

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
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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

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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

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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

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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

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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

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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

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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

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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

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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

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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.

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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.

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,

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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

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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

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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

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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...

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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.

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

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

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

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

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

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

COUNCIL MEMBER POWERS: All right, OK, 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

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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

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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.

I believe that those violations were for failure to submit the report.

CHAIRPERSON LEVINE: Right.

CORINNE SCHIFF: So we'll have to check.

CHAIRPERSON LEVINE: So it's inconceivable that of the thousands of tanks in the city none of them would be found to have physical defects, just because we know of anecdotal reports and with that many tanks that are that old in this climate it's almost, it strains belief that there would be no defects. So what it sounds, sounds to me like we have a failure to enforce for the physical integrity of the tanks, and a system like this that requires reporting from the public, which is generally not going to go up to the roof of their buildings and look at the tanks is inadequate. So it's therefore going to fall under, I guess fall onto the building owners in their reports that they're submitting, but there you have a conflict in which the people who would potentially be fined are the ones who are being asked to report these defective conditions. Am I correct in everything I'm saying?

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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

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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

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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

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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?

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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

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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.

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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

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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

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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

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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

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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

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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

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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

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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

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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,

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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,

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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

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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