

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON HEALTH

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October 30, 2018  
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HELD AT: Committee Room - City Hall

B E F O R E: MARK LEVINE:  
Chairperson

COUNCIL MEMBERS: Keith Powers  
Matthieu Eugene  
Alicka Ampry-Samuel  
Inez Baron

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

Ben Kallos

Dr. Demetre Daskalakis  
Deputy Commissioner for Disease Control  
New York City Department of Health and  
Mental Hygiene

Corinne Schiff  
Deputy Commissioner for Environmental  
Health  
New York City Department of Health and  
Mental Hygiene

Gary Moore  
Department of Buildings

Eric Goldman  
National Resources Defense Council

Jackie Gallant  
National Resources Defense Council

Terence AKA Terry O'Brien  
The Plumbing Foundation

Marricka Scott-McFadden  
Deputy Borough President of the Bronx



2 CHAIRPERSON MARK LEVINE: Good morning  
3 everyone. Welcome back. It seems as if we just  
4 adjourned. Welcome back, commissioners. Again, I'm  
5 Mark Levine, chair of the City Council's Committee on  
6 Health. I am pleased that we're joined today by  
7 fellow Health Committee, Council Member Inez Baron,  
8 and also our colleague, Ben Kallos, who will be  
9 speaking momentarily. Today we are going to be  
10 hearing legislation relating to the inspection of  
11 water tanks and reporting on those inspections, and  
12 for those of you who are suffering from déjà vu and  
13 wondering why a week after we did a hearing on  
14 cooling towers today is actually an entirely  
15 different topic. This is a source of confusion, I  
16 have found, even for seasoned professionals in this  
17 business and I am happy that I think the Department  
18 of Health provided, hopefully, a graphic that vividly  
19 illustrates the difference between what is a  
20 mechanical system usually associated with internal  
21 air conditioning, that's a cooling tower. That can  
22 be a place where Legionella is found and therefore  
23 was central to our discussion last week of  
24 Legionnaire's disease. But today is not about that.  
25 Today is about water tanks, and you can see a fine

1  
2 example here. These are the beloved, iconic, round,  
3 generally oak fixtures on top of many, many buildings  
4 in New York City that provide our domestic water  
5 supply, and we're focusing today on issues related to  
6 their inspection and upkeep. As many of you know,  
7 the city's water mains provide enough pressure to  
8 deliver water to buildings up to six stories. Taller  
9 buildings need to use electric pumps to carry water  
10 into water tanks on top of these buildings, and then  
11 rely on gravity to distribute water to the floors  
12 below. We learned from DOHMH that there are  
13 approximately ten thousand buildings in the city that  
14 contain at least one water tank, and these tanks, I  
15 also need to emphasize, unlike cooling towers, have  
16 not been linked to any public health incidents in the  
17 city. I have interrogated the DOHMH leadership about  
18 this and Commissioner Daskalakis, and there has been  
19 no reported incident of a person getting sick  
20 directly attributed to the condition of a water tank.  
21 However, we're still here for important reasons. We  
22 want to ensure that every New Yorker has faith in the  
23 cleanliness of their water tower so that they don't  
24 refrain from drinking our healthy New York tap water,  
25 which is good for our bodies and good for the

1  
2 environment, and we do know that there have been  
3 failures in the upkeep and maintenance and cleaning  
4 of these water tanks, some of which have been  
5 reported in fairly graphic terms, and we want to make  
6 sure that New Yorkers don't learn of that and stop  
7 drinking their tap water. That would be a loss for  
8 public health. It would be a loss for the  
9 environment. And so today is about ensuring that  
10 every single New Yorker has complete, unmitigated  
11 confidence in the quality of the water that is coming  
12 out of the tanks in their buildings, and to that end  
13 we're going to be hearing, excuse me, to that end the  
14 New York City Council passed in 2007 what was enacted  
15 to become Local Law 239, which requires building  
16 owners to submit water tank inspection reports to  
17 DOHMH annually and requires DOHMH to post  
18 documentation on these inspections on its web site  
19 and on the city's open data portal. Local Law 239  
20 came into effect in April of this year, 2018, and the  
21 uploading of reports to the city's open data portal  
22 is ongoing. The bills that we're hearing today would  
23 strengthen our existing water tank inspection  
24 regimen. For instance, Intro 1157, which I am proud  
25 to be a sponsor, would enhance the training and

1  
2 certification requirements for water tank  
3 inspections. By strengthening our inspection regimen  
4 and ensuring that building owners are held  
5 accountable for violating their legal obligation to  
6 properly inspect, clean, and maintain their water  
7 tanks we can ensure all New Yorkers that their water  
8 is safe to drink, and from a health perspective at  
9 the end of the day that is the goal we all share. I  
10 do want to encourage everyone to keep drinking tap  
11 water. I'm also pleased that we will be hearing a  
12 bill today co-sponsored by our colleague, Council  
13 Member Kallos. I'm sure he's going to tell us the  
14 Intro number, which escapes me at the moment, but I'm  
15 happy to queue him for remarks on this bill.

16 COUNCIL MEMBER BEN KALLOS: Thank you to  
17 our health committee chair, Mark Levine, for his  
18 leadership on last week's issue of Legionnaire's and  
19 this week's issue of water tanks. Following  
20 reporting by City & State, by Frank Runyeon, I  
21 frankly had the heebie-jeebies. I believe that would  
22 be the technical and medical term for what was  
23 uncovered there, and one of the concerns was that  
24 people who had water tanks could clean them and then  
25 inspect them so we wouldn't as a city actually know

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2 what the conditions prior to the cleaning, and  
3 ultimately as a person who represents a part of the  
4 city where every building I see from my window has a  
5 water tank, and we've got a lot of tall buildings  
6 with water tanks, I am sufficiently concerned that I  
7 want to make sure that we have an accurate picture of  
8 the conditions of our water tanks beyond the stellar  
9 reporting of City & State's Frank Runyeon.

10 Introduction 1150 will correct this mistake, which  
11 would simply require that the owner first do the  
12 inspection prior to cleaning. After that they are  
13 free to have another inspection if the DOHMH chooses  
14 to have such regulation. But we want to know what  
15 the condition is like year round, not just at its  
16 best. I want to thank the chair and the committee  
17 members for focusing on this important issue. I must  
18 apologize. There is a vote in the Women's Committee  
19 as well as the Governmental Operations Committee,  
20 which I am on, as well as a hearing on a NYCHA  
21 **infield** project in my district, so please excuse me,  
22 but we will be in touch with the Department of Health  
23 and Mental Hygiene following this hearing. Thank  
24 you.

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2 CHAIRPERSON MARK LEVINE: Thank you,  
3 Council Member Kallos. Welcome to fellow Health  
4 Committee member, Council Member Keith Powers. And  
5 now I'll queue the administration and ask Committee  
6 Council to administer the affirmation.

7 [INAUDIBLE]

8 LEGAL COUNSEL: Do you affirm to tell the  
9 truth, the whole truth, and nothing but the truth in  
10 your testimony before this committee, and to respond  
11 honestly to council member questions?

12 DR. DEMETRE DASKALAKIS: Yes.

13 CHAIRPERSON MARK LEVINE: Please.

14 DR. DEMETRE DASKALAKIS: Good morning,  
15 Chair Levine and members of the health committee. I  
16 am Dr. Demetre Daskalakis, the deputy commissioner  
17 for disease control at the New York City Department  
18 of Health and Mental Hygiene. I am joined by my  
19 colleague, Corinne Schiff, deputy commissioner for  
20 environmental health, and on the behalf of the acting  
21 commissioner, Oxiris Barbot, thank you for the  
22 opportunity to testify on drinking water tanks and  
23 several related pieces of legislation. Drinking  
24 water tanks, as you heard, are the iconic round roof  
25 structures that dot our skyline and provide drinking

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2 water to many buildings over six stories tall  
3 throughout the city. As you know, our drinking water  
4 is of the highest quality. It is tested over six  
5 hundred thousand times per year by the Department of  
6 Environmental Protection and is treated to ensure  
7 decontamination and safety. I can assure you today  
8 that our tap water is safe to drink. We know this  
9 because the health department has a comprehensive  
10 surveillance system that identifies clusters of  
11 outbreaks of disease and we have never linked a  
12 cluster or outbreak of disease to a water tank. The  
13 health department's disease surveillance system is  
14 among the nation's best, and I would like to take a  
15 moment to further describe its impressive capacity.  
16 The surveillance system combines a review of mandated  
17 reportable disease results with syndromic  
18 surveillance, which is electronic information we  
19 obtain on patient symptoms and pharmacy medication  
20 sales that signal the possible presence of disease.  
21 We receive mandated reports on approximately one  
22 hundred different diseases of public health concern,  
23 including enterohemorrhagic E. coli 0157:H7, the most  
24 dangerous form of E. coli, and daily reports of  
25 syndromic data from emergency departments, urgent

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2 care, emergency medical services, pharmacies, and  
3 school nurses. Our expert disease detectives analyze  
4 data from these sources to identify signals that may  
5 indicate an increased cluster or outbreak. We have  
6 never linked a cluster or outbreak of E. coli other  
7 pathogen that can potentially be found in water  
8 through a water tank. Based on our data and our  
9 epidemiologic expertise, we are confident that  
10 drinking water tanks do not pose a public health risk  
11 to New Yorkers. Although water tanks do not pose a  
12 public health risk, we agree that some regulation of  
13 them is appropriate. Indeed, both the Department of  
14 Health and Buildings already do regulate them. The  
15 administrative building, plumbing, and health codes  
16 include requirements for their construction,  
17 cleaning, assessment, and reporting. The  
18 administrative code requires building owners to  
19 conduct an annual assessment of the tank and provide  
20 documentation of the results to both the health  
21 department and their residents upon request.  
22 Additionally, Local Law 239 of 2017, passed last  
23 year, will further improve transparency about these  
24 tanks as it requires the health department to report  
25 information about the assessments to the Council

1  
2 annually starting in spring 2019. Additionally, the  
3 health code requires building owners to report within  
4 24 hours positive sampling of E. coli and coliform  
5 bacteria to the health department. The building  
6 code, which is enforced by the Department of  
7 Buildings, governs construction of rooftop  
8 structures, including water tanks, and the plumbing  
9 code details requirements for drinking water tank  
10 components, such as the design of the tank, covers to  
11 keep out unauthorized persons, dirt, and vermin,  
12 disinfection of the tank after it has been cleaned or  
13 painted, and a mandate for draining, including the  
14 tank, at least once per year. Since last year's  
15 council hearing on drinking water tanks, the health  
16 department has taken steps to strengthen water tank  
17 compliance. For example, we have instituted  
18 expansive ongoing physical canvassing efforts to  
19 identify previously unknown buildings with water  
20 tanks and these buildings will receive summonses if  
21 they do not comply with the law and related health  
22 code provisions by January 15, 2019. Further, we are  
23 transitioning our current manual system to an  
24 electronic system that will go live in early 2019,  
25 which will automatically issue notices of violation

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2 to the owner of any building that has not submitted a  
3 water tank inspection report or a testament that they  
4 do not have a drinking water tank. The new system  
5 will also generate automated violations for any  
6 component of the submitted report that does not  
7 comply with health code provisions. In addition,  
8 last year we launched a tool on our website that New  
9 Yorkers can use to search by building to get  
10 information about the drinking water tank servicing  
11 that building. Notwithstanding the laws and  
12 regulations the city has in place and the fact that  
13 water tanks have never been linked to disease in New  
14 York City, we understand the council's desire to do  
15 everything it can to protect New Yorkers from  
16 situations that appear to pose a threat to public  
17 health. We have all seen stories and pictures of  
18 water tanks that are poorly maintained, and this is  
19 unacceptable. Any such conditions must be addressed  
20 expeditiously, and we dedicate to holding building  
21 owners accountable to ensure they meet the existing  
22 maintenance, health, and safety standards. We believe  
23 that water tanks should be properly maintained by  
24 building owners and look forward to discussing the  
25 package of bills being introduced today, but we are

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2 concerned that some of these bills would create  
3 mandates that are unnecessary given what the data  
4 tells us about the lack of a public health risk  
5 associated with these water tanks. Introduction 1157  
6 proposes that people who paint, inspect, and perform  
7 maintenance work on water tanks hold both licensed  
8 master plumber status and a New York State  
9 certification. We support the bill's requirements  
10 for licensed master plumber status for those who do  
11 this work. Currently the health department requires  
12 either a permit or proof of being a licensed master  
13 plumber to paint, clean, or coat water tanks. We  
14 would like to discuss further with counsel the New  
15 York State certification reference as it does not  
16 apply to drinking water treatment or disinfection.  
17 We look forward to working with counsel to align  
18 these requirements in the administrative code.  
19 Introduction 1053 would require water tank inspection  
20 companies to submit annual reports directly to the  
21 health department. We believe that concurrent  
22 submission to the building owner and the health  
23 department would meet the goals of this bill. To  
24 help ensure the integrity of annual inspection  
25 reports, we also want to work with counsel to

1  
2 authorize the health department to require electronic  
3 submission of these reports. Introduction 1150  
4 requires the inspection of water tanks prior to the  
5 annual cleaning. We would like to discuss this bill  
6 with counsel to better understand the intent. The  
7 health department's goal is to see that any issues  
8 identified during the assessment are addressed prior  
9 to this admission of the report to the department.  
10 Introduction 1056 would require periodic inspections  
11 by the health department and Introduction 1038 would  
12 require inspections when bacteria are found in the  
13 drinking water tank. Under the existing regulatory  
14 structure, when E. coli or coliform bacteria are  
15 found in the tank owners are already required to  
16 immediately report the findings to the health  
17 department and they must disinfect the tank and take  
18 confirmatory samples to verify the absence of  
19 bacteria. Existing laws and regulations designed to  
20 ensure the sanitary and structural integrity of these  
21 tanks are sufficient. And finally, Introduction 1167  
22 requires building owners to repair damaged water  
23 tanks within ninety days of receiving notification of  
24 the damage, and Introduction 1169 requires visual  
25 documentation to be submitted with the inspection

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2 report. The existing requirement, under the  
3 administrative code in the Department of Building-  
4 enforced plumbing and building codes addresses the  
5 cleaning and maintenance of these structures, and the  
6 annual report includes examination of the tank's  
7 integrity and immediate correction of any unsanitary  
8 condition. From a public health perspective this is  
9 sufficient in order to maintain the necessary water  
10 quality standards. Thank you for the opportunity to  
11 testify, and we are happy to take questions.

12 CHAIRPERSON MARK LEVINE: Thank you so  
13 much, Commissioner. One thing this hearing has in  
14 common with the hearing last week there is a role for  
15 the Department of Buildings in overseeing this  
16 regimen. I'm assuming they're not here today.  
17 Anyone from DOB here? OK, good. So we'll be turning  
18 to you for questions, if necessary. Perhaps, though,  
19 Commissioner, you can explain where the roles between  
20 the health department and the buildings department  
21 differ and what actually is the role of the  
22 Department of Buildings?

23 DR. DEMETRE DASKALAKIS: I'm going to ask  
24 my colleague, Corinne Schiff, to comment.

25 CHAIRPERSON MARK LEVINE: OK.

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CORINNE SCHIFF: As you've heard, there are mandates registering drinking water tanks that live in the administrative code, in the health code, in the health department regulations, and also the plumbing codes and codes that the Department of Buildings monitors. I'll leave to my Department of Buildings colleagues to address what's in their codes. I can tell you that what the health code requires is that building owners conduct an annual inspection of the drinking water tank and do water sampling annually, and that that be reported to us.

CHAIRPERSON MARK LEVINE: OK, understood. Commissioners, how many violations did DOH issue last year?

CORINNE SCHIFF: So I think it would be helpful first to provide a little bit of context about the enforcement scheme. It used to be before 2015 that building owners were required to do these annual inspections that I just referenced a moment ago, and the drinking water sampling, and then to maintain those inspection reports on site at the building. In 2015 we recommended to the Board of Health, and they took our recommendation and changed the health code to require that those reports be

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2 submitted to us every year. So we shifted from a  
3 system where the building owner would keep those on  
4 site to a system where they would be universally  
5 reported to us. For the 2016 and 2017 reporting  
6 years we've issued about 580 violations. But  
7 starting, as you heard in our testimony, starting  
8 with this year's inspection reporting year, starting  
9 in early 2019, we'll be doing complete enforcement,  
10 universal enforcement. So any building owner that  
11 fails to submit that annual report will be receiving  
12 a violation from us.

13 CHAIRPERSON MARK LEVINE: OK, but can you  
14 talk numbers?

15 CORINNE SCHIFF: So for the 2016 and 2017  
16 reporting years we've issued almost 580, about 580  
17 violations.

18 CHAIRPERSON MARK LEVINE: Are those  
19 adjudicated by oath?

20 CORINNE SCHIFF: Yes, those are submitted  
21 to oath.

22 CHAIRPERSON MARK LEVINE: How many were  
23 dismissed?

24 CORINNE SCHIFF: I don't have the exact  
25 dismissal numbers. I'll tell you that part of what

1  
2 we are doing in issuing those violations is  
3 continuing to refine our data, because we issue to  
4 building owners who have not submitted an annual  
5 inspection report. Some of those owners we know go  
6 to oath to defend those violations by presenting  
7 proof that they do not have a drinking water tank.  
8 So we would expect some dismissals, and we'll get you  
9 those numbers.

10 CHAIRPERSON MARK LEVINE: We learned  
11 after last week's hearing that the dismissal rate,  
12 and we won't get into it today, but we learned that  
13 it was 88% in oath hearings for cooling tower  
14 violations. Are we facing potentially a comparable  
15 dismissal rate for water tanks?

16 CORINNE SCHIFF: So I can't comment on  
17 that right now, but I can tell you, we can get back  
18 to you about the dismissals, but I'll say again part  
19 of what we are doing is doing enforcement, and this  
20 will be true in early 2019, too, when we do universal  
21 enforcement. Part of the strategy is to issue  
22 violations giving the building owners an opportunity  
23 to defend that and say I don't have a drinking water  
24 tank. And so in this case we would expect some  
25 dismissals. We are certainly, many of those are

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2 getting upheld. I don't have the exact numbers. I  
3 want to be precise. So we'll get back to you on  
4 that.

5 CHAIRPERSON MARK LEVINE: We're concerned  
6 about dismissals because on the one hand if someone  
7 is being issued a violation when they did nothing  
8 wrong, or they've been complying with the rules or  
9 they don't even have a water tank, then that's just,  
10 it's not fair to the building owner and it's a waste  
11 of city resources. There may also be cases where the  
12 building owner actually did fail to follow the rules,  
13 but there's a technical defect in the violation that  
14 leads to it being thrown out, and that's also bad  
15 because if building owners aren't held accountable  
16 for the rules then they don't have an incentive to  
17 comply. So this is an issue that we definitely want  
18 to dig into. Have you noticed discrepancies in  
19 cleaning reports by vendor? I ask because in our  
20 analysis of the open data reports we see that there  
21 are some vendors which may have thousands of cleaning  
22 inspections and almost no reports of sediment, and  
23 there may be others that have very, very high  
24 relative to a smaller number of cases. That could  
25 lead one to worry about inconsistent work being done

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2 or either other motivations by inspectors. Have you  
3 noticed such patterns?

4           CORINNE SCHIFF: We would be happy to  
5 take a look at what you found. I would say a couple  
6 of things, I mean, I haven't seen so I don't know  
7 exactly what you are referring to. But I would say a  
8 couple things. First of all, it's part of why we are  
9 supporting, I believe it's your bill, to require  
10 qualifications. We think that that will help improve  
11 reporting and help promote confidence in our drinking  
12 water, which is really, as you have noted in your  
13 opening remarks, critically important. We do have  
14 the finest, some of the highest-quality water in the  
15 world, so that's why we're supporting that bill.  
16 I'll also note that the inspection reports are  
17 submitted to us under penalty of perjury. As you've  
18 described it, it doesn't necessarily mean that there  
19 is a problem. So why don't we take a look at it and  
20 once we have details we can provide a more detailed  
21 response.

22           CHAIRPERSON MARK LEVINE: Right. We  
23 noticed that two largest providers who filed  
24 thousands and thousands of inspection reports, I  
25 think only had half a dozen reported cases of

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2 sediment. Now, one explanation could be that they  
3 are simply reporting on the status post cleaning and  
4 other vendors are not. That itself would be, it  
5 would be, I think it would be problematic because it  
6 would give us an inconsistent read on the relevant  
7 state of different buildings and if New Yorkers  
8 really want to understand the state of their water  
9 tanks to know the state before the cleaning is more  
10 relevant, and there could be a dead animal sitting in  
11 there for months and months and months and then of  
12 course you clean it and the tank passes inspection,  
13 but we've never known about a prior contamination.

14 CORINNE SCHIFF: So I think it's  
15 important, your hypothesis about why the reports may  
16 look different is, that may turn out to be true. So  
17 we'll take a look at that. But I think it's  
18 important also, we haven't had a chance really to  
19 talk about the inherent safety features that are  
20 built into the drinking water tank and why these are  
21 really an extremely low risk. You've heard from Dr.  
22 Daskalakis that there is really, we have found no  
23 link between disease and drinking water tank, and I  
24 want to just describe for you, because it's important  
25 as you consider the bills, the way that the water

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2 tank works. So first the water comes into the  
3 drinking water tank directly from the source, as you  
4 know and said in your opening remarks and I just  
5 noted, we have some of the highest-quality water in  
6 world and the water tank pulls directly from that  
7 source. The water enters the tank at the top and is  
8 drawn from the middle, and meanwhile any sediment or  
9 bacteria settle to the bottom. Meanwhile, there is  
10 residual chlorine that serves as an ongoing  
11 disinfectant for that water, and it's constantly  
12 being circulated. Every time we turn on the tap  
13 we're drawing from that water, and fresh water comes  
14 in. And then finally the wooden structure itself  
15 serves as a natural insulator. So for all of those  
16 reasons this is a very, very safe water delivery  
17 system and we see the outcome in that, in the  
18 evidence we have, the lack of evidence of any link to  
19 disease. And so the system that is set up in the  
20 local laws and in the regulations is to require an  
21 annual check on that water tank. We want the  
22 building owner to go, take a look at the structure,  
23 make sure that none of the planks have come loose,  
24 that the vents have not started to degrade. But  
25 these are very sturdy structures that degrade very

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2 slowly over time. In New York City we're requiring  
3 this inspection annually. The guidance from EPA is  
4 that they need to be inspected only every three to  
5 five years. So even if what you are hypothesizing is  
6 true, that's OK as a public health matter. The  
7 system is set up to be finely calibrated to the very,  
8 very low risk that we see.

9           CHAIRPERSON MARK LEVINE: With all due  
10 respect, I appreciate, and I myself mentioned in my  
11 opening remarks the lack of any indication that  
12 people are getting sick from what's happening in the  
13 water tanks. The public health interest is that  
14 people aren't grossed out and therefore stop drinking  
15 tap water, because if they move to other sources of  
16 fluids, whether that be soda or juice, that's bad for  
17 their health. If they move to bottled water that's  
18 bad for the environment. So really what the hearing  
19 is about and what the legislation is about is just  
20 going the extra mile so that New Yorkers, to put it  
21 bluntly, just aren't grossed out by what is coming  
22 out of their faucet. There were reports in recent  
23 months about NYCHA contractors changing reports. Or  
24 maybe it was NYCHA's administration changing reports  
25 after provided by the contractors. Can you update us

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2 on that and explain the extent to which you have  
3 confidence that's been corrected?

4           CORINNE SCHIFF: I can't comment on NYCHA  
5 practices. I can tell you that we did, following  
6 those reports, worked with NYCHA to make sure that  
7 they understand the requirements. They would have to  
8 comment on what that was about. The laws and  
9 regulations apply to all property owners in New York  
10 City and we apply them, we enforce them, in the same  
11 way.

12           CHAIRPERSON MARK LEVINE: But that does  
13 raise the question of the extent to which you are  
14 auditing the reports that are filed by vendors, or  
15 are you just taking it on faith?

16           CORINNE SCHIFF: So this is another piece  
17 of the response is it is one of the reasons that we  
18 are supportive of two of the bills, yours to mandate  
19 that there be somebody with particular qualifications  
20 who submits the report. That will complement what is  
21 already required, which is that the inspection report  
22 be submitted under penalty of perjury, and also  
23 requiring that those reports be submitted directly to  
24 the department. The bill, I believe, would require  
25 that before submitting to the building owner. We

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2 would suggest that it could be before or concurrent,  
3 because we don't want any delays in repairs. But we  
4 think those would be improvements and would get at  
5 some of those issue that people are concerned about.

6 CHAIRPERSON MARK LEVINE: But do you  
7 perform inspections yourself, random inspections,  
8 spot inspections of any water tanks?

9 CORINNE SCHIFF: The requirements set out  
10 in the administrative code and in the regulations are  
11 for the building owner to do those inspections. We  
12 have designed an enforcement system that is really  
13 calibrated to the extremely low risk here and we  
14 don't ourselves go out and do those inspections. If  
15 the building owner identifies a coliform or E. coli  
16 that has to be reported to us immediately and we  
17 would have a close interaction with the building  
18 owner to mandate remediation and then a confirmatory  
19 sampling to determine that that remediation was  
20 successful. And, again, given the very, very, that  
21 the absence of a link to disease, the redundant  
22 safety features in these structures, we have  
23 calibrated the enforcement approach to the extremely  
24 low risk here.

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CHAIRPERSON MARK LEVINE: You mentioned that there is a penalty of perjury for falsifying one of these documents or issuing a false statement. Has anyone ever been charged with perjury on these grounds?

CORINNE SCHIFF: Not that I know of.

CHAIRPERSON MARK LEVINE: Not even in the NYCHA case?

CORINNE SCHIFF: Not that I know of.

CHAIRPERSON MARK LEVINE: But that would seem to fit, it would seem to trigger a perjury charge, no?

CORINNE SCHIFF: I would suggest that NYCHA respond to those questions about those reports and what had happened there.

CHAIRPERSON MARK LEVINE: OK, well, it's not clear to me why it wouldn't trigger a perjury charge considering the laws as you just laid out. I'm going to queue our colleague on the Health Committee, Council Member Powers.

COUNCIL MEMBER POWERS: Thank you. Just a, is NYCHA here? Is anybody from NYCHA here today? OK, just asking. You talked about a point earlier where you might issue a violation to a building and

1  
2 they will show that they don't actually have a water  
3 tank and then the violation will be dismissed. Can  
4 you explain to me what is the process by which, or  
5 why, maybe, perhaps somebody is getting a violation  
6 if they don't have a water tank to begin with and  
7 then have to defend the not having one?

8           CORINNE SCHIFF: Sure. So the  
9 enforcement system before 2015 was that building  
10 owners had to conduct these annual inspections and  
11 they had to keep those reports on site at the  
12 building. And the department would do an audit of a  
13 certain number of those every year, visiting the  
14 building to look at records. In 2015 we changed to a  
15 much more robust enforcement system requiring that  
16 all of those reports actually be submitted to the  
17 department every year. That started in 2015. The  
18 challenge that we faced is to come up with an  
19 accurate list of all of the building water tanks in  
20 the city. We took a very conservative approach to  
21 that and probably over-captured buildings and so we  
22 have been working since 2015 to refine that data. We  
23 have used a number of strategies. We've done a lot  
24 of outreach to building owners and to the tank  
25 companies to alert them to the new universal

1  
2 submission requirement and gave them an opportunity  
3 to say that's not me, I don't have a drinking water  
4 tank, please pull me off of your system. This past  
5 summer we did a data match from the buildings that we  
6 had in our drinking water tank online submission  
7 system with the data that we have about cooling  
8 towers, so that when our inspectors were doing  
9 cooling tower inspections at a building that we  
10 thought might have a water tank they could check, and  
11 some of the strategy we have used is to issue  
12 violations for failing to submit drinking water tank  
13 inspection report and that is another moment for the  
14 building owner to say I don't have a drinking water  
15 tank. We have been using these strategies to refine  
16 our data to come up with a more accurate list. We  
17 think the big leap that we are making with the 2018  
18 reporting year to submit, to issue violations to all  
19 building owners who fail to comply with the reporting  
20 requirement will help us further refine that data,  
21 and we'll be able to get to a more accurate list and  
22 then our violations will be only to those buildings  
23 that actually have drinking water tanks.

24 COUNCIL MEMBER POWERS: So just to, it  
25 sounds like you tried to have an accurate picture at

1  
2 the time of the universal submission using, maybe you  
3 can explain about methodology about how you decided  
4 on that list.

5 CORINNE SCHIFF: Sure.

6 COUNCIL MEMBER POWERS: And then have  
7 been subsequently narrowing it down. Some got, who  
8 you made an assumption had a cooling tower, ah,  
9 sorry, a drinking tower, water tower, had a, received  
10 one and then subsequently said I don't have it. Can  
11 you tell us just how you determined that list  
12 originally?

13 CORINNE SCHIFF: Yes, and that's, your  
14 paraphrasing was correct. So the drinking water tank  
15 would sit on a building that is seven stories or  
16 above, because a building smaller than that doesn't  
17 need one. So we took a very, very conservative  
18 approach to develop our list. There was no list. So  
19 we had to create one, and so we polled the buildings  
20 that were seven stories and above and have been  
21 working our way down to make a more accurate list.  
22 So we took this conservative approach so that we  
23 didn't miss buildings and over time since this change  
24 in 2015 we've been pulling those numbers down.

1  
2 COUNCIL MEMBER POWERS: So your list  
3 today is, how accurate do you believe your list is  
4 today?

5 CORINNE SCHIFF: I think we're getting  
6 there, but we really think that this change that we  
7 are making, we are in development with our  
8 technology, we will be doing this early in the new  
9 year for the 2018 reports. We think that's going to  
10 get us a long way there.

11 COUNCIL MEMBER POWERS: And how many, I  
12 don't know if we asked this, but how many do we have,  
13 how many are on your list buildings today?

14 CORINNE SCHIFF: We're continuing to drop  
15 this number as we get better and better data. We  
16 don't have a great number. Now we know that there  
17 have been reports submitted by fifty-five hundred  
18 buildings so we know that it's at least fifty-five  
19 hundred. But I think once we're through the  
20 enforcement of the 2018 reports we're going to know a  
21 lot more. I can't promise that in just one year  
22 we'll get to the absolutely accurate picture, but I  
23 think we're going to make a big leap in our data  
24 accuracy.

1  
2 COUNCIL MEMBER POWERS: Does fifty-five  
3 hundred represent the amount of buildings that are  
4 under seven stories, or is it other buildings under  
5 seven stories that don't have a water tank, if that  
6 makes sense? What does the fifty-five hundred number  
7 represent?

8 CORINNE SCHIFF: The fifty-five hundred  
9 is the number of buildings that have submitted  
10 drinking water tank inspection reports to us.

11 COUNCIL MEMBER POWERS: And then  
12 presumably there are some that haven't, that are,  
13 yeah.

14 CORINNE SCHIFF: Expected there are some  
15 that haven't, and we'll learn a lot more about that  
16 when we issue, right now we're issuing, it's a labor-  
17 intensive manual process, so we're not able to get to  
18 everyone, so starting with this year's reports we  
19 will be issuing a violation to everyone who is in our  
20 system either as not having submitted a report or not  
21 having told us that they don't have a drinking water  
22 tank.

23 COUNCIL MEMBER POWERS: Got it, thanks.  
24 And just one last question, and thank you to the  
25 chair for giving me an opportunity to ask questions,

1  
2 1167 requires building owners to repair damaged water  
3 tanks within ninety days of receiving notification,  
4 not that I've heard any complaints about it, but I'm  
5 just, the basic question is does ninety days seem  
6 like a time period that will be reasonable for  
7 building owners to comply with?

8 CORINNE SCHIFF: So we'd actually  
9 appreciate the opportunity to speak with counsel  
10 about that. Our regulations require that problems  
11 with the structural integrity of the tank be repaired  
12 immediately, so we want to make sure that this bill  
13 wouldn't set up a regimen that is less protective  
14 than what is in place now. So we want to talk with  
15 you to make sure we understand what you're trying to  
16 get at and see if we can make sure that we don't lose  
17 the protections that we have in place now.

18 COUNCIL MEMBER POWERS: So [INAUDIBLE],  
19 so what is immediately under your definition?

20 CORINNE SCHIFF: So when they submit  
21 their report to us, the entire system is designed to  
22 drive good public health practice. So the point is  
23 that the report that they submit to us is, asks them  
24 to demonstrate, to attest that there has been a  
25 correction. So what immediately means probably

1  
2 depends on what needs to be fixed, but in other words  
3 we're not saying at your leisure, whenever you get to  
4 it. The point is there is something that needs to be  
5 repaired, repair it, tell us you've repaired it.

6 COUNCIL MEMBER POWERS: So ninety days  
7 would actually be too long if there's like a public  
8 health risk due to the damage?

9 CORINNE SCHIFF: I don't want to give the  
10 impression that there is a public health risk. These  
11 structures degrade slowly, they're very sturdy. So  
12 the point of the system is that every year, which as  
13 I noted is much more robust than what EPA guidance  
14 is, which is every three to five years, but we say to  
15 building owners every year we want you to take a look  
16 at that tank. Make sure that the vents continue to  
17 be covered, that the rungs of the ladder have not  
18 become loose, that there isn't a plank that's  
19 starting to be dislodged. I think it's sort of, I  
20 think of it as kind of a stitch in time saves nine.  
21 So we want building owners to do that, but it doesn't  
22 necessarily mean that there's any immediate risk.  
23 But we want them to maintain the tanks over...

24 DR. DEMETRE DASKALAKIS: I just want to  
25 comment briefly on risk again. So I think that the

1  
2 current scenario of response time, the answer from  
3 the public health perspective is that there is no  
4 signal for a disease risk. So what's happening now  
5 in terms of response to these water tanks is  
6 happening fast enough where there is nothing that is  
7 signaling to us that there is any human disease, and,  
8 again, our surveillance system is extraordinarily  
9 robust, so we'll hear about certain bacteria or  
10 parasites that we would associate with water, but we  
11 also hear about syndromes that happen in  
12 neighborhoods, and we even go down to the resolution,  
13 something that you may not know, we get reports from  
14 pharmacies about sales of antidiarrheal medicines.  
15 So if we start to see that there is something in an  
16 area, more sales of antidiarrheal medicines, we then  
17 start to do really boots on the ground public health  
18 work, go out and see if there are any new cases of  
19 disease that are landing in doctors' offices or  
20 emergency rooms or urgent cares and then we pursue  
21 them, and so despite this combination of technology  
22 and boots on the ground the risk is inapparent from  
23 the perspective of patterns of infections that would  
24 be associated with water exposure.

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COUNCIL MEMBER POWERS: Thank you, I appreciate that. And just following up on that last point, I'm a little familiar with the point about the tracking. So who are you receiving data from today in terms of it's over-the-counter, I think, right? It's not prescriptions?

DR. DEMETRE DASKALAKIS: Right.

COUNCIL MEMBER POWERS: So which pharmacies are you receiving data from?

DR. DEMETRE DASKALAKIS: We are increasing the number of pharmacies that we are getting the data from. Right now it's a lot of sort of smaller, private pharmacies that we're getting and some other chain pharmacies are slowly coming on board. So it's a sample of pharmacies, but there is enough of them where we can sort of get a general sense of what's happening. The other piece that's really important is that places where people come in with diarrheal syndromes, like emergency rooms and some urgent cares, we do get syndromic surveillance data hourly from some emergency rooms. Others we get daily, and then we also are increasingly getting information from urgent cares, again because we're responding to the way New Yorkers pursue health care

1  
2 and a lot of them are going to urgent care over  
3 emergency departments routinely. So I think the  
4 combination of this sort of syndromic like rough  
5 sketch of what's happening with disease using  
6 pharmacy data as well as clinical venue data. When  
7 you then meld that with our disease detectives that  
8 actually go out and sort of pursue more information,  
9 along with our automated surveillance that we get for  
10 specific bacteria or protozoa, come together to  
11 really create a picture that lets us hone in and  
12 even, again, in honing in a water tank has never been  
13 attributed as a source of a pattern of a cluster of  
14 disease.

15 COUNCIL MEMBER POWERS: Sorry, one last  
16 question.

17 DR. DEMETRE DASKALAKIS: Yeah, I will...

18 COUNCIL MEMBER POWERS: I was curious  
19 about this. You receive this data, you see there's a  
20 surge and something, and then what happens?

21 DR. DEMETRE DASKALAKIS: So it's a really  
22 interesting combination of technology and human  
23 power. So what will happen is we'll get the  
24 syndromic data that comes in in an automated fashion.  
25 We are looking at...

1  
2 COUNCIL MEMBER POWERS: You mean they are  
3 auto-reporting to you?

4 DR. DEMETRE DASKALAKIS: Yeah, so it  
5 comes automatically. And so we get this information  
6 electronically and our team of disease detectives  
7 that are responsible for both syndromes as well as a  
8 hundred of other reportable diseases, will actually  
9 look into the patterns of what's going on with  
10 syndromic data, and then they'll look at other data  
11 sources to see if we're getting increase reports of  
12 certain bacteria, so if we're getting more of this  
13 enterohemorrhagic E. coli or we're seeing more cases  
14 of cryptosporidiosis what happens is that we then  
15 overlap these data and actually go out boots on the  
16 ground investigating in the areas where we see these  
17 little sort of flares or spikes to see if there is  
18 something actually going on. And so we actually can  
19 give you more detail also about the pharmacies that  
20 are involved, but we are increasing the number of  
21 pharmacies that we're getting, so all that comes  
22 together to actually generate a picture that combines  
23 technology and sort of human power to go out and  
24 actually get a sense of what is going on.

2 COUNCIL MEMBER POWERS: Is it cumbersome  
3 on the small pharmacies to have to provide you  
4 ongoing data about, I mean it's like an automatic  
5 system, it would feel like difficult for them to set  
6 up and report.

7 DR. DEMETRE DASKALAKIS: Excuse me, one  
8 more time?

9 COUNCIL MEMBER POWERS: The small  
10 pharmacies, right, it would seem to be just  
11 cumbersome to like the neighborhood pharmacy to have  
12 to report data in some automated fashion to the  
13 Department of Health every month or every week?

14 DR. DEMETRE DASKALAKIS: The good news is  
15 though it may be complex in the beginning we're  
16 getting more and more pharmacies on board and it  
17 becomes less and less complicated as people are sort  
18 of brought into the system.

19 COUNCIL MEMBER POWERS: It's mandated or  
20 voluntary that they report?

21 DR. DEMETRE DASKALAKIS: It's part of our  
22 health code.

23 COUNCIL MEMBER POWERS: All right, OK,  
24 thank you.

2 CHAIRPERSON LEVINE: Council Member  
3 Powers...

4 DR. DEMETRE DASKALAKIS: I actually have  
5 to correct the record. So it is voluntary, but we  
6 are having increasing numbers of pharmacies that are  
7 signing on to do this. So that's why some of the  
8 chain pharmacies haven't done it yet. I [crosstalk]

9 COUNCIL MEMBER POWERS: Can I just ask a  
10 follow-up question? I was under the belief that  
11 chain pharmacies do do it and it's mandatory.

12 DR. DEMETRE DASKALAKIS: It's voluntary.

13 COUNCIL MEMBER POWERS: Thank you.

14 CHAIRPERSON LEVINE: OK. Just to  
15 understand, your objection on Intro 1167, as Council  
16 Member Powers was questioning is that establishing a  
17 90-day requirement might actually lead people to wait  
18 longer to make their repairs? Could we not fix that  
19 by then just reducing that to 60 days or 30 days or  
20 whatever you think is the appropriate?

21 CORINNE SCHIFF: We would like to talk  
22 with you to make sure that this is, that we're not  
23 undermining a more protective regimen, so I think we  
24 should talk about it and figure out where you see a  
25 gap. Our requirement is that if they identify a

1  
2 problem they fix it without setting out the time  
3 line, and the fact...

4 CHAIRPERSON LEVINE: But there are  
5 buildings which are waiting a lot longer than 90  
6 days, right? It's those outliers that we're trying  
7 to crack down on.

8 CORINNE SCHIFF: I think we should have a  
9 follow-up conversation. It's not that we disagree  
10 that the repairs should be made in a timely way. I  
11 think we just need to find the right cadence there.

12 CHAIRPERSON LEVINE: And I want to point  
13 out that the bill does have a provision for the  
14 building owner requesting an extension for  
15 extenuating circumstances. So there is some  
16 flexibility there, but we just want to make sure that  
17 people don't abuse the lack of a firm date under the  
18 current system. So Gary Moore from DOB, I realize  
19 this is like your second day on the job. Are you  
20 prepared to come and answer questions? Wonderful.  
21 Come on up and I'll ask Zeta to please give you the  
22 affirmation. OK. I'm told you're a little bit more  
23 of a veteran than this being your second day on the  
24 job, but I think this might be your first hearing?

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GARY MOORE: Yes. It's been a year, though, so.

CHAIRPERSON LEVINE: It's been a year, OK. Happy to have you hear.

LEGAL COUNSEL: Do you affirm to tell the truth, the whole truth, and nothing but the truth in your testimony before the committee today, and to respond honestly to council member questions?

GARY MOORE: I do.

CHAIRPERSON LEVINE: So in Commissioner's Daskalakis' opening statement he described the plumbing code, which is a component of our building codes that detail requirements for tank components, such as the design and covers to keep out people and dirt and vermin, etc. I guess everything that's in the category of sort of the physical structure of the tank seems to fall under DOB via the plumbing code. Is that accurate?

GARY MOORE: That's correct, between the building code, which speaks to certain structural issues like the supported tanks, their location on a roof, and the plumbing code, which speaks to the design element of tanks and the requirement that they

1  
2 be drained and cleaned annually. Together they speak  
3 to the structural issues of water tanks.

4 CHAIRPERSON LEVINE: OK. So does DOB  
5 then enforce this component of the building code?

6 GARY MOORE: So the construction issues  
7 are enforced, ah, the construction elements, rather,  
8 are enforced during plan exams, so when owners submit  
9 plans to the department we make sure that they're  
10 compliant with all the requirements in the building  
11 and plumbing codes. That's the mechanism by which we  
12 enforce the construction of water tanks.

13 CHAIRPERSON LEVINE: Right, but we're, I  
14 would certainly be alarmed to learn that tanks are  
15 defective out of the gate. We're really more  
16 concerned about tanks degrading over time. So DOB  
17 step in if defects emerge over time because of wear  
18 and tear?

19 GARY MOORE: To the extent we are made  
20 aware of conditions we would issue violations for  
21 these conditions.

22 CHAIRPERSON LEVINE: And so how many  
23 violations have you issued in the last year?

24 GARY MOORE: In 2017 we did not issue any  
25 violations.

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CHAIRPERSON LEVINE: Not one?

GARY MOORE: No, not...

CHAIRPERSON LEVINE: What about 2016?

GARY MOORE: Not for any structural issue.

CHAIRPERSON LEVINE: What about 2016?

GARY MOORE: We only looked back to 2017,  
but I can get back to the committee with that  
information.

CHAIRPERSON LEVINE: So essentially  
there's no violations being issued for the structural  
defects from DOB.

GARY MOORE: No, we have not issued  
those...

CHAIRPERSON LEVINE: But we know that  
there are tanks with structural defects. I don't  
think anyone denies that. Even it's a small  
percentage, even if it's 1% or 2%, but, right? So  
how are they getting away without being sanctioned?

GARY MOORE: If we're not made aware of  
the condition, so via complaint, for example, it  
would not get onto our radar and we would not perform  
an inspection or issue any violations related  
those...

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CHAIRPERSON LEVINE: So how, hypothetically, how in theory would you become aware?

GARY MOORE: The complaint? If we receive a complaint we would become aware, but also in the annual check that owners have to perform every year [INAUDIBLE] be performed usually by licensed master plumbers. Structural issues are something that they need to check for.

CHAIRPERSON LEVINE: Right, so in the thousands of reports filed by the master plumbers they have never reported a single structural defect?

GARY MOORE: I would defer to my colleagues that help to receive the reports.

CORINNE SCHIFF: So that check on the general integrity of the tank, which is part of our annual inspection report, the building owner would indicate whether those have been corrected. So there is an element of the enforcement that the health department does in terms of the inspection reports addressing the structure of the tank.

CHAIRPERSON LEVINE: So there's like, it seems like there's overlapping jurisdiction here and so it would be the health department who may be issuing the fines?

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2           CORINNE SCHIFF: Right, and responding  
3 generally to your question about the integrity of the  
4 tank.

5           CHAIRPERSON LEVINE: But, so someone's  
6 got a hole in the roof, right? We know there are  
7 tanks with holes in the roof. So is anyone getting  
8 fined for holes in the roof of tanks and similar  
9 problems?

10          CORINNE SCHIFF: So under the health  
11 department's requirements a hole in the roof would be  
12 a structural issue and perhaps a sanitary issue that  
13 would need to be indicated on the inspection report,  
14 or remediated and then indicated on the inspection  
15 report that it had been remediated. So that would be  
16 part of the health department's inspection  
17 requirements.

18          CHAIRPERSON LEVINE: And are any such  
19 defects reported in any of the reports?

20          CORINNE SCHIFF: We would have to take a  
21 look at the data to find, to get back with the  
22 details about that.

23          CHAIRPERSON LEVINE: So the 580 fines  
24 that you referenced earlier, none of them relate to  
25 physical defects?

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CORINNE SCHIFF: I would have to check.

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I believe that those violations were for failure to

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submit the report.

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CHAIRPERSON LEVINE: Right.

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CORINNE SCHIFF: So we'll have to check.

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CHAIRPERSON LEVINE: So it's

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inconceivable that of the thousands of tanks in the

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city none of them would be found to have physical

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defects, just because we know of anecdotal reports

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and with that many tanks that are that old in this

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climate it's almost, it strains belief that there

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would be no defects. So what it sounds, sounds to me

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like we have a failure to enforce for the physical

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integrity of the tanks, and a system like this that

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requires reporting from the public, which is

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generally not going to go up to the roof of their

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buildings and look at the tanks is inadequate. So

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it's therefore going to fall under, I guess fall onto

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the building owners in their reports that they're

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submitting, but there you have a conflict in which

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the people who would potentially be fined are the

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ones who are being asked to report these defective

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conditions. Am I correct in everything I'm saying?

25

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2           CORINNE SCHIFF: So I think there's a  
3 couple of things that are important to note with  
4 respect to the physical integrity. First, the  
5 reports are submitted to us under penalty of perjury.  
6 They require, the system is designed to drive  
7 compliance by requiring that those defects be  
8 corrected. Then finally we think that those, the  
9 bills, your bill and the speaker's bill, which would  
10 require submission to the department either before,  
11 or we're suggesting adding concurrently to us, and  
12 that they be submitted by someone with particular  
13 qualifications will be improvement to the system.  
14 But I do want to go back to what we think is really  
15 fundamental here, which is that we have never linked  
16 disease to a drinking water tank, that the tanks  
17 themselves have multiple safety features, redundant  
18 systems that keep our water very, very safe, and so  
19 we think we really have an enforcement system that is  
20 properly tailored to the extremely low risk here.

21           CHAIRPERSON LEVINE: Just so I get my  
22 facts straight here, so we have a systems that relies  
23 on self-reporting under penalty of perjury if the  
24 documents are falsified. But we know of no perjury  
25 charges being filed and there were zero violations

1  
2 issued at least in the last year. So either we have  
3 a pristine stock of water tanks and everyone told the  
4 truth in their inspections and no violations were  
5 warranted, or there are defects which are not being  
6 reported or being inaccurately reported and we don't  
7 have a system to catch that.

8           CORINNE SCHIFF: So I will add that in  
9 our, with the 2018 inspection reports, in addition to  
10 having universal enforcement, so that any owner who  
11 fails to submit the report will be issued a  
12 violation, we are also building into that system  
13 catching failures to correct and issuing violations  
14 for violations of the health code. So we are also  
15 closing this enforcement gap with the technology  
16 improvements that we're making this year.

17           CHAIRPERSON LEVINE: OK. Are there ever  
18 311 calls related to water tank defects?

19           CORINNE SCHIFF: So New Yorkers can call  
20 311 when they have concerns about their water.  
21 Depending on the nature of that complaint, it goes  
22 either to DEP or to the health department and we work  
23 closely with each other to make sure that if calls  
24 are misrouted that they go to the right agency. I  
25 can tell you that in 2017 we received one hundred and

1  
2 fifty-four 311 complaints and two of those mentioned  
3 a drinking water tank. We follow up on all of those.

4 CHAIRPERSON LEVINE: Right, but those may  
5 have been for discoloration in the tap water or  
6 unusual taste in the tap water, right, is that what  
7 you're counting in that number?

8 CORINNE SCHIFF: The ones that come to  
9 the health department are ones that make a reference  
10 to a health concern.

11 CHAIRPERSON LEVINE: Right. But you say  
12 there's two, there were only two 311 calls in all of,  
13 I think you said, I'm not sure if you said 2017 or  
14 2018, but only two in the last year that cited the  
15 condition of a water tank explicitly?

16 CORINNE SCHIFF: Correct.

17 CHAIRPERSON LEVINE: So that reinforces  
18 my previous point, that the public just doesn't go up  
19 on roofs to look at water tanks and so a system that  
20 relies on them to be the eyes and ears isn't going to  
21 catch the vast majority of problems in these tanks.  
22 It seems to me that the only solution is to have some  
23 sort of auditing scheme or spot inspections,  
24 something other than pure trust of self-reporting.  
25 Also pointed out that there's a small number of

1  
2 companies, vendors, which do this work. Many of them  
3 have been with their buildings for many, many, many  
4 years and one could worry, as we saw in the NYCHA  
5 case, that there is a level of confidence, ah, an  
6 excessive level of confidence develop between the  
7 vendor and the building owner that allows for things  
8 to start to slip, or corners to start to be cut, and  
9 it just, it's one more rationale for some vehicle for  
10 auditing or double checking, or otherwise verifying  
11 the veracity of these reports. Fair statement?

12 CORINNE SCHIFF: So we think that the  
13 improves that we're making with the 2018 inspection  
14 year will go a long way. We'll be issuing violations  
15 to all building owners who fail to submit the  
16 reports. We'll be issuing violations where those  
17 reports show health code failure to comply. But we  
18 really think that given the very, very low risk  
19 related to the absence of a link to disease, to the  
20 very, very safe, century-old system for water  
21 delivery that these water tanks have and the federal  
22 guidance, which is inspection every three to five  
23 years, we really think that as a public health matter  
24 the council, the administrative code, and the various  
25 regulations have this properly calibrated.

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2           CHAIRPERSON LEVINE: And just to clarify,  
3 if someone does say, hey, my water, the water coming  
4 out of my faucet is either tastes, smells, or looks  
5 funny, does someone go out and look at the tank?

6           CORINNE SCHIFF: Um, so, tastes, smells,  
7 looks funny, the 311 calls that will be routed to us  
8 are those where there's a health concern, so I think  
9 in the way that you've described that complaint that  
10 would be a DEP complaint. I'll tell you that when we  
11 get complaints we follow up on all of those. A  
12 complaint like this would probably be addressed by  
13 somebody running their water for a little while.  
14 That sort of thing can happen when there is  
15 disruption in the pipes. It loosens some sediment.  
16 We follow up with the complainant, if it's a  
17 complaint that comes to the health department.  
18 Should we in that consultation feel that there's a  
19 need for us to go to that apartment and do an  
20 inspection we would do that. We don't always need to  
21 do that. We frequently can resolve that with a  
22 conversation with the complainant.

23           CHAIRPERSON LEVINE: Do you know out of  
24 the hundred and fifty or so 311 calls last year how  
25 many prompted you to inspected the tank?

1  
2           CORINNE SCHIFF: I don't have that  
3 number, and I want to just be clear that our  
4 inspection may not be an inspection of the tank. We  
5 may be going to that apartment to see what the issue  
6 is, but it's very, very unusual, I would be surprised  
7 if we, well, we'll get the numbers for you. I don't  
8 have that with me. But most of the time these can be  
9 resolved in conversation with the complainant.

10           CHAIRPERSON LEVINE: OK. In Commissioner  
11 Daskalakis' comments on Intro 1157 you pointed out  
12 that a concern with New York State certification  
13 referenced in the bill, this is the bill describing  
14 who works, who can do this work on these tanks, and I  
15 just want to understand this. Is that related to the  
16 DEP rules about applying insecticide? Are you saying  
17 that therefore it's too lenient because it offers  
18 another way in? I didn't understand your objection  
19 on that bill.

20           CORINNE SCHIFF: There are two things  
21 that we want to work with you on to make sure that  
22 we're not incorporating inapplicable requirements.  
23 The state certification doesn't apply to this context  
24 and the health department right now has, we already  
25 permit those who will paint and clean the water tanks

1  
2 and those requirements are a little bit different.  
3 They are to be either a master plumber or to have our  
4 permit. So we just want to make sure that we're  
5 aligning everything correctly, incorporating all the  
6 right requirements. We're supportive of the bill, so  
7 I think it's just a little, I think it will be easy  
8 for us to resolve.

9 CHAIRPERSON LEVINE: OK. Thank you very  
10 much, Commissioners, for your testimony today, and we  
11 look forward to continuing working with you on this  
12 critical issue. And I'd like to call up our next  
13 panel, which includes Eric Goldstein of the National  
14 Resources Defense Council, Jackie Gallant, also of  
15 the NRDC, Terence AKA Terry O'Brian of the Plumbing  
16 Foundation, and Deputy Borough President of the  
17 Bronx, Marricka Scott. [pause] I just want to remind  
18 folks if there's anyone else who wanted to testify  
19 you need to fill out one of these appearance cards,  
20 slips. OK. Mr. Goldstein, do you want to kick us  
21 off?

22 ERIC GOLDSTEIN: [INAUDIBLE]

23 CHAIRPERSON LEVINE: By all means. That  
24 would be Jackie, yes.

1  
2 JACKIE GALLANT: Good morning. My name  
3 is Jackie Gallant and I'm here on behalf of the  
4 National Resources Defense Council. As you probably  
5 already know, the NRDC is a national nonprofit legal  
6 and scientific organization that has been active on a  
7 wide range of environmental health, natural resource  
8 protection, and quality of life issue around the  
9 world and right here in New York City since the  
10 organization was founded almost five decades ago.  
11 Over the years, one of our top priorities has been to  
12 safeguard drinking water quality, both nationally and  
13 in New York City. New York City has more than ten  
14 thousand rooftop drinking water tanks. For millions  
15 of New Yorkers who reside or work in multistory  
16 buildings rooftop water tanks are the final stop in  
17 the journey of water from distant reservoirs to  
18 kitchen and bathroom taps. Thus, the city's  
19 substantial effort to safeguard water quality in our  
20 upstate reservoirs is jeopardized if we fail to  
21 include rooftop water tanks under the city's  
22 protective statutory umbrella. Unfortunately,  
23 investigations conducted in recent years have raised  
24 serious questions registering the physical condition  
25 of some rooftop tanks and the quality of water within

1  
2 them. According to a 2015 *New York Times* article,  
3 many water tanks have thick layers of muddy sediment  
4 and conditions that are ripe for the growth of  
5 potentially dangerous microorganisms. In a May 2018  
6 follow-up story in *City & State New York* the author  
7 interviewed tank repair workers who described finding  
8 water tanks with drowned squirrels and pigeons, as  
9 well as tanks dirtied from dissolved sediment and  
10 sludge. One federal drinking water official quoted  
11 in the *City & State* article concluded that where such  
12 conditions are present they create real potential for  
13 an increase in endemic disease. To be sure, we  
14 believe that overall New York City's tap water is  
15 safe for consumers, but continued reports on water  
16 tank disrepair and poor maintenance are most  
17 definitely cause for concern. Evidence suggests that  
18 many landlords have not been complying with the water  
19 tank laws currently in place. Field investigations  
20 conducted by the Department of Health in 2010, 2011,  
21 and 2012 found that 59%, 42%, and 58% of buildings  
22 visited had no proof that their water tanks had been  
23 inspected in the previous year. A 2014 report from  
24 Public Advocate James reported that a survey  
25 conducted by the city found that 60% of landlords

1  
2 acknowledged that they did not comply with water tank  
3 laws, and the recent *City & State New York*  
4 investigative analysis found that managers of just  
5 3527 buildings with water tanks, an estimated 34% of  
6 the total, provided proof that their buildings had  
7 completed a tank inspection in 2017. Moreover, the  
8 city's statutory and regulatory program that governs  
9 these rooftop water tanks has critical gaps.

10 Although there is no requirement to inspect water  
11 tanks annually, sorry, while there is a requirement  
12 to inspect water tanks annually, there is no across-  
13 the-board requirement to clean water tanks.

14 Available reports, referenced before, underscore the  
15 urgency of the problem. Making matters worse, the  
16 city still lacks essential information about the  
17 condition of water tanks. Many landlords have not  
18 complied with disclosure requirements. Even an exact  
19 figure on the number of city-wide water tanks is  
20 apparently not available. Tellingly, the mayor's  
21 management report fails to provide any data on  
22 violations, enforcement, or compliance with the  
23 city's water tank laws. The bills that are the  
24 subject of today's hearing are all well-intended. In  
25 particular, we support Intro 1053, which would

1  
2 require water tank inspection companies to submit  
3 annual inspection reports directly to the Department  
4 of Health and Mental Hygiene, Intro 1056, which would  
5 require the Department of Health and Mental Hygiene  
6 to conduct periodic unannounced inspections of water  
7 tanks and to post the results of the inspections  
8 online, and Intro 1169, which would require the  
9 visual documentation of water tanks during  
10 inspections to be submitted to the Department of  
11 Health and Mental Hygiene as a regular part of the  
12 reporting process. However, perhaps the most  
13 important part are a bill that the council could  
14 advance is one that would specifically mandate the  
15 annual cleaning of all New York City water tanks. As  
16 noted above, current law leaves too much discretion  
17 to building owners regarding whether or not to  
18 periodically clean their water tanks. While the  
19 current mandate states that building owners should  
20 rectify unsanitary conditions, it does not directly  
21 require annual cleaning for all tanks, even though  
22 annual tank cleaning is a well-recognized best  
23 practice for water tank safety. Accordingly, we  
24 recommend that Section 104.7 of the New York City  
25 health code be amended to include a provision that

1  
2 states that the owner, agent, or other person in  
3 control of a building shall have the water tank  
4 cleaned at least once annually. The cleaning shall  
5 comply with the requirements provided in Section  
6 141.09 of this code. Buildings that fail to comply  
7 with this shall be subject to civil penalties no less  
8 than one thousand dollars and no greater than five  
9 thousand dollars. The owner, agent, or other person  
10 in control of the building should also be required to  
11 submit proof of annual cleanings to the Department of  
12 Health and Mental Hygiene and retain documentation  
13 for at least five years from the date of the  
14 cleaning. In addition, we urge the council to take  
15 action so as to ensure that the Department of Health  
16 and Mental Hygiene steps up enforcement on building  
17 owners who fail to comply with their statutory  
18 obligations regarding water tank cleaning and  
19 maintenance. Thank you for holding this hearing. We  
20 hope that it will lead to legislative action by the  
21 council to ensure that all New Yorkers are protected  
22 from unsanitary conditions in building water tanks.  
23 At the National Resources Defense Council we stand  
24 ready to work with you to advance this important  
25 public health goal. Thank you.

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2                   CHAIRPERSON LEVINE: Thank you so much,  
3 Jackie, for a very well-thought-out testimony and for  
4 your support of these bills. Eric, did you have  
5 additional comments? Please.

6                   ERIC GOLDSTEIN: Thank you, Mr. Chairman.  
7 I'm Eric Goldstein, New York City Environment  
8 Director at the National Resources Defense Council.  
9 I'd just like to briefly supplement the statement of  
10 my colleague, Jackie Gallant. I must say, we are  
11 surprised by the tone of these hearings and the  
12 testimony of the Department of Health and the  
13 Department of Buildings, especially considering that  
14 these problems have been well known for at least four  
15 years since the *New York Times* original 2014 expose.  
16 We may not have evidence of a public health link  
17 between water tank maintenance and illness or  
18 disease. But that isn't the same thing as saying  
19 there is no such link, or there is no such risk.  
20 Current systems of pharmaceutical reporting which the  
21 city has employed is helpful in identifying  
22 widespread outbreaks of waterborne disease. But it  
23 is hardly a precise indicator of smaller-scale  
24 problems or illnesses experienced by the most  
25 vulnerable people. And even if there is no or little

1  
2 actual threat, the failure of the council to act to  
3 address this problem can serve to undermine public  
4 confidence in the entire water supply system that the  
5 city is working with exceptional diligence to advance  
6 over many years and with expenditures of billions of  
7 dollars. Let's not pretend that when we have water  
8 tanks with holes in them, when we find dead rodents  
9 or feces floating in the tanks that such conditions  
10 don't present at least some risk to health. There  
11 are two major weaknesses here that simply need to be  
12 addressed and resolved by council action. The first  
13 is the failure of all building owners to regularly  
14 clean tanks. Annual cleaning is simply a basic  
15 maintenance good practice and should be required by  
16 council legislation. The second major weakness is  
17 the failure to enforce, and here it simply is very  
18 revealing to hear the lack of activity by the  
19 buildings department in particular on this front.  
20 The council needs to use its various powers, both  
21 budgetary and legislative, to ensure that both the  
22 buildings department and the health department  
23 aggressively enforce these provisions, and several of  
24 the bills mentioned by Ms. Gallant in our testimony  
25 would make advances in that direction. It would

1  
2 indeed be unfortunate if this opportunity to  
3 safeguard the quality and reputation of our public  
4 water supply, which is presented by the hearings that  
5 you are calling, is not taken advantage of and so we  
6 strongly urge you to have this hearing as a  
7 springboard for legislative action.

8           CHAIRPERSON LEVINE: Thank you so much.  
9 And a question to either you or Jackie as  
10 environmental advocates, what would be the  
11 environmental impact if New Yorkers switched from  
12 drinking tap water to bottled water?

13           ERIC GOLDSTEIN: Well, it would be  
14 enormous and widespread. Number one, studies have  
15 demonstrated that bottled water is no safer nor  
16 better regulated than tap water. Second, bottled  
17 water is thousands of times more expensive than tap  
18 water, and so that for New Yorkers who would be  
19 having to spend hundreds of dollars a year on bottled  
20 water, particularly New Yorkers at the lawyer end of  
21 the income scale, this would be an enormous fiscal  
22 burden on them. But most importantly, New York City  
23 has one of the most remarkable water supplies in with  
24 world. People come from all over the planet to visit  
25 the nineteen upstate reservoirs and the water supply

1  
2 system that the city has now spent several billion  
3 dollars protecting since the mid-1990s through cost-  
4 effective pollution prevention and watershed  
5 protection, and so from reservoirs that are 125 miles  
6 away in watersheds west of the Hudson River the city  
7 is taking comprehensive steps to protect, to prevent  
8 pollution from entering that water, to have that come  
9 all the way down through our aqueducts, through the  
10 city's water mains, enter buildings, and then at the  
11 very final stop in the distribution system, the water  
12 tanks on top of buildings, not to have those  
13 facilities secured and protected and well-maintained  
14 would be folly on just so many levels.

15 CHAIRPERSON LEVINE: Agreed, and of  
16 course there's even a greenhouse gas impact in this  
17 debate because bottled water transported by diesel  
18 truck is going to impact climate change in a way that  
19 water transported through the water mains does not,  
20 so.

21 ERIC GOLDSTEIN: Absolutely. Just to put  
22 an emphasis on that point, As you know bottled water,  
23 nearby bottled water comes from states, from Maine  
24 and the west coast and all. Some people, folks are  
25 getting bottled water from Europe or Fiji, all around

1  
2 the planet. That consumes an enormous amount of  
3 energy to get here. Plus you've got the issue of how  
4 you deal with those thousands, millions, of plastic  
5 bottles every year.

6 CHAIRPERSON LEVINE: Right.

7 ERIC GOLDSTEIN: So the environmental  
8 impacts of bottled water use are enormous and our New  
9 York tap water comes 95% by gravity. It's gravity-  
10 fed all the way to our taps, except pumped up to...

11 CHAIRPERSON LEVINE: A miracle of modern  
12 engineering, for sure. Thank you, NRDC, to both of  
13 you. Terry?

14 TERRY O'BRIEN: Good morning, Council  
15 Member Levine. I feel like my thunder is taken out  
16 beneath me by the comments by the DOH and Mr.  
17 Goldstein, because I can reiterate a lot of those  
18 things in my testimony, and I think I shall because I  
19 put time and effort into writing it, so I think I'm  
20 obligated to say it. So, once again, I am Terry  
21 O'Brien. I'm the senior director of The Plumbing  
22 Foundation. The Plumbing Foundation was founded in  
23 '86. It's a nonprofit organization composed of large  
24 and small plumbing companies, both union and nonunion  
25 plumbers, and **joint** associations, supply houses,

1  
2 manufacturers, whose primary goal is to protect the  
3 public and safety of New York City through enactment  
4 and enforcement of safe plumbing and related codes.  
5 Broadly, I would like to mention that the foundation  
6 strongly supports the entirety of today's agenda,  
7 which consists of several, seven pieces of  
8 legislation related to water tanks. In particular,  
9 however, we must single out our support to Council  
10 Member Levine's bill, Intro 1157, which establishes  
11 qualifications criteria for inspection, cleaning,  
12 coating, and painting of water tanks. I must note  
13 that this issue has been surrounding water tanks and  
14 inspection topics at the foundation for decades. It  
15 is not a new idea. It's predated Legionella  
16 outbreaks. This is something we've testified, I  
17 would think, in my twelve years, at least twice.  
18 This goes back, like I said, decades. Important  
19 information - under the current administrative code  
20 owners of buildings with water tanks as part of the  
21 drinking water supply tank must have these actual  
22 inspections at least done annually, a little  
23 different than the health code. In 2017, as  
24 mentioned by DOH, the council passed about Local Law  
25 239, sponsored by then-Council Member, now Speaker,

1  
2 Corey Johnson, and former Council Member Dan  
3 Gorodnick, which codified at DOH law that required  
4 landlords to file water tank inspections with the  
5 DOH. These inspection reports are now required to be  
6 publicly available, which is commendable. The law  
7 also requested DOH to report to the City Council the  
8 estimated number of water tanks in the city, the  
9 number of tanks inspector received by DOH number of  
10 violations issued for noncompliance, and we said we  
11 heard that DOH says they will be probably available  
12 sometime the beginning of next year, which is very  
13 commendable. While we, we commend, like I said, the  
14 efforts of City Council and DOH regarding  
15 transparency of water tank inspection, the  
16 administrative code does not solicit criteria for  
17 when or who qualifies to conduct the inspection of  
18 water tanks. The code merely requires the inspection  
19 must comply with the applicable provisions in the New  
20 York City health code. The health code, however, is  
21 silent about qualified people, persons. I'm going to  
22 skip around a little bit, the testimony will speak  
23 for itself. But regarding before about the cleaning  
24 and inspections of coatings, because water tanks must  
25 be inspected annually in some circumstances that

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2 requires emptying and cleaning water tanks, the  
3 health code, specifically Section 141.09, subsection  
4 B, requires cleaning and coating by a person who must  
5 be either a permit holder or a licensed master  
6 plumber. While there are vigorous qualifications to  
7 be a licensed master plumber in New York City, they  
8 are clearly spelled out in the New York City building  
9 code, it is unclear under the health code what the  
10 qualifications are for holding a permit. According  
11 to the New York City business website, the applicable  
12 requirements are vague. It has a requirement to hold  
13 a permit for cleaning, painting, inspections, and  
14 coating of water tanks. I'm not going to read the  
15 actual phrasing, but it sounds like DOH said there is  
16 room to tighten that up for the sake of public good,  
17 which we happen to actually agree upon. Furthermore,  
18 Intro 1157 requires such persons to have additional  
19 fall protection under OSHA regulations, which I think  
20 everyone agrees safety is paramount to anyone doing  
21 construction in New York City. This requirement is  
22 important to ensure that these people climbing tanks  
23 for inspections are properly train in harness  
24 anchoring and other relevant safety protocols to  
25 protect themselves from dangerous falls. We must

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commend the council for Intro 1157 because it mandates the water tanks are cleaned and inspected by properly trained persons, which will in turn ensure highest level of safety to both consumers and those technicians who work on water tanks. One last note is we had a further discussion which we would like to bring up to the council regarding testing of water. There are a lot of things regarding, we talked about cooling towers, but the vigorous testing of the whole water system, maybe for E. coli, lead, is something we would like to go down this discussion at a later date and time. So, thank you, Council Member.

CHAIRPERSON LEVINE: Yes, the whole category of contaminants is something that we need to pay a lot of attention to, and we appreciate you raising that, and in fact this did come up, to some extent, in our hearing last week on Legionnaire's, which doesn't, Legionella doesn't live in water tanks on roofs because that's generally colder water. Legionella, as you well know, likes warm environments. But there is a problem of Legionella living in the hot water systems and I know that your members are on the front lines in attacking that issue, and one that we care a lot about as well.

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TERRY O'BRIEN: If I can...

CHAIRPERSON LEVINE: Yes, please.

TERRY O'BRIEN: I'd like to reiterate Mr. Goldstein's comments. Known cases, but DOH says a lot different than unknown cases. If you're in a cooling tower system it's readily, it's easy, it's high profile recently. But people get sick all the time. If it's any contamination, I'm not a doctor, but I'm a not a trained professional, but logically speaking you have a contamination in anything that gets to conduct with water in any building source, it's in the whole building. So if it's in the cooling tower, contamination in the faucet, it's not relegated to just that one aspect. It's in the entirety of a building. So people have to think about it. It doesn't happen that often, but much the same case five years ago there wasn't much talk about Legionella in New York City. Lo and behold, that's become a common issue. If we don't address these things before it happens we're going to be having an epidemic of some outbreak regarding water, maybe water tanks, if we don't get this properly address now.

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2                   CHAIRPERSON LEVINE: Yes, indeed. Thank  
3 you again, Terry, for being here and for your  
4 remarks. Madame Deputy Borough President, Scott  
5 McFadden, thank you for coming to visit us, Bronx  
6 Deputy Borough President, please.

7                   MARRICKA SCOTT: Thank you, Chairman  
8 Levine. Good morning. I am Deputy Bronx Borough  
9 President, Marricka Scott-McFadden, and I am here  
10 today to testify in support of legislation introduced  
11 at Borough President Ruben Diaz, Jr.'s behest, Intro  
12 1056, by Council Members Constantinides, Levine,  
13 Torres, Diaz, Ampry-Samuel, and Ayala. This  
14 important legislation will require the New York City  
15 Department of Health and Mental Hygiene to conduct  
16 periodic surprise inspections of water tanks,  
17 publicly post the results of these inspections, and  
18 conduct audits of annual inspection reports. The  
19 goal of this legislation is to prevent against any  
20 contaminants that can make New Yorkers ill,  
21 including, but not limited to, the Legionella  
22 bacteria. Clean water is critical to good health and  
23 it is not something that we can take for granted in  
24 the developed world, even in New York City, without  
25 adequate regulation. We have seen time and time

1  
2 again the health crises in this country where unsafe  
3 drinking water that has ensued from drinking water,  
4 the most notable example being, of course, the  
5 ongoing crisis in Flint, Michigan. I recognize how  
6 important it is that New Yorkers have clean, safe  
7 water and this legislation helps ensure that.  
8 Borough President Diaz has been a champion of safe  
9 water and safe water-based systems dating back to the  
10 Legionella crisis in the summer of 2015, when it  
11 became all too apparent that the system was not  
12 working and needed to be changed. Today we are proud  
13 to continue to deliver for the city on this important  
14 issue through partnerships with our colleagues here  
15 in New York City Council. Water tanks are used in  
16 more than ten thousand New York City buildings that  
17 are typically taller than six stories, according to  
18 official estimates. In recent years landlords have  
19 been required to submit annual inspections to the  
20 Department of Health and Mental Hygiene that the  
21 structures are free of sediment, bacteria, and other  
22 harmful substances. However, fewer than half did so  
23 between 2015 and 2017, the year the requirement  
24 became an official law, according to a May expose in  
25 *City & State* magazine. The existing law also allows

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2 the inspections to be done immediately after the tank  
3 is cleaned, meaning the city does not have a clear  
4 picture of how many dead pigeons, rats, cockroaches,  
5 are floating in the water on any given day. There is  
6 a clear need for further smart regulation and this  
7 bill is just that. I urge the City Council to pass  
8 this legislation into law. Thank you.

9 CHAIRPERSON LEVINE: Thank you, Madame  
10 Deputy Borough President. We are happy that you're  
11 here and appreciate your comments, and certainly we  
12 support the bill that you have introduced with our  
13 colleagues in the council, so thank you.

14 MARRICKA SCOTT-MCFADDEN: Thank you.

15 CHAIRPERSON LEVINE: This concludes this  
16 panel. Thank you all very much. And this concludes  
17 our hearing. [gavel]

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C E R T I F I C A T E

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



Date November 26, 2018