



NEW YORK COMMITTEE FOR OCCUPATIONAL SAFETY AND HEALTH

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*New York City Council
Public Safety Committee*

hearing re:
INTRO 650A - PERMITS FOR
BIOLOGICAL, CHEMICAL AND RADIOLOGICAL
DETECTORS

testimony of
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NYCOSH Industrial Hygienist
for
New York City Central Labor Council
and
New York Committee for Occupational Safety and Health
(NYCOSH)

April 29, 2008



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This joint testimony is presented on behalf of the New York Committee for Occupational Safety and Health (NYCOSH) and the New York City Central Labor Council (NYCCLC).

The NYCCLC is a non-profit labor membership organization devoted to supporting, advancing, and advocating for the working people of New York City. The NYCCLC brings together 400 local unions from every trade and occupation in both the public and private sectors of the New York City economy. NYCCLC represents 1.3 million workers, including teachers, truck drivers, operating engineers, nurses, construction workers, electricians, firefighters, retail workers, janitors, train operators, bakers, and many more who are the face of today's workforce.

The New York Committee for Occupational Safety and Health is an independent, non-profit, union-based health and safety organization located here in Manhattan. Over 200 local unions and other labor and community organizations in the metropolitan area are members of NYCOSH, as are several hundred individual workplace safety and health activists, public health professionals and advocates, and concerned citizens. NYCOSH has provided technical assistance and comprehensive training in occupational safety and health to unions, employers, community-based organizations, and government agencies for almost thirty years. NYCOSH has also worked closely with a major medical institution to provide training for hospital-based first receivers of victims of mass casualty incidents that involve the release of hazardous substances and to provide

technical assistance with decontamination procedures and equipment.

NYCOSH and NYCCLC join other organizations, including members of the public health, industrial hygiene, public safety, academic, labor, environmental, and civil liberties communities, and several Manhattan Community Boards, in opposing Intro 650A. This legislation, if enacted, would undermine efforts to protect the public health by creating substantial and unnecessary impediments to the collection of scientific data in both routine and emergency situations.

NYCOSH owns and regularly deploys numerous handheld and portable environmental sampling devices, including devices that detect and measure chemical and biological agents in air, building materials, dust, and water. These chemical and biological agents include particulates, volatile organic compounds, oxygen, hydrogen sulfide, methane and other explosive gases, lead, asbestos, mercury, and mold. NYCOSH borrows or rents additional sampling devices as necessary, including from out-of-town vendors. NYCOSH also lends our equipment to other organizations, including unions and hospitals. NYCOSH may utilize environmental sampling devices according to a predetermined schedule or we may engage in sampling on a rapid response or emergency basis, as we did on 9/11 and other occasions.

We acknowledge that NYPD has a legitimate interest in obtaining timely, credible information that would indicate possible terrorist activity utilizing chemical, biological, radiological, or nuclear (CBRN) agents. However, the scope of Intro 650A goes well beyond that legitimate interest and, even in its current revised form, remains overly and unnecessarily broad.

NYCOSH and NYCCLC oppose Intro 650A for the following reasons:

1. *Intro 650A dangerously confuses criteria for NYPD response to criminal or terrorist activity with criteria for response by public health agencies to public health emergencies.*

The bill would give NYPD responsibility for setting technical standards and alarm levels for environmental monitoring devices capable of detecting CBRN agents, an expertise which NYPD cannot achieve and for which no scientific or regulatory consensus currently exists or is likely to exist in the near future.

Of greater significance, under this bill NYPD would effectively set standards not only for police response to criminal/terrorist activity but also for health-based response. That is, this bill appears to propose a policy of non-response to alarms that indicate possible CBRN activity unless NYPD action levels are met or exceeded.

This would constitute an unwarranted intrusion by NYPD into the field of public health. By comparison, we would not allow non-response by FDNY to a telephone call reporting a smoke condition on the basis that the smoke condition has not been confirmed. FDNY must respond to all alarms, even if they later turn out to be false, so as not to run the risk of overlooking a valid alarm. Potential CBRN incidents similarly warrant rapid public health response and investigation, regardless of whether they subsequently turn out to be false alarms and regardless of whether they warrant police investigation for criminal activity.

2. *Intro 650A criminalizes environmental sampling activities, allows NYPD to halt or prevent environmental sampling operations and to seize sampling instruments without due process, and will have a chilling effect on independent environmental and occupational sampling.*

The bill empowers NYPD to arbitrarily confiscate permitted sampling devices or to require that their use be discontinued. NYCOSH has asked NYPD for the criteria that have been used or would be used to determine if confiscation is appropriate. NYPD has been unable to provide such criteria or to explain the circumstances in which confiscation would occur. Although the current version of the bill exempts certain devices and activities from permit requirements, the onus will be on the person engaged in sampling activities to demonstrate to the police officer that s/he is not required to have a permit, a task that is likely to be difficult if not impossible on the spot.

Such interactions or the fear of such interactions will have a chilling effect on environmental and occupational health monitoring activities unrelated to CBRN weapons detection. The prospect of having to obtain NYPD permission to conduct environmental testing, either via permit or via advisory opinion that no permit is necessary, or to run the risk of seizure of equipment, issuance of an appearance ticket, and subsequent prosecution should a police officer incorrectly

assess activities in the field, will inevitably deter environmental monitoring.

3. *Intro 650A will undermine the ability of even exempt organizations and individuals to engage in environmental sampling.*

This bill will make it difficult or impossible to borrow, lend, or rent environmental sampling equipment, as the permitting process does not anticipate these circumstances. In addition, the threat of confiscation will make it more difficult to borrow or rent equipment.

4. *Intro 650A is aimed at fixing a problem that does not exist.*

The stated purpose of the bill is to reduce “excessive false alarms and unwarranted anxiety.” No data are presented to support the claim of “excessive false alarms,” nor are the types of alarms that are presumed to be excessive defined. No evidence is presented to document “unwarranted anxiety.” It is likely that no such data or evidence exist. Neither press reports nor the scientific literature nor the city’s own web site indicate that “excessive false alarms and unwarranted anxiety” have been or are real-world problems. Certainly, neither was a problem during the City’s most recent catastrophic incidents - the events of 9/11 and the Grand Central asbestos steam pipe explosion.

In conclusion, the goal in science is generally to obtain more data, not less. Intro 650A would significantly impede independent collection of environmental sampling data, as well as the ability of the public to utilize independent data to assess the accuracy of government statements. There is no danger to public safety and health from the acquisition of additional data. There is, however, very real danger to public safety and health in allowing NYPD to set standards that could influence how public health agencies respond to emergencies. NYCOSH and NYCCLC urge this Committee and the City Council to reject this bill in its entirety.

Thank you.