

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON ENVIRONMENTAL PROTECTION

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April 21, 2009
Start: 01:26 pm
Recess: 04:00 pm

HELD AT: Hearing Room
250 Broadway, 14th Floor

B E F O R E:

JAMES F. GENNARO
Chairperson

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Bill de Blasio
G. Oliver Koppell
Peter F. Vallone, Jr.
Thomas White, Jr.
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CHAIRPERSON GENNARO: Good

afternoon, I'm Councilman Jim Gennaro, Chairman of the Committee on Environmental Protection. We're joined by Council Member Oliver Koppell of the Bronx. The other members of the committee joining us welcome. Today we're holding a hearing on Proposed Intro 21-A, the local New York City Brownfields bill. As we all know, difficulties in remediation of brownfields have been a significant obstacle to community revitalization and economic development efforts. The presence of brownfields can present serious public health and environmental risks. Brownfields are often in moderate or low-income communities and communities of color. Cleaning up brownfields in New York City has been an initiative of state and local government since 1994 when the voluntary cleanup program was created by the state. And while the state brownfields program has been effective in some areas, New York City sites were sometimes unfairly rejected. I think this is the finding of the Mayor's PlaNYC, which found that the city would do well to have its own program. I quite agree, which is why I wrote the bill. Then we

1 worked very closely with the Bloomberg
2 administration. All levels of government and many
3 not-for-profit sectors agree that remediation of
4 brownfields in New York City is certainly in the
5 city's best interests. Yet, uncertainty about the
6 programs, which ones are eligible, the funding
7 sources and so on has persisted, leading us to
8 this day today where we should have our own local
9 program. According to the Mayor's Office of
10 Environmental Coordination, there may be as many
11 as 7,600 acres of brownfields citywide. Los
12 Angeles, Portland, Dallas, and Providence are some
13 cities with a citywide brownfield program. At
14 today's hearing we'll hear testimony on Proposed
15 Intro 21-A, which creates a local brownfields
16 program for the City of New York. I'd just like
17 to thank in a special way; the Bloomberg
18 administration has been very interested in this
19 issue. Again, I first proposed a bill that kind
20 of set out the need for a local program. It
21 wasn't a prescriptive bill. It indicated that
22 there was a need and that a program should be
23 written. It was a bill that called upon the
24 Bloomberg administration to do that. They stepped
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2 forward and said, "Why don't we write it with you,
3 we'll write it right into the bill." That's kind
4 of the best way to do that. I was grateful for
5 that approach that has brought us to this good day
6 today. Hopefully we'll get testimony that will
7 help us as we seek to pass this law. I'd like to
8 thank the Counsel to the committee, Samara
9 Swanston and the policy analyst for the bill,
10 Siobhan Watson. We're also joined by Council
11 Member Ulrich from Queens. I'm grateful to have
12 you with us here today. Without further ado,
13 we'll call the first panel, Mark McIntyre,
14 representing the Bloomberg administration, the
15 Mayor's Office, Dan Walsh, also of the Mayor's
16 office. I call each of you to step forward and to
17 be seated. Counsel to the committee will give the
18 oath which is standard practice for all the
19 hearings of this committee. Anything that has to
20 be given out should be given to the sergeant and
21 he'll make that available to us.

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

CHAIRPERSON GENNARO: Thank you. I see many people and many groups who have an interest in brownfields remediation. I thank all of you for your efforts. You'll be recognized in due course. Once again, I want to thank this panel for being here. I want to thank you for your hard work. By extension, I thank the Bloomberg for their efforts in this regard. We appreciate you being here and we look forward to your good testimony.

DANIEL WALSH: Good afternoon. My name is Daniel Walsh. I am the Director of the New York City Office of Environmental Remediation. I am joined by Mark McIntyre, General Counsel for the office. This Office was established by Mayor Bloomberg in June 2008 and represents the attainment of one of the 11 initiatives under the brownfield chapter of PlaNYC. I am here this afternoon to testify and to express the Mayor's support for the New York City Brownfield and Community Revitalization Bill. I'd like to thank the Chairman of the commission, Council Member Gennaro and all of the committee members for this opportunity to testify here today. By way of

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2 introduction, I have spent my entire career
3 working on brownfield and environmental cleanups
4 here in NYC. I formerly served with the New York
5 State Department of Environmental Conservation
6 here in New York City as the chief of the
7 Superfund and Brownfield Cleanup Program. In that
8 capacity, I have been aware of the leadership that
9 this Environmental Protection Committee has played
10 and particularly its chair has played in the
11 formulation of landmark environmental legislation.

12 CHAIRPERSON GENNARO: I just want
13 to ask you; I was wondering if my mother gave you
14 any of that language? Did she call you?

15 DANIEL WALSH: No, she didn't call.

16 CHAIRPERSON GENNARO: She would
17 have said similar things. Thank you very much. I
18 appreciate it.

19 DANIEL WALSH: You're welcome, sir.
20 A brownfield is a vacant or underutilized
21 property that remains undeveloped because
22 pollution from past land usage stops attempts at
23 redevelopment. Brownfields are an important
24 cause of distress in our city's neighborhoods
25 because they often occur in clusters that stifle

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2 community revitalization and do so in a manner
3 that often disproportionately affects
4 environmental justice communities. In New York
5 City, there are roughly 7,600 acres of potential
6 brownfield properties. Left unattended, these
7 properties represent lost opportunities for urban
8 revitalization and in some cases, may present
9 threats to public health and the environment.
10 Before I continue, let me take a moment to
11 provide some historical context for brownfield
12 management in New York City. I'm going to direct
13 your attention to the display of slides behind.
14 This is Mike. Thank you, Mike. The slide that
15 is now shown shows a timeline for brownfield
16 management and evolution in New York City. As it
17 shows, brownfield creation was effectively ended
18 around 1990. During the 1990s, in 1994 in
19 particular, state programs emerged for brownfield
20 cleanup. Beginning in 2009, with the authority
21 provided under this bill, New York City looks to
22 engage fully in a partnership with New York State
23 to work on cleanup of brownfield sites within the
24 five boroughs. In 2007, PlaNYC correctly
25 recognized that New York City had to assert its

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2 influence and create programs, tools and
3 resources to promote cleanup and redevelopment of
4 its brownfield properties. PlaNYC laid out 11
5 initiatives in the brownfield chapter. Over the
6 last year we've made enormous strides in
7 realizing the goals in that plan. Since the
8 creation of the office last June, staff have
9 worked closely with New York State, with the
10 community and with other brownfield stakeholders,
11 most notably, New Partners for Community
12 Revitalization, and have designed an impressive
13 series of new programs for New York City. The
14 bill before you is important because it provides
15 the Office with the authority to carry out these
16 programs and focus the city's resources to enable
17 brownfield cleanup and redevelopment and provide
18 new pathways for community revitalization. Most
19 important among the programs we intend to launch
20 under this bill is a new city brownfield cleanup
21 program. This program will be the first
22 municipal cleanup program in the nation. Let me
23 take a moment to explain why we need a brownfield
24 cleanup program here in New York City. New York
25 State programs have achieved excellent cleanups

1 since 1994. However, recently these programs
2 have under performed with respect to enrollment.
3 Mike, if you would put up the second slide,
4 please. This slide shows a graph of enrollment
5 in the New York State brownfields programs. You
6 can see it begins in 1994 with the emergence of
7 the state voluntary program. We can see from the
8 graph that enrollment peaked around 2000 and
9 2001, but since 2004 we've seen a steady decline
10 in enrollment statewide. Of course, that's been
11 followed as well here in New York City. The
12 reason for this is denial of light and moderate
13 contaminated sites. Not just in New York City
14 but around the state. For New York City the
15 issue is mainly one of historic fill. We
16 estimate that about 90% of the brownfields in New
17 York City are historic fill sites and currently
18 there is no program available for cleanup of
19 these properties. The New York state brownfield
20 cleanup program does not find these properties
21 eligible. So that's in essence why we need a New
22 York City brownfield cleanup program. The bill
23 before you provides the authority to create that
24 program.
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2 COUNCIL MEMBER KOPPELL: Mr.

3 Chairman, I'm sorry to interrupt but I've done
4 this at other hearings as well for people who are
5 here and people who are testifying. As a member
6 of this committee, I am resentful of charts that
7 are so small that they can't be read and copies
8 of the charts are not given to members of the
9 committee that we could have in front of us. I
10 can't read the numbers on that chart. It's
11 useless to me. I don't know what it's talking
12 about.

13 DANIEL WALSH: We can correct that.

14 I've got some copies.

15 COUNCIL MEMBER KOPPELL: We need
16 copies for each member to look at.

17 CHAIRPERSON GENNARO: Certainly if
18 you could give those to the sergeant and have
19 those distributed.

20 DANIEL WALSH: I apologize for not
21 getting them to you at the outset.

22 COUNCIL MEMBER KOPPELL: I
23 appreciate you having them. Now I can read it.

24 CHAIRPERSON GENNARO: Please
25 continue.

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2 DANIEL WALSH: The new cleanup
3 program, to be called the New York City
4 Brownfield Cleanup Program, will greatly
5 accelerate cleanup of brownfield sites here in
6 the city. In its design, we have worked in a
7 close partnership with the New York State
8 Department of Environmental Conservation and the
9 New York State Department of Health to ensure
10 that we achieve cleanups that are identical to
11 those achieved by state programs. Let me repeat
12 that. The cleanups that we're going to achieve
13 in the New York City Brownfield Cleanup Program
14 are identical to those achieved by New York
15 State. We'll use the same state DEC standards,
16 that same selection criteria for remediation and
17 all work that's performed under our program will
18 be approved by our staff of geologists and
19 engineers. The city program is designed to
20 oversee cleanup of brownfield properties with
21 light to moderate levels of contamination,
22 including historic fill sites. We will not
23 accept superfund caliber sites. We are not
24 competing with the State of New York. Those
25 sites are appropriate for New York State to

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2 manage. We are working in a partnership with New
3 York State. In a partnership with state and
4 federal agencies, as well as other city agencies,
5 our program will offer a one-stop shop for
6 brownfield cleanup. In consultation with the New
7 York City Department of Health & Mental Hygiene,
8 we will ensure that cleanups will be protective
9 of both public health and the environment.

10 Partnerships with DEC and EPA are also expected
11 to enable broad liability protection for parties
12 who successfully clean properties under our city
13 program. We will also offer a Clean Property
14 Certification Program, which will do for
15 brownfields what the LEED certification does for
16 green building design. To promote brownfield
17 cleanup and enrollment in our program, this bill
18 provides the office with the authority to
19 administer city funds in a new brownfield
20 financial incentive program. Under PlaNYC, the
21 city has budgeted roughly \$11 million for
22 investment over the next three years. We will
23 offer a small-grant program that is designed to
24 stimulate brownfield projects at all stages, from
25 pre-development through cleanup, and to encourage

1 enrollment in our cleanup program. We will also
2 provide preference to environmental justice
3 communities through enhanced benefits for
4 targeted projects, such as affordable housing and
5 Brownfield Opportunity Area compliant projects.
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7 To supplement this incentive program and aid
8 other brownfield initiatives, the office has also
9 recently applied for approximately \$3 million in
10 state and federal grants. More importantly, the
11 city cleanup program will provide a steady stream
12 of shovel-ready brownfield development projects
13 and our small grant program will provide a
14 structure for potential investment of economic
15 stimulus funding for New York City brownfield
16 projects. Under this bill we've assembled a
17 series of progressive programs for community
18 involvement. Simply put, our program and our
19 office will provide the most advanced for of
20 community engagement now available on brownfield
21 issues. We'll be introducing the Community
22 Protection Statement which will be in every
23 cleanup plan. This will provide an executive
24 summary in easy to understand language for the
25 lay public that'll provide a summary of all the

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2 protective elements in the cleanup plan so that
3 our communities will understand exactly what's
4 being done to provide protection to them in the
5 cleanup process. We're also going to work, as I
6 mentioned earlier with the New York City
7 Department of Health to provide public health
8 protection and we're going to provide complete
9 transparency in this entire process, using our
10 website and an online repository of project
11 documents. The office has introduced a robust
12 public education program as well. In 2008, we
13 initiated the Brownfields for Beginners workshops
14 series. This is an educational series that
15 provides basic instruction on brownfield cleanup
16 and redevelopment. These workshops are aimed at
17 non-profit community development corporations,
18 Brownfield Opportunity Area grantees, and small
19 and mid-size developers. We are also
20 aggressively pursuing state and federal funding
21 to further our community education and brownfield
22 assistance and to aid important programs like the
23 New York State Brownfield Opportunity Area
24 program. This a fabulous program, and with the
25 stewardship of New Partners for Community

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2 Revitalization, New York City now has 16 BOA
3 grantees accounting for a total of \$4 million in
4 New York State grant awards. The office will be
5 working closely with the New York State
6 Department of State to foster this excellent
7 program and expand it into more NYC communities.
8 Our cleanup program will introduce sustainability
9 as a cleanup selection criterion. We'll also
10 introduce the Sustainability Statement to our
11 cleanup plans, a summary of sustainability
12 measures to be employed during and after the
13 cleanup process. I am proud to say that the bill
14 before you, if adopted into law, will enable our
15 New York City program to become the first fully
16 sustainable brownfield cleanup program in the
17 nation. I provided an overview of the elements,
18 the various elements of our programs that will be
19 enabled by passage of this bill. These programs
20 will provide vital service to our communities for
21 many years to come and for that reason I urge its
22 passage. In closing, I would like to thank the
23 Committee for this opportunity to testify here
24 today.

25 CHAIRPERSON GENNARO: Thank you,

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2 Mr. Walsh. I appreciate you being here. Thank
3 you, Mr. McIntyre as well. Since the beginning
4 of your testimony we've been joined by Council
5 Member Eugene, Council Member Crowley, and
6 Council Member Vallone. We appreciate everyone
7 who is participating in today's hearing. Thank
8 you for your comprehensive testimony, Mr. Walsh.
9 In your statement you talk a little bit about
10 offering a clean property certification program
11 that will do for brownfields what LEED
12 certification does for green building design.
13 Can you tell us a little more about that?

14 DANIEL WALSH: The New York City
15 Clean Property Certification Program will be
16 offered to volunteers that enter our program and
17 successfully navigate through the investigation
18 and cleanup stage. Once they've completed the
19 cleanup, we're going to offer, in addition to a
20 final signoff, which is called a certification of
21 completion, we're also going to offer a clean
22 property certificate which is equivalent to a
23 LEED certification. What this provides is a
24 tangible and marketable symbol of New York City's
25 confidence in the cleanup. We're hoping that by

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2 providing this added benefit, we create an
3 interest in cleaning properties up, engagement of
4 our program and expanding enrollment in our
5 programs.

6 CHAIRPERSON GENNARO: Thank you.
7 You talk a little bit about providing preference
8 to environmental justice communities through what
9 you indicated as enhanced benefits for targeted
10 projects such as affordable housing and
11 brownfield opportunity area compliant projects.
12 Can you talk a little bit about this preference
13 and how it would work? I'd be happy to hear
14 about that.

15 DANIEL WALSH: We have very
16 extensive plans to work with the BOA grantees in
17 New York City. There's a real need in brownfield
18 planning; area wide planning to integrate that
19 planning with city agencies that are doing
20 similar work on their own but not necessarily
21 linking with these planning grant programs. We
22 view the role of our office as kind of an
23 ombudsman to bring these parties together to
24 enable communication and help on both sides in
25 bringing these plans together. In addition,

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2 within our financial incentive program our goal
3 is to provide a series of financial incentives to
4 engage on brownfields. We're building added
5 incentives for affordable housing and for BOA
6 compliant projects. The way we're doing that is
7 to provide higher caps for the grant awards and
8 there are other methods as well.

9 CHAIRPERSON GENNARO: Thank you.
10 Your statement also talks about what you're doing
11 to try to get state and federal grants. You
12 indicated that the office has made application
13 for about \$3 million in grants. What is a
14 reasonable expectation of the amount of grant
15 money, like the scale of grant money that we may
16 be able to pull in? Also, is that based on how
17 successful our program is and how it's perceived
18 by the grant makers? I would imagine that if we
19 do a really good job and we have a great program
20 that will help us get more grant money. Is that
21 a fair assessment?

22 DANIEL WALSH: It is, absolutely.
23 By creating a brownfield program and creating a
24 brownfield infrastructure we really are creating
25 a vehicle for investment, whether it be state

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2 dollars or federal dollars to invest here in New
3 York City brownfield projects. Without that
4 there may be a will, there may be an interest in
5 investing but there's no infrastructure to put
6 that money into. So we've been working very hard
7 in creating our own small grant program with a
8 design that not only serves the \$11 million that
9 we have to invest but can also provide a conduit
10 for state and federal funds. In this period,
11 particularly, with the availability of economic
12 stimulus funds through the federal government we
13 think that there's a real value in identifying
14 these funding sources, providing that
15 infrastructure and working to channel money into
16 our local brownfield sites.

17 CHAIRPERSON GENNARO: Thank you.
18 I'd also like to thank you for recognizing New
19 Partners for Community Revitalization and giving
20 them the recognition that they deserve. We'll be
21 hearing from them today and it's nice of you to
22 mention them and all their good work. Those are
23 the questions that I had from your statement. I
24 have some other questions that have been prepared
25 by staff, but I'd like to recognize now for

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2 questions some Council Members and I recognize
3 Council Member Koppell for questions.

4 COUNCIL MEMBER KOPPELL: Thank you,
5 Mr. Chairman. I would just ask a couple of
6 background questions and you'll see why I'm
7 asking this. Right now, if a developer wants to
8 develop a site and let's assume that site was
9 contaminated at some point in the past. How is
10 that developer told that he can't use that site
11 until it is remediated?

12 DANIEL WALSH: Well, the typical
13 process a developer would engage, and often this
14 is related to the process of acquiring lender
15 financing, would be a basic site investigation.
16 It usually starts with a paper investigation
17 called a Phase 1. It doesn't even involve
18 inspection of the property. It looks back in
19 time at the history of past usage and identifies
20 past use that might trigger environmental issues.

21 COUNCIL MEMBER KOPPELL: Is that
22 done by the developer?

23 DANIEL WALSH: It's usually done by
24 consultants that are engaged by the developer.
25 Often this is linked with the property

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2 transaction. So the developer might identify a
3 property that they're interested in and then move
4 down the path toward land acquisition and then at
5 some point the process of investigation is
6 triggered. Once the initial phase, the paper
7 study is done, often that will trigger the
8 environmental concern and then that's followed by
9 an actual field visit and field sampling. That's
10 the point where those environmental issues are
11 typically confirmed.

12 COUNCIL MEMBER KOPPELL: So then
13 what does a developer do at that point? How does
14 the developer then interact with government? How
15 does that happen?

16 DANIEL WALSH: The simple fact is
17 that for most brownfield properties that don't
18 reach the level of what is called superfund
19 caliber there are no governmental requirements
20 that force a developer into a regulatory program
21 for cleanup. Typically what a developer will do
22 is engage environmental consultants and
23 engineering firms to study a site and come up
24 with a proposed cleanup plan. What we've seen
25 since about 1994 is the emergence of brownfield

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2 programs that encourage enrollment in these
3 regulatory structures that provide better
4 cleanups and more protective cleanups.

5 Historically the biggest driving force for
6 developers to go into a governmental program is
7 the desire for liability protection. That's why
8 the state programs have become so effective is
9 that they've offered state liability protection.
10 If you go through their program they will not sue
11 you once you successfully complete the work.

12 COUNCIL MEMBER KOPPELL: So that's
13 the incentive for going into the program.

14 DANIEL WALSH: That's one of the
15 strongest incentives available.

16 COUNCIL MEMBER KOPPELL: So if we
17 create this office, the developer is going to be
18 able to go to the city, to your office or
19 whatever, instead of going to the state. Is that
20 the idea?

21 DANIEL WALSH: Right. We're
22 working in a partnership with the state. The
23 bill itself calls for some measure of city
24 liability protection. We're negotiating an
25 agreement with the State of New York where

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2 parties that go through our program would also
3 get state liability protection. We're also
4 negotiating with the US EPA and we're looking to
5 get federal liability protection. So if a party
6 goes through our city program, they'll get city,
7 state and federal protection, which is more than
8 a developer can get anywhere else in the country.

9 COUNCIL MEMBER KOPPELL: What the
10 city program is going to do is make it easier for
11 a developer to get through the process and get
12 his liability protection.

13 DANIEL WALSH: I need to make
14 something very clear. The quality of the cleanup
15 and the process to engage cleanup will be
16 essentially the same as the state program. We're
17 using the same standards, the same approach and
18 the same oversight process. We're working very
19 hard to develop a streamlined approach that
20 provides better guidance and a more interactive
21 engagement of staff so that we can keep projects
22 on their timeline. We're working very hard to
23 expedite the process, but the bottom line is the
24 quality of the work has to be at the same high
25 level as the state programs.

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2 COUNCIL MEMBER KOPPELL: I do
3 notice in the bill, on Page 10, it says, "cleanup
4 standards and remedial selection criteria shall
5 be consistent with standards and criteria
6 applicable to the state brownfield cleanup
7 program, including all applicable guidance
8 documents." I assume that's the language that
9 says what you just said.

10 DANIEL WALSH: Yes, that's correct.

11 COUNCIL MEMBER KOPPELL: When it
12 says consistent, I'm not sure and I would ask,
13 Chairman that you ask the staff to look into
14 whether the word consistent is the same as comply
15 with. Is that your interpretation that those two
16 words are synonymous?

17 MARK MCINTYRE: Essentially, yes,
18 the word "consistent" was inserted there to
19 provide that when or if state standards or state
20 guidance were to change down the road that we
21 would change with that guidance and follow those
22 standards that would be further developed in the
23 future so that we're not just locking ourselves
24 into merely following current state standards if
25 there were ever to be amended in the future.

COUNCIL MEMBER KOPPELL: Right. It could say comply with state standards and criteria in effect at the time or something like that. I just consistent with, in my opinion, and I don't know that it should be controlling, but I think it's a little bit different than comply with. I would prefer the word comply with there. It would make me feel more comfortable, Mr. Chairman. I would say that, but I leave it to you and the Council. This is a major concern. The other concern that's been expressed to me and I share to some extent, Mr. Chairman, is that obviously one of the purposes and the bill repeatedly talks about economic development. I'm not opposed to economic development. I'm not saying that. At the same time I am a little concerned that this office will have somewhat competing priorities because economic development sometimes would be hindered by environmental considerations. It's inevitable. I'm concerned that the one office having both objectives is a potential problem. Perhaps we could somewhat remediate that or mete that by having some environmental agency, maybe the City Environment

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2 Agency if you're concerned about the state agency
3 being too slow, but maybe having the city DEP
4 certify to those standards or something like
5 that. I know that's a concern that some people
6 have raised with me of late in the last day or
7 two. It's a legitimate concern I think, and
8 maybe you want to respond to that.

9 DANIEL WALSH: I would like to.
10 The very core of our program design is a direct
11 linkage with state programs and federal guidance
12 as well. Let me tell you the reason for that.
13 We require state liability protection for our
14 developers. City liability protection is not
15 enough. Most of the environmental laws are state
16 laws. In order to get state liability protection
17 we need to comply with state requirements for
18 cleanup. That is the core and the essence of our
19 negotiations with the state to date. They want
20 that. We want that. Just for background
21 purposes, our goal is not a fly-by-night program.
22 We want a cleanup program that will serve this
23 city for decades to come. The only way that will
24 be accomplished is by achieving a high quality
25 remedy, just like state programs. Again, that is

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2 the focal point of our design. I think what
3 you're talking about perhaps is some wordsmith,
4 but our intent is precisely what you're
5 describing in terms of being consistent or
6 complying with state requirements. We want to do
7 the cleanups the same way the state does their
8 cleanups. In terms of economic development I
9 think in each occurrence there is a string of
10 language that was just repeated. It talks about
11 providing for public health protection,
12 environmental cleanup or remediation,
13 investigation and economic development. Those
14 are core concepts for brownfield management and
15 have been well established for almost two decades
16 now. I think we carry that concept and we carry
17 that language forward. That's not new or unique
18 to the New York City program or this bill. I
19 think that is something that is characteristic of
20 brownfield programs in states throughout the
21 country.

22 CHAIRPERSON GENNARO: Let me also
23 just chime in with regard to Council Member
24 Koppell and your thoughtful comments regarding
25 one agency versus having two agencies look at

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2 this. I'm kind of inclined to leave it all in
3 sort of one house for the sake of doing it
4 efficiently and the kind of coordination when
5 it's under one roof. I think to the extent that
6 issues may or may not develop regarding whether
7 that was the wisest way to go, we can kind of see
8 that as it plays out in the next few years and do
9 tweaking if need be. But my inclination now is
10 to keep it in one shop. Sometimes when things
11 are divided between agencies you get like a lot
12 of yelling and screaming and not a lot done. So
13 it certainly would be my thought to keep it as
14 is. It doesn't mean we shouldn't keep a wary eye
15 on how it goes. If issues like those pop up,
16 then we'll hopefully be here to speak to those.
17 Did you have further comments?

18 COUNCIL MEMBER KOPPELL: No. But
19 my concern does to some degree remain. I think
20 some sort of an overview on the environmental
21 issue by somebody else might be worthwhile.

22 CHAIRPERSON GENNARO: Maybe we can
23 play that role and god willing we'll all be here
24 for a couple more years.

25 COUNCIL MEMBER KOPPELL: I don't

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2 want to belabor this. In other words, some
3 report is going to be issued with respect to the
4 status of the site after the cleanup efforts are
5 continued and that report will be reviewed by
6 this office obviously before they give whatever
7 certificate they're going to give. It might be
8 worthwhile to have that report also reviewed by
9 somebody else. That was my idea.

10 DANIEL WALSH: That's actually a
11 great point and let me respond to that. In our
12 negotiations with the New York State Department
13 of Environmental Conservation we've actually
14 discussed that point. They want to make sure
15 that if we're engaging in essence on their behalf
16 for liability protection that there is a
17 mechanism for them to have the ability to review
18 the work that's being done under our program. So
19 there will be a process for review by the state
20 where they will engage with us directly on that.
21 So if your concern is that there's an extra set
22 of eyes looking at the work that we're doing, I
23 think you should rest assured that as a function
24 of the process that we're negotiating with the
25 state that they will provide that function.

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2 COUNCIL MEMBER KOPPELL: Would
3 there be any way to incorporate that into bill?
4 It would certainly make me feel better.

5 DANIEL WALSH: It is incorporated
6 indirectly in that we have the ability to engage
7 in finalized agreements with state and federal
8 agencies for various purposes including liability
9 protection. That's directly in the bill. That
10 was the purpose there. Incorporated into that
11 liability process, the state wants this ability
12 to oversee the program and that's how the review
13 will take place.

14 COUNCIL MEMBER KOPPELL: So we've
15 got to make sure the statement says that.

16 DANIEL WALSH: Yes, that's correct.

17 CHAIRPERSON GENNARO: Thank you,
18 Council Member Koppell. I recognize Council
19 Member Crowley.

20 COUNCIL MEMBER CROWLEY: Thank you,
21 Chairman. I have a question that relates to the
22 workforce that will be remediating the
23 brownfields. You speak about quality and
24 process. Since these dollars aren't going to be
25 directly federal dollars, is there anything

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that's going to ensure prevailing wage?

DANIEL WALSH: You mean outside of the office that we maintain?

COUNCIL MEMBER CROWLEY: Well if you're going to be encouraging building private and public dollars to remediate this land, there's going to be public dollars going into the remediation, I just want to know what type of protection the workforce will have to make sure they have a fair wage for the labor that they do in remediating.

DANIEL WALSH: Let me clarify what our function is in terms of investment. We're looking at really small grants. The grant program is designed to deliver grants in the order of \$30,000 for a project. Put in perspective, a typical cleanup is probably anywhere from \$500,000 to perhaps \$1 million. The main function in value of those grants is to offset the added costs of entering our program in the first place. This is a small subsidy. I'd be doubtful that we can encourage major changes, through small subsidies, if that's what it would take in management of workforce. That's an

1
2 interesting question. Mark, do you have anything
3 to add to that response?

4 MARK MCINTYRE: I mean there are
5 various mechanisms where fair wage come into
6 bearing in the use of federal grant funds in
7 remedial projects. That's in place. That will
8 stay in place. Most significant projects in the
9 city have wage provisions similar to what you're
10 suggesting. Perhaps some smaller ones do not.
11 Nothing in the law will change that existing
12 allocation, but I think there is a substantial
13 fair wage practices in the significant projects
14 across the city and federal participation
15 financially will continue that.

16 COUNCIL MEMBER CROWLEY: Well, if
17 you're under the opinion that fair wages are
18 happening with the remediation, wouldn't it be
19 wise to just include that in the bill so we can
20 make sure that it goes that way.

21 MARK MCINTYRE: It's clear from
22 reading the bill that we didn't make that policy
23 call in this bill. We left that to other forces
24 that bear on that question.

25 COUNCIL MEMBER CROWLEY: Do you

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think it's a good idea?

DANIEL WALSH: As a practical matter, here's our goal with these funds. Again, they're small grants. They're intended mainly for the very early stages of stimulating projects. The period of title search of zoning analysis to get projects sparked and moving. For the most part, the greatest value will be found in those stages. As a practical matter, our goal in creation of the program was to make the usage of this funding as fluid and readily available as we could. Our main targets, as I mentioned earlier, are community development corporations for things like affordable housing. We wanted to make sure that this money could get on the street and be invested in these projects as readily and as fluidly as possible.

COUNCIL MEMBER CROWLEY: I would just imagine if you were drawing from an apprentice trained workforce that they would be able to do the work more efficiently, whereby having a project that once it is remediated it's done correctly and safely where you would have the ground ready for that type of development.

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2 If you were to get a company to do it that
3 doesn't draw from a trained apprentice program,
4 you would not have the same quality type of
5 workforce. So I think at the end of the day it
6 makes sense to put a requirement in that would
7 require drawing from an apprentice trained
8 workforce, not just people who may be day
9 laborers. We have to make sure that people know
10 what type of soil they're working with and be
11 ready to work efficiently.

12 CHAIRPERSON GENNARO: If I could,
13 Mr. Walsh's point is that these small grants that
14 are put out there to check for the viability and
15 feasibility of these programs, this money is
16 really more for like brain waves than it is for
17 people like laboring on the site. It's for doing
18 the kinds of technical analysis, doing title
19 searches, doing community outreach and that's
20 really what these funds are for. So that is the
21 point here; to get this money on the street so
22 that we can do the title searches, we can do the
23 community organizing and we can do the outreach
24 to see whether or not we can really have a viable
25 project here or not. That's what the money is

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2 actually for.

3 DANIEL WALSH: That's correct. One
4 thing I could is that we've been very attentive
5 to providing community benefits in the design of
6 our overall program. I wanted to be respectful
7 of your time here today. I didn't have time to
8 talk about a program that we've created called
9 the Partnership of Brownfield Practitioners.
10 It's a voluntary association of brownfield
11 practitioners including community-based
12 organizations, consulting firms, and contracting
13 firms. In the context of this organization which
14 now has 40 or 45 members citywide, there are a
15 series of programs to provide community benefits,
16 many of which benefit the environmental justice
17 communities. One example is a program for green
18 job training for unskilled from EJ communities.
19 The goal there is to provide a conduit for on the
20 job training to develop new career paths for
21 unskilled workers in the brownfield trade. So
22 we've been very attentive to this concept in this
23 program and in others, not specifically in design
24 of the financial incentive program. I think
25 almost by definition we're talking about relative

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2 small amounts of money that are not driving
3 projects. The goal is to get them in early in
4 projects to get them stimulated and moving
5 forward. But we do have programs designed for
6 some of the issues that you've described. That
7 program began in November of 2008 and we've
8 stimulated quite an extensive interest so far.
9 Again, somewhere around 45 organizations are
10 currently involved. We're looking to double that
11 by the end of next year.

12 COUNCIL MEMBER CROWLEY: Can I ask
13 one more question, Chairman?

14 CHAIRPERSON GENNARO: Sure. One
15 question sounds fine.

16 COUNCIL MEMBER I'm curious of what
17 the laws are. If I had a manufacturing site and
18 I wasn't sure whether it was contaminated and I
19 want to sell it. Wouldn't I as an owner be
20 afraid to have this land tested for fear that it
21 was contaminated and then thereby the land would
22 go down? Are there city laws that make for some
23 type of testing?

24 MARK MCINTYRE: In New York State
25 it's not required to sell property that you

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2 conduct a subsurface test of contamination that
3 may or may not be present. Property owners
4 having property that they want to sell take a
5 range of attitudes about the wisdom of looking at
6 their subsurface condition prior to title
7 passing.

8 COUNCIL MEMBER CROWLEY: Thank you.

9 CHAIRPERSON GENNARO: Thank you,
10 Council Member Crowley. I recognize Council
11 Member Ulrich.

12 COUNCIL MEMBER ULRICH: Thank you,
13 Mr. Chairman. Mr. Walsh, during your testimony
14 you stated that with this bill New York City is
15 poised to take charge of management of
16 brownfields within its borders. The bill will
17 allow New York City to take an active role in the
18 recovery of our environmentally impaired property
19 and will greatly accelerate the pace of the
20 cleanups. But correct me if I'm mistaken. A
21 developer can still go right to the state, right?
22 They don't have to go to the city.

23 DANIEL WALSH: Absolutely.

24 COUNCIL MEMBER ULRICH: What
25 incentives are you providing for them to go to

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2 the city rather than to go directly to the state?
3 As I believe your colleague brought up before,
4 and I know Council Member Koppell touched on the
5 language of the bill, if that were the case and
6 let's assume that the state law were to change at
7 some point in terms of digressing or making
8 things more stringent, wouldn't that kind of
9 undermine some of the efforts of the city in
10 terms of providing the best remediation of
11 brownfield locations?

12 DANIEL WALSH: We're not competing
13 in any way with New York State. It's our view
14 that if a party were to choose a state program,
15 that's a great outcome. If they choose a city
16 program, that's also a great outcome. Either
17 way, we want to encourage enrollment in a
18 regulated cleanup program. We're pleased if
19 parties choose either program. What we're trying
20 to do is to fill an important gap that exists
21 right now. In New York City there are probably
22 thousands of brownfield sites that require some
23 form of environmental management that are not
24 eligible for the state program as it exists
25 today. Our program is designed to provide a

remedial program for those properties to enter.

COUNCIL MEMBER ULRICH: But there are already remedial programs for them to enter through the state, right?

DANIEL WALSH: There is a New York State Brownfield Cleanup Program.

COUNCIL MEMBER ULRICH: Right. There's one in Rockaway right now. That's why I happen to know a lot about this. I probably know more than I care to about this topic.

DANIEL WALSH: The state program has been rejecting brownfield properties statewide and particularly in New York City that fall in the light to moderate contamination range. They've been doing that pretty steadily since 2004, which is creating a bigger and bigger gap over time. That gap is hurting New York City probably more than any other part of the state because we have many historical fill sites and sites in the light to moderate category. So there really aren't alternatives for many properties. I'd say as many as 90% of the brownfields in the city. There is a gap that's not filled. This is, in many cases, a crisis

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2 that needs to be addressed. That's what this
3 bill aims to do.

4 COUNCIL MEMBER ULRICH: This is not
5 driven primarily by the desire to advance
6 economic development exclusively, right?

7 DANIEL WALSH: Absolutely not.

8 COUNCIL MEMBER ULRICH: Thank you.
9 Mr. Chairman, thank you.

10 CHAIRPERSON GENNARO: Thank you,
11 Council Member. I just want to follow-up and ask
12 on the status of the MOA that we'd have to enter
13 into with the state to make sure that we're able
14 to do this program the way we want to do it. Can
15 you talk about how things are going with the
16 state and getting that done, a memorandum of
17 agreement and with the federal government?

18 DANIEL WALSH: Sure. We've been
19 working with New York State DEC for several
20 months now in defining the protocol that we would
21 apply within our city program. Their main
22 interest is to ensure that if they're providing a
23 form of liability protection to the parties that
24 go through our program that we're complying with
25 the same requirements that they would apply if

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2 they were managing the project. So I think one
3 of the great advantages of the city selecting
4 somebody from the city brownfield program for the
5 state is that they know there's somebody in
6 charge at the city level that knows how the
7 programs work and has managed them for many
8 years. In fact, that's what I bring to this job.
9 I bring a very intimate knowledge of the way the
10 state program works and how to make it function
11 in a complex environment and New York City is
12 certainly a complex environment. So that's our
13 goal. We've been crafting language on the
14 liability protection and what it will state.
15 I'll be clear on that, we're also looking to
16 provide liability protection not just from DEC
17 through a separate memorandum of understanding
18 with one agency, but we'd like liability
19 protection from all agencies of New York State.
20 So we're going to be looking to pursue
21 legislation at the state level that would be a
22 companion to this bill that would provide broader
23 liability protection and more ironclad protection
24 as long as they comply with the rules of our
25 program and in there, as long as our program is

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compliant with the rules of the state.

CHAIRPERSON GENNARO: How is that looking? How is that companion legislation looking? Have you formally called for that?

DANIEL WALSH: We haven't yet. The companion legislation will build off of this legislation. In fact I'm not sure of the legal process, but it amends this legislation at the state level. Mark, do you want to talk about that process?

MARK MCINTYRE: The bill has not been formally introduced in Albany. The idea is to provide statewide liability protection to parties who go through our local program. It's done by really making an amendment to our local bill here. That's the mechanism that the law department has worked out with us as to best achieve that objective.

CHAIRPERSON GENNARO: Thank you. Mr. McIntyre if after the hearing you can have a conversation with the counsel to this commission that would be helpful. We have a lot of other people to hear from. We certainly appreciate you being here today and the office that's been

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2 created and all of the good work that you've
3 done. Mr. Walsh, Mr. McIntyre, we greatly
4 appreciate you being here today. Thank you. The
5 next panel is Jody Kass from New Partners, Dan
6 Hendrick from the New York League of Conservation
7 Voters, and Jim Tripp of Environmental Defense
8 Fund. I see Jim and I see Jody, where's Dan?
9 Ramon, do you want to go on this panel and we'll
10 put Dan on the next one? So I call Ramon Cruz
11 and Dan will be on the next panel. We'll ask the
12 panel to be sworn by the counsel.

13 SAMARA SWANSTON: Please raise your
14 right hands. Do you swear or affirm to tell the
15 truth, the whole truth and nothing but the truth
16 today?

17 CHAIRPERSON GENNARO: Okay. Thank
18 you all for being here and for all of your hard
19 work. That was Council Member Bill de Blasio
20 checking in. It's a busy day here at the
21 Council. Everybody has got a whole bunch of
22 meetings at once. I want to thank you all for
23 being here. Jody, we've been having
24 conversations about a brownfield law for New York
25 City for a real long time. I like to call you

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2 the high priestess of the New York City
3 brownfield movement. It's a spiritual thing.
4 Jody, you have earned the honor of testifying
5 first on this panel. I don't think the other
6 panelists mind. All that you and New Partners
7 and Mathy and everyone has done. Do I have your
8 statement?

9 JODY KASS: There are two pieces
10 here.

11 CHAIRPERSON GENNARO: I've got two.

12 JODY KASS: One is a statement and
13 one is a sign-on letter.

14 CHAIRPERSON GENNARO: Fine.
15 Please, state your name for the record and
16 continue with your testimony.

17 JODY KASS: Jody Kass, New Partners
18 for Community Revitalization. Thank you for the
19 opportunity to speak today. Thank you Councilman
20 Gennaro and your staff, for your leadership in
21 protecting the environment and for your work on
22 brownfields in particular, both here and in
23 Albany. I also want to thank Dan Walsh and the
24 folks over at OER for working with us, for
25 engaging with us, for hearing our concerns and

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2 for accommodating those concerns. We're really
3 pleased to be here today to testify in support of
4 this very robust community revitalization bill.
5 New Partners for Community Revitalization is a
6 nonprofit organization working to revitalize New
7 York's communities with a particular focus on
8 brownfield sites in low and moderate income
9 neighborhoods and communities of color. NPCR is
10 working to ensure that brownfield cleanups not
11 only benefit poor and low-income neighborhoods
12 but also involve area residents meaningfully in
13 the planning process for the future of their
14 revitalized neighborhoods. We strongly endorse
15 the bill, Intro 21-A, the New York City
16 Brownfields and Community Revitalization Act, and
17 we've included in our testimony a sign-on letter
18 that has been endorsed by 15 environmental and
19 community groups. There are several key reasons
20 for NPCR's enthusiastic support. We believe this
21 legislation gives the city fundamental tools that
22 are needed to overcome the intractable obstacles
23 of disinvestment and decay that limit development
24 in so many of New York's underserved
25 neighborhoods. The institutionalization of the

Office of Environmental Remediation will empower it to work with other city agencies to function in a more coordinated, more efficient fashion.

We believe this approach is one that complements our organization's mission in that with this law the city's remediation focus will be on the cleanup and redevelopment of contaminated properties that are largely in left behind low and moderate income neighborhoods. Passage of this bill will firmly establish New York City as a national leader in urban smart growth in that this bill contains crucial tools, resources and a unique underlying framework that will create new partnerships between local government, local residents, property owners, local business, community organizations and neighborhood lenders and across all levels of government. It provides for the fourth leg of the stool and will allow the city to be a full partner in the implementation of the state's BOA program along with the residents and community-based organizations. Through BOA, a program that empowers communities to plan for their redevelopment, based not on what a particular

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2 developer wants, but on what the neighborhood
3 needs. Contaminated lands are remediated, public
4 health improves and investment dollars begin to
5 flow. Communities become more attractive and
6 livable. New parks and affordable housing is
7 created and local shops and businesses and other
8 job-generating enterprises thrive. In November
9 of 2208, Governor Paterson and Secretary of State
10 Lorraine Cortes-Vazquez launched the Spotlight
11 Communities Initiative. In that announcement the
12 state made a firm commitment via the Smart Growth
13 Cabinet to the BOA approach to urban
14 revitalization. This bill would formally
15 recognize and prioritize resources for projects
16 built consistent with BOA plans and will position
17 New York City neighborhoods to successfully
18 compete for state and federal resources. What
19 sets this apart from other municipal programs
20 across the country is that the bill firmly
21 establishes an area wide collaborative approach
22 to planning, cleanup and the re-use of city's
23 estimated 7,600 acres of brownfield sites.

24 Passage of the bill will lead to the creation of
25 new economic anchors that signify the rebirth of

1 neglected neighborhoods. Specifically, the New
2 York City Brownfields and Community
3 Revitalization Act will accomplish several key
4 goals crucial to the success of an urban smart
5 growth strategy. Once passed into law it will
6 facilitate the city's effective participation in
7 the state's BOA program. It will empower the OER
8 to develop programs for sustainable growth in
9 consultation with the City Office of Long-Term
10 Planning and Sustainability with a focus on
11 communities burdened by disproportionate numbers
12 of brownfield sites and on projects that are
13 consistent with BOA plans. It will allow the OER
14 to serve as an intermediary for city agencies and
15 officials participating in BOA planning and
16 implementation. It will facilitate interactions
17 among city agencies, community-based
18 organizations, developers and environmental
19 experts and assist community-based organizations
20 in brownfield redevelopment. It will support the
21 efforts of community groups, developers and
22 property owners to obtain and utilize federal,
23 state and private incentives to identify,
24 investigate, remediate and redevelop brownfields.
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2 In addition, the bill would provide authority for
3 the city to create a local regulatory program
4 that would give affordable housing developers and
5 others who have been disqualified from the
6 state's cleanup program for not being dirty
7 enough the opportunity to conduct cleanups under
8 the watchful eye of regulators. When passed, it
9 will provide regulatory oversight of brownfield
10 cleanups that are not subject to state or federal
11 enforcement actions, as well as those city sites
12 disqualified from entering the state brownfield
13 cleanup program. It will provide the cleanup
14 standards and cleanup remedies on city sites that
15 would be consistent with the regular state
16 brownfield program. It will ensure interagency
17 and public notification regarding compliance with
18 engineering and institutional controls,
19 guaranteeing that intended use cleanups will be
20 monitored and regulated. Two years ago Mayor
21 Bloomberg announced his PlaNYC initiative
22 recognizing that the city is expected to add
23 another million residents by 2030, that our
24 carbon footprint is unsustainable and that the
25 future of the city requires development of

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2 previously used lands, most of them brownfields.
3 The New York City Brownfield and Community
4 Revitalization Act is the next step in responding
5 to the mayor's challenge. NPCR urges those who
6 care about the future of the city, especially
7 those who see its future in the revitalization of
8 neglected low and moderate income neighborhoods
9 and communities of color to support this crucial
10 piece of urban smart growth legislation. Thank
11 you.

12 CHAIRPERSON GENNARO: Thank you,
13 Jody. I appreciate your testimony and everything
14 that you've done. We'll have everyone give their
15 statement and then we'll have questions or
16 comments from us. I'll call upon Jim Tripp next.
17 Jim, it's always a pleasure to have you here.
18 We've known each other a long time and I'm very
19 happy that you're here today and everything that
20 you and EDF do to make this a better city.
21 Thanks, Jim, I appreciate it. Just give your
22 name for the record and proceed.

23 JAMES TRIPP: James Tripp, I'm
24 general counsel of the Environmental Defense
25 Fund. Thank you, Mr. Chair, for the invitation

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2 to be here today. The Environmental Defense Fund
3 has long been interested in the whole subject of
4 proper cleanup and redevelopment of brownfield
5 sites. Jody mentioned that there was 7,600 acres
6 of brownfield sites in the city. The goal for
7 these sites is to get them cleaned up and
8 redeveloped in a way that is consistent with the
9 requirements of public health and the
10 environment, but also to do so in a timely way,
11 because as a practical matter, if somebody
12 doesn't come forward to clean them up and
13 redevelop them, they're going to sit there.
14 That's what's happened with these sites. The
15 contamination has been in the ground very often
16 for decades. Many of these sites are small.
17 They're concentrated in low-income communities.
18 In most cases, there aren't the proverbial sorts
19 of responsible deep pocket parties sitting
20 around. These are not superfund sites. If they
21 were state or federal superfund sites in all
22 likelihood they would have been designated by
23 now. So the status quo is to either have a
24 program of some sort that is going to facilitate
25 the cleanup and redevelopment or they're just

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2 going to sit there. If they sit there, they are
3 a blight in many different respects. For all of
4 those reasons, we strongly support the city
5 initiative, the setting up of the Office of
6 Environmental Remediation and then the city
7 program that is described in the bill. Along
8 with Jody and Mathy and a lot of others who are
9 here, we've worked long and hard on the state
10 legislation that got passed I think in 2003 and
11 then was amended last year. The state
12 legislation filled a very important gap because
13 at the time, other than the state superfund
14 program, there really wasn't anything for all the
15 other sites. Then New York State DEC sort of
16 administratively created a program. The state
17 legislation sets up a state brownfield cleanup
18 program which is a very good thing. It provides
19 tax credits and probably still today tax credits
20 that are too generous for the well being of the
21 program, particularly the redevelopment tax
22 credits it provides for a state liability
23 release. It has its limitations. One is because
24 of the tax credits it's very hard for a lot of
25 would-be folks who want to clean up and redevelop

1 sites to get into that program. There are plenty
2 of people who don't want those tax credits. As
3 Jody mentioned, very often the state is more
4 interested in the more contaminated sites, but
5 there are a lot of other sites out there that
6 have needs. So there's still a gap. In all
7 likelihood that gap is not going to be filled by
8 the state. This sets up a city regulatory
9 program so that hopefully all these many sites
10 found in the 7,600 acres, many of which might not
11 get into the state program, have a regular
12 regulatory program under the auspices of the city
13 to go there. The city program under this bill
14 really has to comply with state standards, both
15 in terms of soil standards and cleanup standards
16 and the kind of remediation programs that are
17 required and also in terms of the public
18 participation and community participation aspects
19 of it. The bill makes special reference to the
20 brownfield opportunity area programs. There are
21 16 BOAs in the city. That is a very good
22 program. Mathy and Jody and many others worked
23 on that program. The city, like other old urban
24 others, but there are parts of New York City
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2 where there are concentrations of brownfield
3 sites. The best approach to cleaning up those
4 sites is to try and sort of work comprehensively
5 more systematically with those sites. The state
6 program does that, but I think the city is a very
7 important supplement to that. So for all of
8 these reasons, we strongly support this program.

9 CHAIRPERSON GENNARO: Thank you,
10 Jim. Ramon Cruz, I'm just looking for your
11 statement.

12 RAMON CRUZ: Thank you. My name is
13 Ramon Cruz. I'm vice president for energy and
14 environment of the Partnership for New York City.
15 Thank you, Mr. Chair, for the opportunity to
16 testify today. The Partnership for New York City
17 is an organization of business leaders dedicated
18 to strengthening the economy of New York City and
19 State. We support the creation of a local
20 brownfields program to accelerate the
21 redevelopment of thousands of acres of
22 contaminated land in the city that have been
23 neglected and under utilized for too long. Among
24 other things, this local initiative would advance
25 efforts by the city and the private sector to

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2 recover from the current recession and help get
3 construction moving again. An important
4 component of such a program will be the city's
5 ability to enter into agreements with state
6 agencies to secure guarantees against liability
7 for programs participants in other jurisdictions.
8 This liability protection is necessary to attract
9 private investment in contaminated properties.
10 We recommend that the Council and the
11 administration work together to secure Albany's
12 approval of this limit on liability. The
13 partnership provided leadership in securing a
14 state brownfields remediation and redevelopment
15 program that has been moderately successful,
16 particularly with the most contaminated
17 properties. But much possible reclamation
18 activity has been left undone. Providing New
19 York City the authority to run its own
20 brownfields cleanup program would allow for
21 expedited investment in sites that are not state
22 priorities. For example, the city has many sites
23 with historic fill that contain light to moderate
24 contamination which the state program does not
25 effectively address. Cleanup of these sites

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2 could be expedited with the right financial
3 incentives and a predictable process managed
4 through a local brownfields program. New York
5 State has a significant portfolio of contaminated
6 properties. A local program will complement the
7 brownfields initiatives of the state and break a
8 log jam that has unnecessarily delayed the
9 remediation of many properties. Therefore, we
10 urge the committee to support this measure and
11 look forward to working together in Albany to
12 ensure that the appropriate state authorization
13 is enacted. Thank you.

14 CHAIRPERSON GENNARO: Thank you,
15 Ramon. I'm very grateful for the work that
16 everyone did. It was a great effort to get here.
17 I'm almost reluctant to ask this question but I
18 will. We're going to hear testimony from some
19 folks today who are not supportive of our efforts
20 here. They think that separating New York City
21 and New York City being able to do its own thing
22 has problems, complications and drawbacks. I'll
23 certainly allow them to speak for themselves.
24 You may be aware of some of the concerns that
25 have been articulated. Maybe you have and maybe

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2 you haven't. But to the extent that you are
3 aware of some of those concerns and reservations,
4 I just wondered if you'd be in a position to kind
5 of speak to those?

6 JODY KASS: I have a couple of
7 thoughts that jumped out at me while you were
8 framing your question. I am familiar with some
9 of the concerns that I think you're going to be
10 hearing. I will say that when NPCR first saw the
11 earlier version of this bill, we had some
12 concerns. We wanted to make sure that the
13 cleanup standards were strong. We wanted to make
14 sure they were reflective of what the state law
15 required. We wanted to make sure that once the
16 cleanup had been done and something was built
17 that there was adequate notification if that were
18 to change. We asked for changes and we got them.
19 So we think that it's extraordinary what the city
20 has done there. I will also say that we believe
21 that the city OER has tremendous capacity with
22 leadership by Dan Walsh, who when he was at DEC
23 was known far and wide as someone who was a
24 fantastic regulator. Having him at the helm to
25 get this program established and on the right

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2 track, I mean obviously he's not going to be
3 there forever. But we have complete confidence
4 that that is where we will end up. The other
5 thing is we also wanted to make sure that the
6 bill was balanced. We wanted to make sure that
7 it wasn't just the regulatory program. We were
8 concerned that the environmental justice and
9 community aspects of the program were equally as
10 strong as the regulatory and that is one of the
11 things that we fought hard for and we also got as
12 part of this piece of legislation. So what we
13 think we have is we think we have a national
14 model. We view this as a huge victory for the
15 communities and for the environment.

16 JAMES TRIPP: I suppose one could
17 say there should only be a state program and no
18 city program. I think we've pointed out the
19 difficulties with that position and that is that
20 there are a whole lot of sites that don't qualify
21 and wouldn't get into the state program. There
22 may be some where somebody makes a choice to go
23 through the city program because it may be a
24 little bit quicker than the state program and get
25 some tax credits. But on the whole the city

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2 program is filling a hole. If the hole isn't
3 filled there is going to be a kind of a non-
4 transparent process which in fact goes on today
5 and did go on in the state before the state
6 program became law. There has been a question
7 that was actually long debated in the state
8 legislator before the adoption of the legislation
9 in 2003 as to what the cleanup standards should
10 be. One side argued that all contamination ought
11 to be removed from the soils and the groundwater
12 before any development took place. The problem
13 with that point of view is in some cases it's
14 physically impossible to get all contamination
15 out of the soils. Cleaning up groundwater is
16 even more problematic since groundwater moves.
17 So the groundwater that is found underneath one
18 site may come from another site and it may be an
19 endless task to clean it up. One can always
20 impose cleanup standards that as a practical
21 matter will make it impossible to cleanup and
22 redevelop sites. It's not as though somebody has
23 a whip out there to make somebody do it. I mean
24 the state and federal superfund program has a
25 compulsion to it. You're a responsible party to

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2 the site, you own the site, and you put hazardous
3 material there, whether you like it or not you're
4 going to have to clean it up. That's not true of
5 these sites and we do not have a state program or
6 a federal program that would require it. So
7 these sites are only going to be cleaned up if
8 somebody, be it a city, a municipality or a
9 private party, a new investor, or a community
10 group comes in and cleans it up. Then they're
11 going to want to know what that entails. If at
12 the end of the day it's going to cost \$10 million
13 and the site might be worth \$1 million after
14 that, then it's not going to be done. So the
15 state program and like it the city program has a
16 way of dealing with cleanup standards which in my
17 view is responsible. Is it absolutely perfect?
18 No. But it is practical reality and the
19 important thing is to get these sites moving
20 forward and to clean them up so that they can in
21 fact be redeveloped promptly and safely. Another
22 question I suppose that could be asked about New
23 York City's office or if Buffalo were going to do
24 that same thing or some other city, is there
25 technical competence there? Is it going to be

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2 effectively and efficiently run? Is there going
3 to be good enforcement or are people going to be
4 able to get away with things? I mean that's an
5 issue one can raise about anything that goes on
6 in the City of New York. There's no reason to
7 think that this program cannot be responsibly
8 run. The City of New York is either lucky or
9 unlucky in having a lot of nonprofit groups
10 wandering around like New Partners and Ramon's
11 group, the New York City Partnership and our own
12 that are paying attention to this. Again, for
13 all those reasons, we think you should approve
14 this legislation.

15 CHAIRPERSON GENNARO: Thank you. I
16 remember when I was first running for office in
17 2000 and 2001. I wanted to be able to make a
18 difference on this issue. I think today and this
19 bill is our sort of best opportunity that we
20 have. There's only so perfect things can get.
21 If things were totally perfect, we wouldn't want
22 to go to heaven and we all want to go there. So
23 we have to have a little bit of imperfection here
24 otherwise we have no incentive to be good. I
25 don't think I could expand anymore on that. I

2 really appreciate everything you brought to the
3 table to get us to this good day. I'm so
4 grateful to you all. Thank you very much. Next
5 we'll hear from Anne Rabe of Center for Health,
6 Environment and Justice and the Citizen's
7 Environmental Coalition and also Joel Kupferman
8 from New York Environmental Law and Justice
9 Project. Thank you both for being here. Counsel
10 will give the oath.

11 SAMARA SWANSTON: Please raise your
12 right hands. Do you swear or affirm to tell the
13 truth, the whole truth and nothing but the truth
14 today?

15 CHAIRPERSON GENNARO: Thank you
16 both for being here today and giving us the
17 benefit of your views. We'll start with Ms. Rabe
18 and then we'll hear from my friend Joel. Ms.
19 Rabe, please state your name for the record and
20 proceed with your testimony.

21 ANNE RABE: Thank you. I'm Anne
22 Rabe and I work for the Center for Health,
23 Environment and Justice, CHEJ, which is a
24 national group that's directed by Lois Gibbs, the
25 community leader who organized the relocation of

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2 over 800 families away from the Niagara Falls
3 infamous Love Canal toxic waste site. I'm also
4 here today representing a statewide group,
5 Citizen's Environmental Coalition, or CEC, as
6 many of their members are impacted by toxic
7 sites, brownfield and superfund sites. We
8 appreciate this opportunity to testify on the
9 city's proposed brownfield legislation.
10 Generally our group supports the bill's
11 provisions that can enable the city to assist
12 developers in the redevelopment process, to gain
13 funds and to better involve the public in the
14 process and to a certain extent to address the
15 non-brownfield cleanup program state sites.
16 However, the main thrust of this bill is to have
17 the city take over the state Department of
18 Environmental Conservation's role of
19 administering the brownfield program, as we read
20 the bill. Our organizations oppose those aspects
21 of the bill. First, I wanted to mention that the
22 bill gives sort of a false reassurance that the
23 cleanups will only involve low hazard sites,
24 using a definition of light to moderate levels of
25 contamination. Moderate levels is a very

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2 subjective term. The case can be made that
3 moderate levels of contamination are usually
4 found at brownfield sites as opposed to high
5 levels of contamination found at superfund sites.
6 Specifically the bill has an interesting set of
7 definitions for sites. First it says there are
8 delegated brownfield sites where the state or
9 federal agencies would authorize the city to take
10 over the investigation and remediation plan
11 decision making. Then it has a broader
12 definition of local brownfield sites which
13 includes delegated sites that I just referred to
14 and sites that are rejected by the state's
15 program, the Brownfield Cleanup Program, or BCP,
16 as well as other sites. In fact one DEC official
17 I spoke with said that the brownfield definition
18 is so loosely defined in this bill it could even
19 include some superfund sites as well as state
20 Brownfield Cleanup Program sites. That's the
21 devil in the details. That's our main concern is
22 whether the city is going to pressure DEC and the
23 EPA to delegate brownfield cleanup program sites
24 as well as potentially superfund sites. There's
25 a conflict between those cleaning up brownfields

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2 who search for the cheapest remedy and those who
3 are interested in protecting public health and
4 the environment. This kind of underscores our
5 main concern. This bill has a distinct emphasis
6 on development. It says the main goal of the
7 city's new role on brownfields is to "support the
8 city's economic development". It says it not
9 once but numerous times in Section 15E,
10 subdivisions 4, 5, 6, 7, 10, 11, 12, 13 and 14
11 only state that clause as the priority emphasis
12 on various aspects of implementing this new
13 brownfield program. We find that troubling
14 because clearly the first goal in cleaning up
15 contaminated sites is to protect public health
16 and the environment. The subsequent goal is to
17 facilitate redevelopment that promotes safe and
18 healthy communities. We need to continue to keep
19 those two procedures separate and maintain a
20 firewall wherein the DEC administers the
21 brownfield program for brownfield cleanup sites
22 and superfund sites and makes cleanup decisions
23 without undue influence from those with economic
24 interests and then the city administers the
25 redevelopment process. Now separately where you

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2 have sites that were declared ineligible by the
3 DEC, we would ask that this bill be clear that
4 this new program with non-DCP sites would
5 implement fully the part 375 regulations and I'll
6 get to that in a minute in terms of some of the
7 aspects that seem to be a gap in this bill. The
8 issue of delegating brownfield cleanup decisions,
9 I just want to go back in time a little bit, was
10 hotly debated in 2003 when the law passed.
11 Buffalo policy makers wanted weakened cleanup
12 requirements claiming it would facilitate
13 redevelopment in an economically depressed area.
14 The legislator and governor considered this and
15 rejected it and passed a law requiring DEC to
16 implement the program throughout the state. So
17 we feel there are some real shortcomings with
18 this bill's plan to set up an Office of
19 Environmental Remediation that could implement a
20 brownfield program delegated by New York State.
21 We just generally think it's bad public policy
22 for the DEC to hand over all or part of their
23 statutory authority to a municipality and it
24 appears to be unprecedented. City officials have
25 mentioned that DEC may just delegate the

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2 brownfield cleanup program implementation and
3 then maintain final approval at DEC on site
4 cleanup plans but we still feel this is
5 unacceptable. If DEC engineers are not deeply
6 involved in each step of the site investigation
7 and remedial process it will only have a
8 superficial role. The in-depth participation of
9 DEC on all the details relating to the site
10 during the testing, cleaning and development
11 process is where the real decisions get made.
12 Our concern is that we feel that DEC would merely
13 be rubberstamping whatever deal the city worked
14 out with the developer if a delegation happened
15 with the DEC on a brownfield cleanup program site
16 or potentially a superfund site the way we're
17 reading the definitions and the implementations
18 aspects of the bill. Secondly, in talking with
19 DEC staff we found that delegation has been
20 problematic for the agency. They delegated
21 gasoline station inspections to five counties in
22 the last five years and an internal review
23 recently found serious problems as county staff
24 were more subject to local political and business
25 pressure to not thoroughly inspect underground

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2 storage tanks. Now DEC is apparently looking
3 into taking back the delegated authority. A
4 third concern we have is that this proposal
5 places important public health and safety
6 decisions directly inside a political office, not
7 a DEP, but in the mayor's office. Technically
8 complex decisions on where to test for chemical,
9 the level of cleanup would be implemented by a
10 political appointee, with all due respect, not
11 DEC and other civil services employees who have
12 the appropriate technical expertise. Now I
13 understand that in terms of personnel we have Dan
14 Walsh who came from DEC. But God forbid
15 something happens to him in six months and we
16 have someone else. It'll be a political
17 appointment. It won't be civil service technical
18 requirements for the staff implementing this new
19 program. We feel in terms of superfund and
20 brownfield cleanup program sites that only DEC
21 has the expertise, the experience and the legal
22 authority to implement the brownfield cleanup
23 program statute consistently. Lastly, we don't
24 believe the city has necessarily sufficient
25 resources or the expertise to adequately manage

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2 the brownfield cleanup program and a couple of
3 points on that. One is the city already has
4 problems with meeting its environmental oversight
5 obligations. In 2006 the EPA set a lawsuit
6 against the city on underground storage tank
7 systems with \$1.3 million in penalties. In 2008,
8 the DEC settled an enforcement action against the
9 city on sewer overflow violations with a \$1
10 million fine. Personally I and others in our
11 organizations are concerned about some of the
12 city's past practices on toxic site issues.

13 First is that for years DEC staff have often been
14 unable to get information from the city DEP staff
15 about potential superfund sites. This has been a
16 consistent chronic problem. The DEP receives
17 environmental investigation reports whenever an
18 owner does property renovations or construction,
19 which can provide important new information about
20 potential contamination, especially in old
21 industrial areas or past dry cleaner sites. It's
22 my understanding in numerous conversations with
23 DEC staff that DEP has often refused to provide
24 this information to DEC claiming the state will
25 not investigate superfund potential sites in a

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2 timely fashion due to staff cutbacks and they
3 want to facilitate development as soon as
4 possible at the site and generate revenues.

5 Instead of taking this unfortunate attitude, why
6 doesn't the city support a DEC staff increase,
7 such as using the economic stimulus funds to help
8 investigate sites in a timelier manner? So we
9 recognize there is a problem. DEC has been cut
10 back and they're going to be cut back again this
11 year. But why don't we work together to convince
12 the governor and the legislature to increase the
13 DEC staff so they can do a timely job? Another
14 story involves a DEP meeting I attended a number
15 of years ago. We had a brownfield stakeholder
16 process which some of the earlier people who
17 testified referred to, which was an initiative
18 that brought together environmentalists,
19 developers and agency officials to craft a
20 brownfield bill. We had a side meeting at one
21 point with the DEP staff and a top DEC official
22 to discuss groundwater contamination and non-
23 superfund sites. The DEP staff said they rarely
24 required developers to remediate groundwater.
25 This is under the voluntary cleanup program and

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2 other sort of non-superfund site remedial
3 decision makings. The top DEC official angrily
4 noted that DEP did not have the authority to
5 write off groundwater in the five boroughs. It
6 was an extremely disturbing meeting. Our concern
7 is that if this bill and a DEC transfer or
8 delegation goes through for brownfield cleanup
9 program sites and potentially superfund sites, we
10 feel the city will be pressured to cut bad deals
11 with developers to do the cheapest testing, the
12 cheapest cleanups possible with little regard for
13 promoting the more protective track one and track
14 two brownfield cleanups, permanent cleanups that
15 best protect public health and the environment.
16 There are some red flags in reading how the city
17 is going to implementing this new program. They
18 appear to be planning to disregard some of the
19 state requirements and to sort of in a way
20 reinvent the wheel. Their bill requires a
21 politically appointed director or remediation to
22 promulgate new rules and gives the director a lot
23 of discretion, such as developing cleanup plan
24 procedures. It says only, "cleanup standards and
25 remedial selection criteria shall be consistent

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2 with state standards." Clearly this is in direct
3 conflict with DEC's comprehensive Part 375
4 brownfield regulations. How can the city for
5 instance justify ignoring state regulatory
6 requirements on how you investigate a site, how
7 you fully characterize contamination at a site?
8 We feel in general that those aspects of the bill
9 are misguided and would set a terrible precedent.
10 We recognize the city is trying to establish a
11 robust cleanup program for non-brownfield cleanup
12 program sites but that's not what this bill says
13 if you read it carefully and you look at the
14 definitions. We're concerned that with this bill
15 the Mayor's Office and the City Council
16 sponsoring members are seeking to take the first
17 step in taking away DEC's administration of the
18 brownfield cleanup program for all sites in the
19 city and placing it in a political office. We
20 feel that these proposed changes as we read the
21 bill currently could increase public health risks
22 as potentially poorly tested or poorly remediated
23 sites would be put on a fast track for
24 development at all costs. So, for the reasons
25 stated above, our organizations strongly oppose

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2 this current bill in its current form and urges
3 its sponsors to take some time to address our
4 concerns and other concerns that are being raised
5 today and move more carefully on a city project
6 that will deal with non-brownfield cleanup
7 program sites and not try to pressure DEC and EPA
8 to take over authority on dealing with brownfield
9 cleanup program sites or potentially superfund
10 sites. Thank you for considering our views.

11 CHAIRPERSON GENNARO: Thank you.

12 Anne, we'll hear from Joel and then I'll have
13 questions and comments. Joel, please state your
14 name for the record.

15 JOEL KUPFERMAN: Joel Kupferman,
16 Executive Director, New York Environmental Law
17 and Justice Project. We'd like to concur with
18 Anne Rabe's statement. I would like to add a
19 little personal history. People give their
20 history of working at DEC and the like and Mark
21 McIntyre's experience working at the law
22 department and the like. What scares me is there
23 are a few terms that wake me up when I'm going
24 into a lull at these hearings. One is the word
25 expedite. The other word is consolidated. The

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2 other is maybe the state is passing a bill.
3 We've had a lot of history with the environment
4 justice communities. What concerns me when we
5 keep on hearing EJ communities and that's why we
6 have to build, build, build. Those are the
7 communities that get the short end of the stick
8 in terms of environmental protection. It's not
9 the laws, it's the enforcement. Time and time
10 again my organization and other organizations
11 have gotten calls, sometimes in the middle of the
12 night, by community groups saying we have to
13 oppose something. Most of the time it's either
14 too late or they don't have enough information
15 and many, many times what also concerns me is
16 that the city hasn't been forthcoming with
17 information. Anne mentioned that DEC is having
18 trouble getting information from the state.
19 There are three or four projects now that we've
20 foiled different New York City agencies and they
21 haven't given us information. They tell us they
22 don't know where it is. In the case of
23 Washington Square Park the next day they appeared
24 with great presentations with the information
25 that we were seeking. Part of the problem is

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2 there is a lack of information, especially when
3 you expedite these processes. It violates a lot
4 of community right to know laws and the city has
5 been one of the major violators of that law. Our
6 history goes back with the city going back to the
7 West Nile Spring in 1999. We were approached by
8 a few of the sprayers that worked for the city's
9 contractor and they told us there was violation
10 of federal law. We went to EPA and we went to
11 the state and it took a while for them to take us
12 seriously. Only when we pushed and pushed and
13 brought those voices in did the federal
14 government and the state give \$1.5 million fine
15 towards that contractor. The City Health
16 Department all along that time said they were on
17 top of it and there was no problem. Only when we
18 pushed and the state intervened was anything
19 done. That's the first strike against the city.
20 The second strike against the city about the
21 spraying is that they went to hire the same
22 people back even though DEC gave that fine and
23 OSHA found violations. We're concerned that in
24 this bill now there's no bad actor policy. If
25 there are bad contractors out there they city

1 should be forced to look at them a lot stronger.
2 There are contractors out there that have had bad
3 records and that's not being looked at. What
4 also concerns us now in our personal is the city
5 wants to build a waste transfer station in
6 Brooklyn, in Bensonhurst. It's a site of a
7 former dioxin incinerator. The city refuses to
8 do any testing for dioxin at that site and is
9 relying on records and data that go back three,
10 four or five years. Mr. Walsh and Mr. McIntyre
11 mentioned Phase One and Phase Two. The new laws
12 in Phase One require that data has to be not more
13 than six months old to do any type of transfer of
14 residence or real estate transactions. The city
15 in many, many cases is using information that's
16 three, four, five or ten years old. That is one
17 of the things not even mentioned here. We're
18 also concerned about enforcement. I hate to
19 bring it up, but 9/11 is still an issue that
20 faces many people in terms of their residences
21 and even the workers. What concerns me is that I
22 think by putting all of this power into the
23 Mayor's Office takes away all that expertise and
24 the ability of all those departments that took
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2 years and years to develop. You impress me with
3 your knowledge that you got working for DEP over
4 the whole watershed issue. I think that by
5 putting that into the Mayor's Office takes away
6 from that expertise and the ability of civil
7 service people in the city to express that. What
8 I want to bring up is on October 5, 2001, and I
9 think this is important and just hear me out.
10 After 9/11, the EPA's Chief of Response and
11 Prevention wrote to the associate commissioner of
12 the City of New York and said we have a major
13 environmental health problem a few blocks from
14 here at 9/11. The Associate Commissioner wrote a
15 memo to himself, not to the public, not to the
16 community, not to the people that work around
17 here. The following is a report of critical
18 environmental issues related to the World Trade
19 Center disaster. The issue came up of re-
20 occupancy. Are we going to let people come back
21 into the red zone; all the areas and all of the
22 apartments that were below the red zone? I
23 quote, "Re-occupancy, the Mayor's Office is under
24 pressure from building owners and business owners
25 in the red zone to open more of the city to

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2 occupancy." According to OEM, some city blocks
3 north and south of Ground Zero are suitable for
4 re-occupancy. DEP believes the air quality at
5 those locations is not yet suitable for re-
6 occupancy. In an October 5th meeting, the DEP
7 Commissioner indicated that the data shows two
8 consecutive days of fiber counts below the DEP
9 level of concern, .015 cubic centimeters of air
10 in the target areas, extenuating circumstances;
11 that is truck routes, existing debris pile at
12 Ground Zero, et cetera, make DEP uncomfortable
13 with the opening of target areas. Miele
14 indicated that the final decision about opening
15 rested with DOH. Following the meeting I was
16 told that the Mayor's Office was directing OEM to
17 open the target areas next week. Expedited
18 opening. OEM apparently wants to force DEP and
19 DOH to define opening criteria and any objection
20 that they may have to next week's opening of
21 target areas. This to me is the main bit of
22 evidence that we shouldn't trust one office with
23 protecting us, especially when they're given the
24 mission of expediting economic development and
25 opening up those areas. What also concerns us,

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2 coming out of the history of 9/41, as Council
3 Member Crowley pointed out, is the issue of labor
4 protection.

5 CHAIRPERSON GENNARO: Joel, we've
6 had a lot of 9/11 stuff and I've given a little
7 latitude to talk about things that were not
8 directly in the bill. This is a legislative
9 hearing and I need you to try to focus directly
10 on what's in the bill and talk about what you do
11 or don't like about what is in the bill.

12 JOEL KUPFERMAN: Okay. What I
13 don't like in the bill is that there's really no
14 talk, as Council Member Crowley talked, about
15 worker protection. One of the things that you
16 could put into that bill is that people who are
17 doing the cleanup are given a certain amount of
18 wages but moreover that there should be certain
19 health standards that are set. When the city
20 hired all those people to do the cleanup they
21 should have been given baseline levels. There's
22 one way to protect workers is to make sure that
23 their health and their medical profiles are
24 certified. When thousands of those people got
25 sick when they went into all those worker comp

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2 hearings, they were told that there was no
3 baseline so we don't know where they got sick
4 from. So I think it's really important for the
5 city to mandate through the Department of Health
6 that the workers be treated correctly and be
7 protected and also know whose working and to do
8 proper medical surveillance to see if any of
9 those workers are being hurt and if the community
10 is being hurt. The second thing is there should
11 also be much better medical and health
12 surveillance of the areas where the sites are
13 being developed. The city health department has
14 failed to do that. Another point is they should
15 definitely increase the freedom of information
16 requirements in this law; meaning that it's not
17 enough to just say that everything is
18 transparent. We've had time and time again
19 problems of getting information in terms of past
20 records of what's at that site, past enforcement
21 records. I think it's important to make sure
22 that's all out in the open. We're also very
23 concerned about cleanup standards. We're talking
24 about low and medium level. It was just a few
25 years ago that EPA--

2 CHAIRPERSON GENNARO: [interposing]

3 But the standards aren't at issue here that we're
4 using the state standards. This bill is not
5 about creating a new standards paradigm. The
6 standards are the standards.

7 JOEL KUPFERMAN: The standards are
8 nebulous. In every case I've done with the city,
9 the city used those standards as a low point or
10 as a ceiling, not as the beginning to do a better
11 protection. The problem is that it's up to the
12 community to fight to show that there's not a
13 proper enforcement or proper interpretation of
14 those standards. The community cannot hire
15 experts every time there's an argument over which
16 standard applies. That's the problem. The city
17 should adopt and be the leader. If we're the
18 leader, if this is the model national code, this
19 should not just be brushed over. We should use
20 better standards or the higher standards. In
21 talking about standards, and I'll go back to 9/11
22 and I know it's much to your chagrin.

23 CHAIRPERSON GENNARO: I don't want
24 you to go back to 9/11.

25 JOEL KUPFERMAN: Well I just want

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2 to tell you one test that the city did is there's
3 one apartment where the feds went in and the city
4 went in and they tested for asbestos. The city
5 using lower standards, PLM, said no detect. The
6 feds using the higher state of the art equipment
7 found 5%. The trouble is on all these sites
8 you're talking about the city is not required to
9 use higher standards. I think one of the things
10 you want to do and in some ways, Mr. Gennaro,
11 you're the one that mentored me in terms of all
12 the talk that you're talking about now about
13 protecting the New York City watershed that it's
14 important to use all that science that's out
15 there. It seems that over and over again the
16 city uses that as an excuse. There's a technical
17 excuse all the time and they don't basically say
18 what they can do, it's always what they have to
19 do. I think it's important to look at this law
20 to look at state and federal and say which ones
21 are the highest standards and to use a really
22 strong public scrutiny on those methods. That's
23 the most important thing on all of these cases.
24 The community cannot afford to go into court for
25 two or three years and bring up witness after

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2 witness to argue with the city. I think it's
3 important to put it in at the beginning. There's
4 a problem with notice. In this law it talks
5 about just putting the notice on the deed. Does
6 the average person living in a low-income or
7 environmental justice community have the time to
8 go searching for court records or the deed
9 records? That's one of the changes in the law
10 that should take place. If there's a development
11 there should be definitely a lot more community
12 input and signage. The city, time and time
13 again, including the Deutsche Bank building
14 refuses to put signs up on the building that says
15 there are hazardous chemicals present. That's
16 one of the things you want to do. One of the
17 things you want to do is to get people to be
18 aware of what's in those sites and to also even
19 let the city hear from the community what they
20 think is in that site. It just really scares me
21 also that you're talking about \$11 million.
22 That's less than a lot of prices of buildings
23 that are being sold in the city. Deutsche Bank
24 spent \$32 million to test one building to show
25 that it was uninhabitable. Now we're talking

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2 about thousands of sites and the city is spending
3 \$11 million to expedite. It really scares me.
4 Part of the problem is that you're talking about
5 superfund sites.

6 CHAIRPERSON GENNARO: I'm going to
7 have to ask you to conclude, Joel. We got a lot
8 of witnesses today. I got the gist.

9 JOEL KUPFERMAN: But there's also
10 cherry picking in the law in terms of superfund
11 sites and not superfund sites. Superfund law is
12 basically based on a snapshot of what exists now.
13 They don't look into perspective activity. Most
14 of those pollutants that we're talking about,
15 including the water going back and forth and the
16 pollutants moving is when there's construction.
17 So a lot of the problem is that a lot of sites in
18 the city are dangerous if they're worked on or
19 touched or one shovel goes in and they'll never
20 fall under the superfund classification. There's
21 a reason for that. Part of the reason is that
22 the federal law does not look at groundwater as
23 being a serious concern in New York City. But we
24 do know that that water that is contaminated that
25 moves that many people talked about affects

1
2 people living next door, affects the subways and
3 elsewhere. So I think it's important that the
4 city doesn't go to the lowest level and tell us
5 what's required and this always seems to be the
6 dodge, but to act as a model and to forge ahead
7 and use all of that knowledge that we have and
8 put a higher standard and hold everyone else to
9 that higher standard. Thank you.

10 CHAIRPERSON GENNARO: Thank you,
11 Joel. It seems that both panelists we have some
12 philosophical concerns about trust in government
13 and role of government. We've heard that when
14 the technical experts in the various agencies
15 don't do things right, they don't provide
16 information, and use signs to kind of obfuscate
17 and so on. So the people in the agencies to some
18 level, according to your testimony, can't be
19 trusted. The political appointees that are not
20 in the agencies that are not subject to civil
21 service have all kinds of other motivations that
22 lead them elsewhere then along the path of
23 righteousness and they can't be trusted either.
24 Here's where I am. I came to this office and I
25 want to make a difference on this issue. A lot

1
2 of brownfield areas in the city aren't spoken to
3 by the state program. I wanted to figure out a
4 way that we could effectively do that. I wanted
5 to do a bill originally that just called upon the
6 city to create a program but then we decided not
7 to call upon the city to just pass a bill that we
8 as the Council are calling on the city to put in
9 place a brownfield program. Let's work together
10 to do this. They rose to that challenge and it
11 was really more of their idea to sort of do it in
12 the open and write the program right into the
13 bill and to work with people like New Partners
14 for Community Revitalization, the New York City
15 Environment Justice Alliance, Youth Ministries of
16 Peace and Justice, WE ACT for Environmental
17 Justice to figure out how city dollars could flow
18 to those communities in small amounts but that
19 would enable them to do the community organizing
20 that was needed to move this forward. That's
21 what we did. That's what this effort represents.
22 I think it's a good effort. While there always
23 will be concerns, we all have our philosophical
24 viewpoints of who can be trusted and who can't
25 and who is going to release information and who

1
2 wont and who's going to act on some clandestine
3 interest and who is going to be more interested
4 in economic development than protection of the
5 environment. Fortunately, the City Council is
6 not going away and fortunately you folks aren't
7 going away and we're going to go down this road
8 and we're going to make sure through the
9 oversight of this body and the advocacy of folks
10 like you to make sure that people are using the
11 full range of their powers along the lines of
12 excellence. That's what we certainly would
13 expect of the folks that are here today and Mr.
14 Walsh and that office and the people in the
15 Bloomberg administration who have made a deep
16 commitment to this issue. The oversight function
17 of this body, the advocacy function of
18 organizations does not end with the passage of
19 this bill. I'll call upon you to do the same
20 thing that I'm going to do once we start with
21 this is to continue to be vigilant in making sure
22 that what we set in motion with the passage of
23 this law is true to the spirit in which it's
24 passed and that good things get done. I call
25 upon you to be vigilant in that regard. I call

1
2 upon myself to be vigilant and the staff and
3 members of this committee and of this body. But
4 we've formed I think an unprecedented coalition
5 between members of the executive and of the
6 Council and of the advocacy community and of the
7 environmental community and of the economic
8 develop community and of the environmental
9 justice community to put something, while nothing
10 is ever perfect, I think this represents a good
11 effort and I am going to be supportive of this
12 but mindful of your concerns. I know that you're
13 not going anywhere, I'm not going anywhere and
14 we're all going to work to make sure that the
15 right thing gets done. I thank you for coming
16 today. I thank you for putting these issues on
17 the record. Mr. Walsh and Mr. McIntyre are
18 taking copious notes.

19 ANNE RABE: Can we just ask you a
20 few questions?

21 CHAIRPERSON GENNARO: No, it
22 doesn't work that way.

23 JOEL KUPFERMAN: Let me just say
24 one thing, Mr. Gennaro, because it's nice when
25 you do the philosophical part which I take a

1
2 little umbrage at.

3 CHAIRPERSON GENNARO: I would have
4 to say that like some of the testimony coming
5 from the panel was largely philosophical also.
6 So I was not the only one waxing poetic here.
7 There was a lot of waxing going on from the
8 panel.

9 JOEL KUPFERMAN: I'm also concerned
10 that people always tell us that this private law,
11 don't talk about changing laws that much that
12 people always have this private redress. What
13 concerns me also was that you kept on talking
14 about every other issue was limiting to
15 liability. How is the community protected when
16 they have no one to go to when that liability is
17 so limited? That's what irks me. As a public
18 interest attorney that would irk me. Also as a
19 private attorney, a toxic tort attorney would say
20 who do you go to in order to correct matters? If
21 you make people invincible and you make more and
22 more Teflon on there, there is no correcting the
23 cost of the boat that they're talking about other
24 than a hearing two or three years from now. It
25 really concerns me that there is no

1
2 accountability and when you limit it in all
3 different angles the public can't speak
4 meaningfully. I want you to look at that again.

5 CHAIRPERSON GENNARO: I'm going to
6 end it there. I have been satisfied that the
7 entities that I've worked with for years, all the
8 groups that I mentioned, I was deeply involved in
9 the BOA program. I'm the one that gave the state
10 a hot foot a couple of years ago by holding a big
11 press conference. Jody was there. Mathy was
12 there. To make sure that the state coughed up
13 those funds. I think that I have done my job,
14 made my mom proud and I'm going to continue to do
15 my job with all vigilance and I would expect that
16 you would do no less. But we're going to leave
17 it there. We're going to leave it there.

18 ANNE RABE: It's unfortunate that
19 we can't dialogue about this.

20 CHAIRPERSON GENNARO: No, we can't.
21 This is a hearing for you to impart information
22 to me and for me to ask questions. This is not
23 really a dialogue like that. This is a hearing.
24 I'm not here to take questions.

25 ANNE RABE: Well it's unfortunate

1
2 because obviously our group and other groups are
3 going to be opposing any MOU that the city tries
4 to have with EPA or DEC.

5 CHAIRPERSON GENNARO: I would
6 defend your right to state whatever kind of
7 opposition.

8 ANNE RABE: We'll be reaching out
9 to the various government agencies about that.

10 CHAIRPERSON GENNARO: Like I said,
11 you're not going anywhere. I'm not going
12 anywhere. We're all going to have fun for years
13 to come. I look forward to it.

14 JOEL KUPFERMAN: Thank you.

15 CHAIRPERSON GENNARO: Thank you.
16 The next panel is Dan Hendrick with the New York
17 League of Conservative Voters, L. Nicholas
18 Ronderos, Regional Plan Association, Michael
19 Slattery of the Real Estate Board. The panel
20 should configure itself. I have to send a text
21 message to someone in the Speaker's Office
22 regarding an issue that's not related to this.
23 I'll be back in 30 seconds. We no longer have a
24 counsel to the committee to give the oath. So
25 you're on your honor on that. I'll be right

back.

[Pause]

CHAIRPERSON GENNARO: Sorry about that. I had to break the continuity of the hearing but I had to do that. So why don't we start from my left to my right. That would be Nicholas.

L. NICHOLAS RONDEROS: My name is L. Nicholas Ronderos. I'm Director of Urban Development Programs for Regional Plan Association, a private nonprofit research and planning organization serving the greater New York metropolitan region. Regional Plan supports the establishment of the Office of Environmental Remediation. We believe that this local brownfield program will contribute to support the future development of community projects on impaired properties in the city. Duties of the Office of Environmental Remediation to plan, establish, coordinate and oversee city policy regarding the identification, investigation, remediation and re-development of brownfields is a needed effort to bring back to use lands that are under utilized and vastly needed for the

1
2 city's continued growth. Establishment of the
3 local brownfield cleanup program will provide the
4 necessary administrative framework for the city
5 to undertake this cleanup program and to
6 promulgate rules to effectuate it and will also
7 determine eligibility for participation in the
8 program and open brownfield remediation to public
9 participation. PlaNYC identified 7,600 acres of
10 brownfields in New York City. These represent
11 lost opportunities for housing, jobs and open
12 space and can potentially threaten public health
13 or the environment. The City of New York faces a
14 great opportunity regarding its brownfield lands
15 and the proposed amendment to the city charter
16 provides the blueprint to revitalizing all types
17 of contaminated land to productive, economic and
18 green space use. Thank you for the opportunity
19 to testify.

20 CHAIRPERSON GENNARO: Thank you for
21 being here on behalf of RPA. It's been a
22 pleasure to work with them over more years than I
23 care to mention. Thank you. Dan?

24 DAN HENDRICK: Good afternoon, Mr.
25 Chairman. It's pleasure to see you.

CHAIRPERSON GENNARO: Same here.

DAN HENDRICK: My name is Dan Hendrick and I'm honored to be here today to testify in support of Intro 21-A. We believe that passage of this legislation is essential for New York City to continue its exemplary record of environmental leadership. The 7,600 acres that Jim Tipp and other folks have mentioned of the contaminated land in the city, we believe they present both a serious environmental hazard and an unprecedented opportunity. Many of these sites are located in low-income neighborhoods and communities of color, as we know. The inability to properly and expeditiously clean and redevelop them hampers the development of countless communities in the five boroughs. If treated properly, however, these sites represent great areas of opportunity in our land poor city for increased affordable housing, for more open space and especially for transit-oriented development. Unfortunately, New York State's brownfield law contains several serious structural flaws that we've heard about today. While the reformed legislation that was adopted last year was

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2 helpful, obviously we know the program was far
3 from perfect. We believe that this program is a
4 good one to speed up efforts for the city to
5 manage its own remediation effort. Furthermore,
6 we believe that Intro 21-A will place New York
7 City at the forefront of the national
8 environmental movement and create an important
9 center for advancement of smart growth.
10 Brownfields offer the best opportunity, not only
11 for New York City but for the entire region, to
12 funnel population growth into areas that are well
13 served by mass transit and that promote more
14 energy efficient lifestyles. Encouraging this
15 sort of development on formerly contaminated
16 sites goes a long way towards supporting the
17 city's battle against climate change. So on
18 behalf of my organization and our 15,000 members
19 in New York City, we urge you to support this
20 bill. Thank you.

21 CHAIRPERSON GENNARO: Thank you,
22 Dan. I appreciate that. Mr. Slattery?

23 MICHAEL SLATTERY: Michael
24 Slattery, the Real Estate Board of New York. The
25 Real Estate Board is broadly based trade

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2 association of about 12,000 owners, developers,
3 brokers and real estate professionals active
4 throughout the New York. We support Intro 21-A.
5 This bill outlines a local brownfield cleanup
6 program that we believe will benefit New York
7 City. This proposed local program will work as a
8 companion program to existing cleanup processes
9 administered by the state. The benefits of a
10 local program tailored to local needs are many.
11 We believe that passing this bill will contribute
12 to cleanup and redevelopment in many
13 neighborhoods of the city and will provide a
14 simpler and more predictable system for property
15 owners. One positive aspect is that the sites
16 that do not qualify under the state brownfield
17 cleanup program for whatever reason will now have
18 an opportunity to move ahead with a cleanup that
19 is monitored by a governmental environmental
20 agency and will result in an issuance of
21 Certification of Completion and liability
22 protection. It will also encourage the cleanup
23 of properties contaminated with historic fill, a
24 category of sites that has been excluded from the
25 state brownfield program. That exclusion has

1
2 kept a significant number of sites located in New
3 York City, especially those along the waterfront
4 areas, from being redeveloped as brownfields.

5 The program would also focus on lightly and
6 moderately contaminated sites, another category
7 of sites that are not covered by the state
8 program. We're also very appreciative of the
9 inclusion of template documents for site
10 assessments, agreements and reports as we believe
11 that these documents will help expedite the
12 processing of sites and reduce transactional
13 costs which will be very important for property
14 owners, especially small property owners. We
15 also want to applaud the hard work of the Mayor's
16 Office of Environmental Remediation as done to
17 establish this program and its ongoing public
18 outreach. We look forward to working with the
19 Council and the city on the implementation of
20 this program. Thank you.

21 CHAIRPERSON GENNARO: Thank you,
22 Mr. Slattery. I certain appreciate all of you
23 being and all of your respective organizations,
24 the contributions that they've made to this and
25 so many other things that we've been able to get

1
2 done here in the committee and the Council. I'm
3 grateful to you for that. Dan, with regard to
4 your weekly LCV email alerts, I look forward to
5 getting it this Friday at 6:03 a.m. when it
6 always comes in. What's the deal with coming at
7 6:03? It's just when it's triggered? That was
8 on a lighter note. I certainly appreciate you
9 being here today and I thank you for your
10 support. I appreciate it. The next panel is
11 Alexandra DelValle from UPROSE and Lauren Elvers
12 Collins of the Gowanus Canal Conservancy. We can
13 go in the order that I called. We'll have
14 Alexandra first from UPROSE.

15 ALEXANDRA DELVALLE: My name is
16 Alexandra DelValle, I'm the deputy director and
17 policy analyst at UPROSE. Thank you so much to
18 the Chairman and the Committee for allowing us to
19 testify today in support of this bill. I submit
20 this testimony on behalf of UPROSE and the New
21 York City Environmental Justice Alliance. UPROSE
22 is Brooklyn's oldest Latino community-based
23 organization. We work to achieve environmental
24 justice in Sunset Park and Southwest Brooklyn.
25 We have a multi-racial and intergenerational

1
2 membership and have dedicated years to fighting
3 against environmental burdens and for
4 environmental amenities like green and open space
5 and sustainable development in our community.

6 The New York City Environmental Justice Alliance,
7 or NYCEJA, is an umbrella organization

8 comprised of member groups based on low-income
9 communities and communities of color throughout

10 New York City. NYCEJA empowers its member

11 organizations to fight against environmental

12 injustices through the coordination of citywide

13 campaigns. Many NYCEJA's member organizations

14 work together specifically on brownfields

15 redevelopment. NYCEJA brings together the unique

16 voices of local New York City based organizations

17 in support of this bill on behalf of the

18 communities in this city with the highest

19 proportions of brownfields and that are most

20 likely to be positively affected by the passage

21 of this bill. UPROSE AND NYCEJA support this

22 proposed law which would institutionalize the

23 Mayor's Office of Environmental Remediation and

24 enact a local brownfields cleanup program.

25 UPROSE is currently working on a Brownfield

1 Opportunity Area, or BOA grant, in Sunset Park.

2 In Sunset Park alone we have identified over 100

3 potential brownfields and will continue to work

4 through the BOA program to identify priority

5 sites and develop them in line with community

6 priorities. The BOA program has provided us with

7 a great opportunity to revitalize the Sunset Park

8 community and bring environmental amenities into

9 our neighborhood. UPROSE believes that the

10 passage of this proposed legislation will

11 facilitate the ability of community-based

12 organizations like ours to work with the various

13 city agencies that need to be involved in the BOA

14 process. In addition, we've already benefited

15 and attended some of the trainings sponsored by

16 the Mayor's Office of Environmental Remediation

17 and believe that the OER can provide educational

18 information and technical assistance to CBOs

19 working on brownfields. The office is also well

20 positioned to make connections amongst brownfield

21 practitioners in the city. The bill includes

22 strong provisions for community participation and

23 redevelopment of brownfields relative to

24 community priorities. As a community-based

25

1
2 organization engaged in brownfield redevelopment,
3 UPROSE, along with the New York City
4 Environmental Justice Alliance encourage the
5 Council to pass this bill. The principles of
6 environmental justice call for local policies to
7 be shaped by local organizations and local
8 communities and we hope that the City Council
9 will take into account these supportive local
10 environmental justice organizations for this
11 proposed legislation.

12 CHAIRPERSON GENNARO: Thank you.
13 Once Lauren testifies I'll come back to you for
14 questions. Thank you.

15 LAUREN ELVERS COLLINS: Thank you
16 for allowing us to come here and speak today. My
17 name is Lauren Elvers Collins. I am the acting
18 executive director of the Gowanus Canal
19 Conservancy. The conservancy's mission is to be
20 the steward for the preservation, restoration and
21 green development of the Gowanus Canal and its
22 environs for the greater good of the community.
23 As tomorrow is Earth Day, there really isn't a
24 better day for this bill to come before the City
25 Council. We are here to endorse Intro 21-A, the

1
2 New York City Brownfield and Community
3 Revitalization Act. The Gowanus Canal
4 Conservancy sits on the steering committee for
5 the New York State Brownfields Opportunity Area
6 grant, or BOA, for the Gowanus Corridor along
7 with grantees Gowanus Canal CDC, Community Board
8 6 and Friends of Community Board 6 and other
9 steering committee members, friends and residents
10 of greater Gowanus and the Southwest Brooklyn
11 Industrial Development Corporation. PlaNYC has
12 identified 7,600 acres of brownfields in New York
13 City and a number of those are located by the
14 Gowanus Canal. We have been very involved in
15 formulating how the Gowanus BOA will be used to
16 identify some of the multiple brownfields in our
17 own backyard. The city should have one office
18 dedicated to addressing brownfield problems and
19 implementing solutions. The Mayor's Office of
20 Environmental Remediation, or OER, has already
21 demonstrated their commitment to addressing the
22 problem of brownfields and has been a continuous
23 presence in our initial planning for the BOA over
24 the past year. OER has also been a part of
25 public meetings to engage and inform residents of

1
2 Carroll Gardens, Park Slope and other
3 neighborhoods of the Gowanus Basin in Brooklyn on
4 the current investigation and cleanup of several
5 of the manufactured gas plants in the vicinity.
6 These former plants were the source of coal tar,
7 a toxic substance present in the soil of some
8 lots near the Gowanus Canal. Financial
9 incentives, a predictable process and protection
10 from liability will encourage the private sector
11 to cleanup sites rather than letting them
12 languish. Brownfields training, outreach and
13 information are a key aspect to engaging
14 community organizations and nonprofits in
15 understanding the brownfields in their
16 neighborhoods and building capacity to address
17 them. We urge the City Council to pass the New
18 York City Brownfield and Community Revitalization
19 Act establishing and Office of Environmental
20 Remediation and facilitating a more coordinated,
21 efficient focus on the remediation of brownfields
22 throughout our city. Thank you.

23 CHAIRPERSON GENNARO: Thank you for
24 being here and thank you for your testimony.
25 Thank you for your great work on behalf of the

1
2 Gowanus Canal communities. I just want to ask a
3 question of Alexandra. Your testimony here is
4 not only from UPROSE but the New York City
5 Environmental Justice Alliance, which, as you
6 said, is an organization that takes in a lot of
7 groups. How many groups belong to the coalition?

8 ALEXANDRA DELVALLE: That was a
9 quick pop quiz. Let me think. I think it's
10 somewhere between 10 and 15.

11 CHAIRPERSON GENNARO: I just wanted
12 to put on the record how many groups of the
13 environmental justice movement stand in support
14 of this bill. You mentioned in your testimony
15 about the trainings that were sponsored by the
16 Mayor's Office of Environmental Remediation. You
17 say that you've benefited from that. Could you
18 tell me a little bit about the trainings and how
19 they're conducted and the outreach that's a part
20 of that?

21 ALEXANDRA DELVALLE: Sure. I can
22 speak to one training and one event that we've
23 participated in recently through the OER. The
24 first was the Brownfields 101 training series.
25 It was an all day event. It was maybe about a

1
2 month or two ago. I attended that myself. For
3 me it was quite useful in terms of providing a
4 scientific background on kind of more the science
5 of brownfields. At least for UPROSE or for some
6 of the other environmental justice organizations
7 that do brownfields work, we have an
8 understanding of what brownfields are and what
9 they mean in our community. We're so early in
10 kind of the BOA planning process that we're not
11 even in the Phase One kind of site diagnosis
12 step. So learning the science, learning the
13 technicalities, getting an idea and meeting some
14 of the consultant organizations that might be
15 practitioners that we'll work with as we move
16 along in the BOA was really helpful. That was an
17 opportunity I hadn't been afforded yet in my
18 brownfields work. Last week we were at the Big
19 Apple Brownfields Awards, which was nice in the
20 sense of an awards ceremony and also being able
21 to see some of the more successful brownfields
22 projects throughout the city, especially as we're
23 early in the BOA process. I found that the OER
24 really facilitated us getting a better
25 understanding of what completed projects look

1
2 like. You know when a brownfield is taken from
3 start to finish and redeveloped inline with
4 community priorities, giving us an example for
5 that, giving us kind of hope for where our BOA
6 can go and strategies for how we might get there.

7 CHAIRPERSON GENNARO: It would be
8 fair to say then that the city was providing
9 technical experts, not so much broad policy, but
10 technical experts on the issues and bringing them
11 right into the community to bring people up to
12 speed on the technical details. You found that
13 it was a satisfactory and educational experience.

14 ALEXANDRA DELVALLE: Yes.

15 CHAIRPERSON GENNARO: Good to know.
16 Have you had other dealings with the Mayor's
17 Office of Environmental Remediation?

18 ALEXANDRA DELVALLE: We have. I
19 believe our executive director, Elizabeth
20 Yeampierre, has had more dealings with them
21 directly than I have. One forum through which we
22 have worked with them was through NPCR's recent
23 Brownfield Summit. It was a one-day long event
24 and Dan Walsh gave a presentation at that. I've
25 seen him speak through a number of venues, so I

1
2 would say that the outreach component of the OER
3 has been quite strong. But we heard
4 presentations from Dan and had a facilitated
5 conversation afterwards and I think, Lauren, you
6 were there as well. It was about how BOA
7 grantees have worked with city agencies in the
8 past, how we can continue working with them in
9 future and how the OER might help facilitate
10 those relationships for us.

11 CHAIRPERSON GENNARO: Thank you. I
12 appreciate that. Ms. Collins, you've been
13 involved with BOA a while. You mentioned in your
14 statement that the Mayor's Office of
15 Environmental Remediation has already
16 demonstrated their commitment to addressing the
17 problem of brownfields and have been a continuous
18 presence in planning for the BOA over the past
19 years. Can you talk about some of those
20 experiences?

21 LAUREN ELVERS COLLINS: There have
22 been several meetings in the community, not
23 really related to the BOA, but community meetings
24 about some of the MGPs, some of the manufacture
25 gas plants as well as other community meetings

1
2 about some of the toxic areas in the
3 neighborhood. Carroll Gardens is quite
4 inquisitive. I'll put it that way. They really
5 like to know what's going on with their dirt and
6 with their air and everything. OER has always
7 been at these meetings; I mean for a lot of them
8 have been participating. Lee Ilan from OER has
9 been at BOA meetings and we've spoken with her
10 because this is new to us, as it was to you. We
11 were trying to figure out how it all works.
12 We've been in touch with her on other things
13 throughout the last year.

14 CHAIRPERSON GENNARO: You've found
15 your dealings with OER to be helpful?

16 LAUREN ELVERS COLLINS: Yes. And
17 they've been very responsive, which is something
18 that is always a plus. I know it's difficult for
19 some agencies, but they've always been responsive
20 when we need to ask questions or need support on
21 something.

22 CHAIRPERSON GENNARO: Thank you
23 very much. I appreciate the panel being here.
24 Thank you for your testimony and good luck in
25 your brownfields endeavors. The last panel, we

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2 have two witnesses that are not representing
3 organizations. They're here as New York City
4 residents. If they don't mind being paneled
5 together we would like to do that, Larry Schnapf
6 and David Freeman. We'll start with you, sir, if
7 you could state your name for the record and
8 proceed with your testimony we'd be happy to hear
9 it.

10 LARRY SCHNAPF: Chairman and
11 members of the Committee thank you very much for
12 having me here. I'm Larry Schnapf and I guess if
13 Jody is the high priestess on brownfields then I
14 guess you are, Mr. Chairman, of brownfields. I'm
15 sure your mother would be happy to hear about
16 that.

17 CHAIRPERSON GENNARO: My mother
18 things I'm San Gennaro actually. I couldn't
19 resist. My apology to the patron saint of
20 Naples; hopefully he's merciful.

21 LARRY SCHNAPF: My testimony is
22 informed by my 25 years as an environmental
23 lawyer. I also teach two courses at New York Law
24 School on environmental law with Dave Freeman.
25 I'm co-chair of the Brownfield Task Force for the

1
2 Bar Association. I've also been the chair of
3 Brownfield Committee for the EBA and I have also
4 represented a number of affordable housing
5 clients, so I've had a lot of experience with
6 brownfields. I'm testifying today in support of
7 the bill. In 1998 NYU did a study for
8 brownfields and at that time I had suggested that
9 the city take control of its brownfield sites. I
10 think this is not only a model for the country
11 but this is not unprecedented. DEC has delegated
12 authority to several counties for the petroleum
13 storage program. EPA has entered into
14 cooperation agreements under Section 104 of
15 CERCLA with cities in the past. So I think this
16 would be a very valuable program for New York
17 City. Also, it's consistent with the local land
18 use concept behind local government. Local
19 governments are involved in the way their
20 properties are used and this is the next logical
21 step. We're seeing cities taking control of
22 their green building initiatives and this is the
23 next logical step. If you look at the kind of
24 professional staff that Dan is appointing and the
25 framework that's built in, I think while we could

1
2 be concerned about the parade of horrors that
3 have been testified before, I think the reality
4 is that perfect is the enemy of the good. In
5 this case this is a very good program. In fact,
6 local regulators would be more concerned about
7 their particular sites and New York City has a
8 lot of unique issues with their brownfields that
9 are different from the state. I might just give
10 a humorous aside; I had a site in Brooklyn where
11 we had a DEC person managing the project from
12 Buffalo. We were going to put some wells on the
13 sidewalk. I said well there's a lot of traffic
14 there; you know the people come park in the
15 morning. He said, well why don't you just put
16 some traffic cones up there? I said, not only
17 will the parking spots will be taken but the
18 traffic cones won't be there in the morning. It
19 was that kind of distant view. Just like we
20 don't like the federal government to tell the
21 state what to do, I think in this case we have
22 people that are very concerned about the city and
23 its future and its local use. As testified
24 earlier, there are plenty of sites that are being
25 excluded from the brownfield program. There are

1
2 a number of sites that don't fall in within the
3 remedial program of DEC and worse yet; I have an
4 affordable housing project in the Bronx where
5 one-third of the building was admitted in the
6 program. So we have one-third of the building
7 and two-thirds outside of the DEC program. How
8 do we get protection for two-thirds of that site?
9 So this would be a perfect situation for those
10 kinds of sites. I think this is clearly a robust
11 program. I want to add to some comments that
12 were mentioned before. I think the idea of
13 shared responsibility would be a terrible idea.
14 Look at what we have with DEC and DOH right now
15 in terms of trying to coordinate. I think the
16 idea of putting one office in charge of a
17 brownfield program, there is plenty of
18 transparency here. As Justice Brandeis said,
19 sunshine is the best disinfectant; I think Dan
20 has set up a system where it's very robust. I
21 also think the issue about prevailing wage really
22 doesn't apply in most cases here because you're
23 going to have environmental professionals that
24 will be doing investigations since it is cleanup.
25 Some of the subcontractors might be union people.

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2 New Jersey has some experience with this as well
3 but I don't think it's a real big issue. I would
4 say this program is an excellent idea. I
5 strongly endorse it. It's not perfect. If I was
6 king I would probably make a few tweaks to the
7 program. But I think it does the job and I would
8 certainly encourage the committee to pass it.

9 CHAIRPERSON GENNARO: Thank you so
10 much. I appreciate your vote of confidence and
11 support. I appreciate that. Mr. Freeman?

12 DAVID FREEMAN: I will synopsize it
13 because a lot of the points that are made within
14 it have been testified to by others. My name is
15 David Freeman. I'm a partner and chair of the
16 environmental practice group at Paul, Hastings,
17 Janofsky and Walker, a law firm in New York City.
18 I'm active with respect to brownfield matters as
19 a co-chair with Larry of the Brownfields Task
20 Force of the New York State Bar. I also serve as
21 vice-chair of the New York League of Conservation
22 Voters Education Fund. But I'm testifying here
23 in my individual capacity, not as a
24 representative of any of any of those
25 organizations. Over the past ten years I've been

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2 involved with more than two dozen brownfield
3 sites in New York State, many of them in New York
4 City. Most of these sites have been enrolled in
5 the state's voluntary cleanup program or its
6 successor, the Brownfield Cleanup Program, or the
7 BCP. The BCP is a fine program at least in
8 concept, but it has significant shortcomings,
9 particularly with respect to sites in New York
10 City. That's why this legislation is needed. I
11 will very briefly identify four of the most
12 serious shortcomings of the state program and
13 explain or describe how I think this act that you
14 are considering will address them in a way that
15 will bring active brownfield cleanups back to the
16 city. First, the legislation will address the
17 issues caused by the state's restrictive
18 eligibility guidelines. As many people have
19 testified before, a great number of New York City
20 sites do not qualify for the BCP. What's lost
21 site of is those sites not only lose their tax
22 credits for not qualifying, but they lose the
23 other benefits of the Brownfield Cleanup Program,
24 which is state oversight, public involvement and
25 a state signoff at the end. Those sites are

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2 cleaned up, if at all, unilaterally and with no
3 public participation. That is the underside of
4 what's going on here. Some of the public
5 interest folks testified that they're worried
6 about the level of cleanup that's going on. If
7 they compare it with what's going on now, which
8 is that cleanup being done almost under cover of
9 night because there's no state oversight, no city
10 oversight, there's no program that these sites
11 can get into. This is a vast improvement. This
12 legislation will bring those cleanups back into
13 the public domain. They would be overseen by
14 experienced governmental representatives who will
15 ensure that cleanup standards are met and there'd
16 be public participation. Second, the state
17 program does not tailor to issues typically faced
18 by the sites of New York City. Again, the poster
19 child of this is the historic fill which
20 contaminates many of the sites. Contamination by
21 historic fill is not considered by the Brownfield
22 Cleanup Program to trigger eligibility. This
23 bill would rectify that anomaly. If the historic
24 fill was sufficiently contaminated to require
25 cleanup these sites would be able to be in the

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2 program. Third, and people haven't talked about
3 this but I think it's important. The Brownfield
4 Cleanup Program has been adversely affected by
5 inadequate staffing at the state level. The long
6 delays under the state program have been a strong
7 disincentive for entry into the BCP. This bill
8 will establish an office whose sole focus will be
9 on sites in the five boroughs with a dedicated
10 staff to administering the program and overseeing
11 the cleanups of those sites. It will have the
12 effect of jumpstarting those projects and
13 streamlining their handling. Finally, the state
14 program deprives many site owners, developers and
15 community groups of the seal of approval that
16 they need and deserve for undertaking cleanup of
17 these sites. Often, official acknowledgement of
18 a successful cleanup is needed by banks, sellers
19 or insurance carriers to facilitate these
20 transactions. In recent years many brownfield
21 deals didn't happen because there was no agency
22 to provide that certificate at the end. This
23 legislation will authorize the issuance of a
24 clean property certificate which will be
25 transferable to subsequent owners. It will allow

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2 sellers to sell, subsequent owners to purchase,
3 banks to finance and insurance companies to
4 provide coverage in the knowledge that relevant
5 regulatory agencies have been satisfied that a
6 proper cleanup has been performed. Obviously,
7 effective implementation of any legislation is
8 paramount to its success. New York City has
9 already made significant progress in moving sites
10 through the state's program under the leadership
11 of Daniel Walsh and his talented team. I am
12 confident that with the substantial improvements
13 that this new legislation provides, New York City
14 will achieve dramatic results in increasing the
15 number of brownfield sites that are cleaned up
16 and brought back into productive use. I
17 heartedly endorse and urge prompt passage of this
18 legislation. Thank you.

19 CHAIRPERSON GENNARO: Thank you,
20 Mr. Freeman and thank you Mr. Schnapf. Both of
21 your statements were very illuminating. You
22 touched on points that other people didn't. I'm
23 very grateful that you're both here to give more
24 detail and more texture to the conversation that
25 we had here today. I'm grateful to both of you.

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2 I hope that you will use this new law to good
3 effect as I trust you both will. Thank you very
4 much for being here. We appreciate your
5 testimony very much. We received testimony that
6 will be entered into the record. I just want to
7 say on the record that we received supportive
8 testimony from the South Bronx Overall Economic
9 Development Corporation, supportive testimony
10 from the Newtown Creek Alliance, supportive
11 testimony from EWVIDCO, East Williamsburg Valley
12 Industrial Development Corporation. With no one
13 else wishing to be heard, I thank everyone for
14 their good participation today. This hearing is
15 adjourned.

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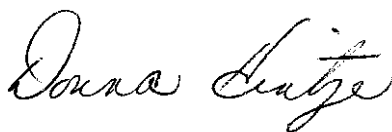
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C E R T I F I C A T E

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

Signature_



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Date May 4, 2009