damage. B.E. Cane (sic) and I did this test.
14 Everyone does it to see how well they work. So
15 basically we have in front of us an opportunity,
16 which as an artist I have many cities on the planet,
17 but it's got to be that we will take this water, and
18 it will become literally the resource of the—to the
19 rest of biosphere here in New York as well.

20 CHAIRPERSON CONSTANTINIDES: Well, I
21 definitely appreciate your testimony. Thank you for
22 that.

23 WILLIS ELKINS: Hello. My name is Willis
24 Elkins. I work for the Newtown Creek Alliance. I
25 just want to offer my testimony on behalf of Newtown

1 Creek. Newtown Creek is greenhouse model waterway in
2 boroughs of Queens and Brooklyn with some tourists.
3 I would say one of the most polluted waterways in the
4 country with that old Superfund site. A lot of the
5 contamination that's in Newtown Creek is historical
6 from decades of abuse by oil companies, and metal
7 refineries, and everything else. So, it's a bad
8 place, but there's also a lot of ongoing pollution,
9 and—and it's in the form of CSOs but also discharges
10 from the MS4. A lot of the areas around Newtown
11 Creek, pretty much the entire area, it's occurred
12 there now with residential development is part of the
13 Industrial Business Zone areas, and there's a lot of
14 industrial operations, and some are fantastic
15 operations and others operate as was described
16 earlier like it's the wild west, and these MS4 areas
17 contribute to significant contamination to Newtown
18 Creek. As was discussed earlier, there's not a lot
19 of data available on what that loading is, and what
20 the environmental impact would be ever using it. I
21 think we know anecdotally that--

22
23 CHAIRPERSON CONSTANTINIDES:

24 [interposing] Right.

2 WILLIS ELKINS: --it would be
3 significant. Personally, last and this year 2016,
4 Sean from Riverkeeper mentioned about citizen
5 enforcement action. I personally worked on 24
6 different investigations in Newtown Creek alone, and
7 it's not my full-time job to go around and find
8 enforcements, but they are there. That's not all
9 stormwater related, but there's a huge percentage of
10 those that are industrial operations where materials
11 are flowing off of metal recycles, auto shops,
12 transfer stations, concrete companies, you name it,
13 going in, and there's a lot to be done in terms of
14 enforcement. [coughing] Currently, I work really
15 closely with organization like Riverkeeper as well as
16 the State DEC on that, and despite DEC's limitations
17 and--and budget enforcement, they are very responsive.
18 And so, I think going forward with this we want to
19 see that as has been mentioned earlier, the DEP has
20 the resources available to take these problems
21 seriously because it's not just like there's a couple
22 bad actors. It's significant and we really need to
23 make sure that DEP is available to offer their
24 services and to take this seriously. There's been,
25 you know, some--some great progress in Newtown Creek

1 over the past decade, and we're very excited about,
2 you know, continuing working with DEP on things like
3 improving the treatment plants, upgrades to CSOs.
4 There needs to be some more of that, but going
5 forward these MS4 areas are very serious. So we want
6 to make sure they have that. The other thing I'll
7 just say is also, you know, to again encourage things
8 like green infrastructure, and also looking CSO areas
9 as well, but also coordination with the other
10 agencies as mentioned. As much as I-I love Paul's
11 work, and-and completely agree with the importance
12 of-of getting back stormwater into the ground,
13 unfortunately there are some area like around Newtown
14 Creek where the ground is so polluted, they actually
15 create additional problems by putting stormwater in
16 it. So Greenpoint, for instance, had the second
17 largest oil spoil in U.S. history underneath it,
18 plumes from metal factories, from dry cleaners are
19 also there. So, when we introduce a lot of
20 stormwater you can really move those plumes around,
21 but there's other ways to address that. Currently,
22 they're reconstructing Kosciuszko Bridge, the BQE and
23 with that reconstruction, they are implementing a way
24 to take the stormwater that's running off there,
25

2 which is highly contaminated and it rolled around
3 from the cars, and filtering out a lot of those
4 contaminants before they discharge the water into the
5 creek. So, as was mentioned, there's a lot of great
6 solutions that are available, but it takes
7 coordination with the agencies and it takes
8 resources. So, I just want to encourage that more
9 resources are--are dedicated to this. So I think it's
10 really time, and really it's special time. (sic)

11 CHAIRPERSON CONSTANTINIDES: Thank you
12 for your time, and I appreciate your insight, and I
13 think working with the DEP unless they have-- We
14 definitely want to make sure they have the right
15 resources and also that they are--when we have that
16 conversation come budget times. There'll be times,
17 you know, as soon as Christmas is over, it's going to
18 be budget time. [laughs] Happy New York. January
19 1st, we'll--we'll start discussing about it again. So
20 that's always a conversation and making sure that
21 every agency has what they need. It's always part of
22 our conversation. So I appreciate all of your
23 insight, all of your time today, and I was constantly
24 hearing, and obviously you brought up Local 71. So
25 I'm sure they'll appreciate. So thank you for that.

2 You're allowed to speak to that. Thank you. [pause]
3 next up with June-Julie Welch from the Spring
4 Coalition, and Gene Matthews from the RB Systems.
5 [off mic] [background comments, pause]

6 LEGAL COUNSEL: Can you please raise your
7 right hands? Do you swear or affirm to tell the
8 truth, the whole truth and nothing but the truth
9 today?

10 JULIE WELCH: [off mic] I do. Okay.

11 CHAIRPERSON CONSTANTINIDES: You are—you
12 are up.

13 JULIE WELCH: Alright. I'm Julie Welch
14 I'm the Program Manager for Stormwater Infrastructure
15 Matters Coalition. Thank you for inviting us to
16 attend the hearing today and to testify on Intro
17 1346. Stormwater Infrastructure Matters Coalition
18 represents over 70 organizations dedicated to
19 ensuring swimmable, fishable waters around New York
20 City, the natural system of the stormwater management
21 practices. Our members are the stoop of community
22 based citywide regional and national organizations.
23 Water recreation needs are instituted into higher
24 education and business. We respectfully offer the
25 following testimony. We support this important

2 legislation, which grants DEP the authority to
3 develop new rules so we could zoom on up in
4 development, new development projects in the
5 unexplored area of the city. However, we are
6 concerned that the city is being required to do the
7 job without any additional resources. [off mic]
8 Again, we making the point that others have made on
9 this topic. [on mic] Regarding maintenance of
10 stormwater management practices on private
11 properties, we urge the City Council to ensure the
12 legislation is robust enough to give DEP all the
13 tolls it needs to ensure adequate maintenance of
14 these practices. We recognize the ability to take
15 enforcement action in court against the negligent
16 property owner if we use the tool. However, we also
17 believe DEP should have the authority to enter onto a
18 private property to perform maintenance if the owner
19 is delinquent and to collect expenses from the owner
20 for work done. This legislation should ensure that
21 DEP has the authority to take those types of action.
22 The bill requires the property owner to certify every
23 five years based on the inspection by qualified
24 inspectors that all post-inspection stormwater
25 management practices are being properly maintained.

2 However, the definition of qualified inspector
3 requires only expertise in erosion, and the sediment
4 people, not in post-construction coming out of
5 passages. (sic) [off mic] We urge the City Council to
6 more specifically require inspectors and the rest of
7 the team in post-construction stormwater passages.
8 This is particularly important in New York City where
9 many conventional erosion and sediment control
10 measures may not be appropriate. Thus, requiring
11 expertise in other stormwater management practices
12 including green infrastructure practices.
13 Additionally, we request the City Council amend the
14 bill so that post-construction section applies
15 citywide. After a certain point in the bill, you do
16 state that runoff from impervious areas generate
17 greater polluting-loading to the separate stormwater
18 and combined through a system. We recommend that you
19 include CSO to balance everything. And we would
20 also like to take this opportunity to share some
21 thoughts even though they are not necessarily
22 directed-related directly to the proposed
23 legislation. We urge the City to expand the Green
24 Infrastructure program including the Green
25 Infrastructure Grant program [coughing] citywide so

2 that Green Infrastructure becomes a tool to manage
3 stormwater in-in the four areas. Expansion of GI is
4 important not only for managing the stormwater in-in
5 the four areas, but also in developing and
6 implemented combined sewer overflow long-term control
7 plans. For many of our water bodies these watersheds
8 often encompass and built with CSO and MS4 areas. A
9 holistic watershed based approach to GI rather than
10 sewer type based GI is necessary to efficient use of
11 those resources and improving water quality. We also
12 urge support through these city agencies involved in
13 the Stormwater Management programs to fully cooperate
14 at DEP. Stormwater management unlike wastewater or
15 combined sewer management requires actions by all
16 city agencies that generate stormwater. Without the
17 cooperation of the other involved agencies, the DEP
18 will not be able to meet the requirements of the
19 part-and the source permit. We hope the City Council
20 will lead and monitor the operation and performance
21 of city agencies throughout this process so that DEP
22 as the lead agency can do its job properly and
23 efficiently. And lastly, as previously stated, we
24 have concerns regarding the fiscal burden of MS4 from
25 that and the expanded authority of the DEP, like is

2 on DEP and thus the water-water rate payers. We hope
3 that DEP will evaluate-re-evaluate water based
4 structures to create a rate structure that is
5 equitable in terms of affordability, but also in
6 terms of solution generated, i.e. excellent (sic)
7 water fee. [off mic] We thank the City Council
8 Committee for Environmental Protection empowering the
9 NYCDEP with the authority to implement and enforce
10 the kinds of cleanup, and to specifically oversee and
11 enforce requirements regarding the activity that has
12 the potential to contribute through the stormwater
13 runoff. On behalf of the steering committee at
14 Stormwater Infrastructure Matters Coalition. Thank
15 you.

16 CHAIRPERSON CONSTANTINIDES: Thank you.

17 JOAN LIANAKI: [off mic] Good afternoon,
18 Mr. Chairman. I'm Joan Lianaki (sp?) and I'm a
19 senior attorney at the National Resources Defense
20 Council, and I appreciate the opportunity to testify
21 today. And you'll note that we trend it up from your
22 extensive written comments and green highlights (sic)
23 and we never-- [laughter]. So I lead an NRDC's Urban
24 Water Management team, and that's a national program
25 and it is free teachings (sic) including stormwater

2 pollution combined overflows and green
3 infrastructure. My NYDC colleague Larry Levine
4 serves on the Steering Committee of the same
5 collation, but he was not able to come today, but the
6 testimony that we're offering is fully aligned with
7 the same coalition and very proudly so. So the
8 biggest ongoing sources of water pollution to New
9 York City is—is stormwater runoff from the city's
10 municipal separate storm sewer system called MS4,
11 which serves about a third of the city's land area,
12 and also raw sewage discharges, the combined sewer
13 overflows, the CSOs, from the combined sanitary storm
14 sewers that serve about half of the city, and area.
15 CSO discharges, too, are triggered by excessive
16 stormwater runoff and drainage through the system now
17 to these sites. MS4 and CSO pollution fouls our
18 waters often rendering them unsafe for recreation and
19 degrading habitats for fish and wildlife. DEP
20 studies indicate that we cannot clean up our waters
21 without addressing both of these stormwater pollution
22 problems. So NRDC strongly supports Intro No. 1346
23 and we applaud DEP and the Mayor for introducing it.
24 The bill provides for a much needed and decades long
25 overdue program to regulate sewage runoff, also known

2 as stormwater, from development projects and
3 industrial sites in MS4 areas. If I may, we would
4 like to urge the committee to serve as strengthening
5 the bill in several respects. First, we urge the
6 committee to strengthen the bill by directing DEP to
7 develop new stormwater regulations for development
8 projects not only within the MS4 portions of the
9 city, but also in the half of the city served by
10 combined sewers. Covering the MS4 area is necessary
11 to comply with the city's new MS4 permit under the
12 Clean Water Act, and improving regulations and
13 combine sewer areas is often necessary to ensure
14 compliance with the city's Clean Water Act obligation
15 to reduce overflows of raw sewage from CSOs. Second,
16 the committee should also strengthen the bill to
17 support a key provision of the city's MS4 Permit,
18 which requires the city to expand its green
19 infrastructure efforts on municipal property and
20 rights-of-way into MS4 areas. Until now, the city's
21 green infrastructure investments through DEP's Green
22 Infrastructure program, has focused on CSO areas.
23 The MS4 Permit now requires the city to do the
24 following in the MS4 area: "Consider, and if
25 feasible and cost-effective, incorporate runoff

2 reduction techniques in clean infrastructure during
3 planned municipal upgrades including municipal
4 rights-of-way. The committee should amend the bill
5 to direct all city agencies to develop the nets (sic)
6 to the City Council and implement specific operations
7 of protocols that ensure they incorporate green
8 infrastructure into a capital project. Third, we
9 urge the committee to amend the expected date
10 provisions of the bill to avoid unnecessary delay and
11 the effectiveness of the new construction, post-
12 construction and industrial stormwater rules.
13 Fourth, we recommend a revision to the bill to
14 clarify and inspectors to certify proper operation
15 and maintenance of post-construction stormwater
16 passages must be qualified in post-construction
17 stormwater management. And finally, and I do a few
18 points on the finals. We urge the committee to hold
19 a separate oversight hearing on the city's overall
20 efforts to address CSOs and to promote green
21 infrastructure. DEP has made significant investments
22 in CSO reduction since the 1990s, but we still have
23 over 20 billion gallons of overflow per year, and so
24 much more remains to be done. City Council
25 involvement is essential to ensure that DEP develops

1 and implements effective long-term CSO cleanup plans
2 and to ensure D-E—that DEP improves upon it's green
3 infrastructure program to protect our waters and
4 improve out neighborhoods citywide. I would like to
5 address both the CSO Consent Order and also a little
6 more on the—on the Green Infrastructure Program. But
7 first, on the CSO Consent Order. The City CSO
8 program is developed and implemented primarily under
9 the terms of consent orders that it has negotiated in
10 secrete with the New York State Department of
11 Environmental Conservation. These orders have been
12 negotiated and renegotiated several times since the
13 early 1990s, and I—we know that DEP and DEC are
14 currently re-negotiating a new order, which will
15 determine how much and where the city reduced the
16 CSOs for the next 25 years. The CSO Clean-Up that
17 DEP is supposed to restate, are woefully inadequate,
18 as they would leave hundreds of millions and in some
19 cases over a billion gallons of overflows annually
20 and to individual water bodies such as the Bronx
21 River Flushing Creek. And yet, as in the past, the
22 new CSO order is being negotiated without input from
23 local elected officials or from their constituents
24 that waterways are fouled by raw sewage. That is all
25

New Yorkers. Until after—after DEC and DEP have reached a deal. The City Council should assert itself before these decisions have been made.

Briefly, on the Green Infrastructure program, DEP's Green Infrastructure program has its origins in City Council legislation, which addressed both CSO areas and separately sewered areas. Over the last several years, the DEP has built or has in design or construction the allergens of bioswales I certain fearful (sic) drainage areas. Yet, DEP reports that it is falling far short of its targets under the current CSO Consent Order, greening less than half of the area targeted for 2015. DEP's official contingency plan to catch up and to meet its more ambitious street (sic) targets is simply to consume with its current approach, and DEP is called into question whether it should even continue to aim for their targets suggesting that large portions of the city simply do not need any new green infrastructure. There are many opportunities for DEP to improve upon its timed Green Infrastructure program, and all of them have been implemented in one form or another in cities around the country. And I have a couple of examples to offer. Large scale grant—a large scale

2 grant program for green infrastructure requisites and
3 what NRDC's involvement in that has been. We've been
4 working closely with DEP on a collaborative effort to
5 develop and innovate community supported grant
6 program to fund and build green infrastructure
7 requisites on privately owned land in both CSO and
8 MS4 areas in the city. This program can be designed
9 not only to include water quality, but also to
10 leverage DEP's green infrastructure investments to
11 make quality life improvements in underserved
12 neighborhoods, create those green collar jobs, and
13 support the city's climate resiliency. Active
14 engagement by the City Council would help make this
15 innovative program a success, and ensure that it
16 reaches communities most in need. And one of the
17 last points that I would like to make is that—in
18 regards to stormwater needs. The committee should
19 explore opportunities for DEP to more equity generate
20 a dedicated revenue stream for stormwater management.
21 We think a stormwater feed structure that would
22 provide incentives to property owners to reduce their
23 stormwater. So we than you for the opportunity to
24 testify to day.

2 CHAIRPERSON CONSTANTINIDES: I appreciate
3 the points that you raised regarding this
4 legislation, and also the points you raised regarding
5 the CSO, the green infrastructure, and—and this
6 committee covers a lot of ground, and, you know,
7 based on the one—the one hearing a month, I think I
8 could have a hearing a every week and not cover all
9 the topics that we'd like to cover. But I—I—I
10 definitely look forward to 2017 during our budget to
11 try to hear that topic, and—and do so. We certainly
12 will do private conversations on this, and we look
13 forward to continuing the conversation we can have at
14 some other time. So we thank you for your time
15 today. I appreciate it.

16 JOAN LIANAKI: Thank you. [pause]

17 CHAIRPERSON CONSTANTINIDES: I want to
18 thank everyone for their testimony today and your
19 time. I want to thank our staff attorney Samara
20 Swanston for all of her great work as always. Oh,
21 I'm sorry. Excuse me, do you have a question?
22 [background comments] I didn't know you had a
23 question. Steve Levin has joined us, one of our team
24 members from Brooklyn, Thank you for being here,
25 Steve. I want to thank Samara Swanston our staff

2 attorney, Billy Murray, our Policy Analyst, and my
3 staff Ray Mejewski (sic) and with-with that, I will
4 end this committee hearing today, the Environmental
5 Protection Committee. Thank you. [gavel]

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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 January 4, 2017