

Testimony of Kathryn Garcia  
Assistant Commissioner of Strategic Projects  
New York City Department of Environmental Protection  
before  
the Committee on Environmental Protection  
of the Council of the City New York  
concerning Intro 1062

250 Broadway, December 10, 2009

Good morning, Chairman Gennaro and Members of the Committee. I am Kathryn Garcia, Assistant Commissioner for Strategic Projects at the New York City Department of Environmental Protection (DEP). Thank you for the opportunity to testify today on Introduction 1062, which proposes to address emissions of chemicals from businesses located in mixed-use buildings. I am joined today by Michael Gilsenan, acting Deputy Commissioner at DEP's Bureau of Environmental Compliance; and Nancy Clark, Assistant Commissioner for the Bureau of Environmental Disease Prevention, New York City Department of Health and Mental Hygiene (DOHMH).

At the outset, I want to recognize the work of this Committee and especially the leadership of Chairman Gennaro in crafting important environmental policies. Today's hearing also allows for a detailed fact finding and a full airing of the complex issues surrounding indoor air quality. Although we understand and support the desire of the sponsors to reduce health risks from fugitive emissions from commercial sources, this legislation would not in our judgment accomplish that and we cannot support it. In my testimony I will offer the reasons behind that judgment after first explaining how

DOHMH and DEP currently respond to concerns relating to indoor air quality.

Improving and protecting indoor and ambient air quality are integral parts of the Administration's environmental objectives. The City's sustainability plan, PlaNYC, adopts the goal of having the cleanest air of any major U.S. city by 2030. The City has led initiatives to reduce emissions from on-road vehicles, marine vessels, construction vehicles, and buildings. The City is also committed to improving indoor air quality and minimizing public exposures to toxics. To that end, the Mayor's Office, DEP and DOHMH appreciate the need to continue to address indoor air quality in New York City and in this case, share the City Council's concern about the impact on public health of emissions into residences from businesses located in the same building.

Indoor Air Quality (IAQ) refers to the condition of air inside a dwelling or other building. Many things can affect IAQ including:

- Indoor pollutants, which can come from a variety of sources such as use of household products (like paints and cleaners), building materials (such as pressboard and carpeting), or co-located business processes (for example, dry cleaners and auto body repair shops);
- Outdoor pollutants, which can get into a building from sources like vehicle exhaust, fires, industrial emissions or chemical spills;
- Poor ventilation, which can lead to a buildup of odors and pollutants, if ventilation is inadequate, and uncomfortable temperature and humidity.

The most common types of chemicals that can escape from dry cleaners, auto repair shops, photo processing and commercial printing are called volatile organic compounds (VOCs). VOCs are chemicals that readily evaporate in air and are commonly used as solvents, paint thinners, adhesives, and cleaners.

Breathing in the vapors is the most common way people are exposed to VOCs. Vapors from businesses, also called fugitive emissions, can enter apartments through many pathways such as common areas of the building, air shafts, ventilation and exhaust systems, through windows and doors, or other penetrations. Chemical spills are also a concern, and may lead to direct exposure to the product or may contaminate the surrounding environment.

VOCs have a variety of health effects depending on the specific chemical, and how much and how long a person is exposed. Effects can range from temporary irritation to eyes and respiratory system to permanent organ damage. Some people may be more susceptible to health effects, such as infants or people with underlying illnesses.

In general, workers have the highest exposures to these chemicals and are at the highest risk for health effects. There are standards and guidelines for chemical exposures in the workplace. These standards are not usually appropriate to apply to residential settings

Acceptable guidelines for residential or community exposures have not been set for most chemicals because of a lack of information on potential health effects associated with these lower level exposures. However, based on

research and recommendations of the New York State Department of Health, the NYC Health Code has set a nuisance level of 100 micrograms per cubic meter for perchloroethylene (PERC) in occupied buildings that are co-located or adjacent to a dry cleaner.

The City's regulation of hazardous substances and its response to their suspected environmental releases, whether in the form of emissions, leaks or spills, are comprehensive and robust. The best way to protect people – both workers and neighbors – from exposures to hazardous chemicals is to prevent exposure in the first place. Accordingly, and as I will discuss in depth, DEP works closely with businesses to assist them in coming into compliance.

DOHMH and DEP also work closely together in responding to complaints of odors and fumes from New York City residents, including those who live in close proximity to businesses that use chemicals. Both agencies are staffed by highly trained professionals including chemists, biologists, environmental scientists, industrial hygienists and toxicologists.

The City's response protocols are also adaptive, allowing for various types of responses depending on site specific factors. We know from our experience that some odor complaints are not life-threatening, such as a commercial kitchen improperly venting its exhaust. Other complaints, such as those connected with dry-cleaning equipment, are much more serious. One of the drawbacks of Intro 1062 is that it sets forth one basic response protocol or procedure and requires that protocol to be broadly used. Reliance on a prescribed, single approach can lead to inappropriate and

costly use of inspectional and sampling resources. Our environmental response agencies currently triage complaints and prioritize response resources for the most hazardous situations such as PERC emissions while less serious complaints require fewer and less-technical inspection resources.

Both DEP and DOHMH respond to complaints from the public about chemical odors, which are generally routed to agencies through 311. The Health Department receives complaints about indoor air quality in residences and other buildings. DEP responds to complaints that are related to impacts from emissions to outdoor air. Any complaint from a caller who uses key words such as “hazardous,” “chemical” or “explosive” is directed to the City’s Emergency Command Center, which mobilizes emergency responders including DEP emergency responders, who are at the site within an hour. Upon investigation, if appropriate, the complaint will be referred for follow-up to DEP’s air inspectors.

The New York City Health Code authorizes the City’s Health Department to respond to complaints about public health nuisances, including indoor air problems and order correction of conditions responsible for the nuisances. The Office of Environmental Investigation (OEI) responds to complaints received by the Health Department.

DOHMH receives approximately 3,000 complaints related to odors, chemicals, and fumes each year; only a small proportion of these complaints are related to co-located businesses. For instance, the Health Department only receives about 50 new complaints each year regarding dry cleaners in co-located buildings.

In response to complaints that identify a possible chemical odor from a co-located business, OEI conducts an inspection of the impacted space. Of the few complaints related to businesses, dry cleaners, nail salons and auto repair are the most common.

For complaints about dry cleaners, OEI takes air samples in at least five locations within a co-located residence. If results are greater than 100 micrograms per cubic meter of air in an occupied dwelling, the dry cleaner is cited in violation of the City Health Code. If PERC levels exceed 1,000 micrograms per cubic meter, the dry-cleaning equipment will be sealed by OEI. In both instances, the case is referred to DEP. DEP evaluates the operation of the equipment, works with the operator to correct the problem and achieve compliance. After the dry cleaner is cleared by DEP, OEI will re-inspect and re-sample for PERC vapors. If PERC vapors continue to be problematic, OEI will order the dry cleaner to perform an independent evaluation of the facility.

OEI also responds to complaints of other possible chemical exposures from co-located business, such as an auto repair shop or nail salon. The OEI inspector will make a visual determination of the potential for chemicals to enter occupied spaces, determine if an odor exists and, when indicated, take air measurements using a device known as a Photo Ionization Detector (PID). The OEI inspector, with the assistance of a PID, will try to confirm the source of chemical and possible pathways for exposure. An order to correct problems may be issued to any party that is responsible for the release of chemicals into occupied spaces. Responsible parties that do not

comply with Health Department orders are subject to NOV's (Notice of Violation) and fines.

In responding to concerns about chemical exposure, it is important to note that New York City possesses extensive information about hazardous materials. This information is contained in the DEP database created pursuant to Local Law 26 of 1988, the New York City Community Right to Know Law, often known just by its initials "RTK". The RTK program requires public and private facilities that use, store, process or otherwise handle any of 3,000 different hazardous substances at or above certain threshold quantities to submit reports disclosing the quantity and location of the substances. During FY 2009 DEP's audit team has conducted 5,386 inspections. Power utilities report separately on hazardous substances used, stored, handled or processed in their 49,413 facilities, which are primarily underground vaults.

In addition to maintaining the RTK database, DEP also responds to a variety of complaints of odors and fumes, apart from PERC complaints generated by dry-cleaning equipment. If a violation of the Air Code prohibitions is found, DEP will issue an NOV answerable to the Environmental Control Board. Penalties start at \$400 for a first violation. Inspectors can issue NOV's on the basis of visual observations and their own sense of smell. As explained earlier, obtaining immediate and direct measurements of odors and air contaminants is not always available for a broad range of offending substances. Fortunately, both DEP and DOHMH inspectors can issue violations and require businesses to correct fugitive emissions based on observations, sense of smell and professional judgment.

Perhaps most importantly, DEP then works with the business owner to reduce or eliminate the fugitive emissions. If the owner does not comply with DEP's recommendations and emissions continue, further enforcement follows until the situation is resolved.

Intro 1062 appears to broaden the regulatory scheme for PERC to other indoor air pollutants likely to occur in co-location situations with other types of businesses. The PERC regulatory structure addresses emissions of a specific, dangerous compound from one type of business frequently located in a residential building. To broadly expand these regulations across a vast array of compounds, not all of which have indoor air quality standards, is a misguided approach to address other potential indoor air hazards.

The bill's legislative findings makes passive reference to printers, nail salons, furniture refinishers, metal platers, photofinishing, shoe repair and auto body repair facilities as potential sources of fugitive emissions. Currently both DEP and DOHMH can and do respond to complaints about these and other co-located businesses and already have the technical expertise to prioritize and evaluate problems and the regulatory authority to take protective action with or without a documented threshold exceedance.

In summary, DEP and DOHMH have in place comprehensive and flexible protocols for responding to complaints about emissions from industrial and commercial sources that are detectable within residences. The new inspection requirements created in Intro 1062 would not supplement or improve the current response protocol; rather, implementation of the



proposed procedures could result in misdirected use of resources, delays in corrective actions, and unnecessary costs.

We appreciate the opportunity to present testimony and to answer questions you may have about our programs.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1062 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 12/10/09

(PLEASE PRINT)

Name: KATHRYN GARCIA

Address: \_\_\_\_\_

I represent: DEP - Assistant Commissioner

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1062 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 12/10/09

(PLEASE PRINT)

Name: NANCY CLARK

Address: DOH

I represent: DOHMH - Assistant Commissioner

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1062 Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Michael Gilsekan

Address: \_\_\_\_\_

I represent: DEP - Assistant Commissioner

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms