



News

Runnin' Scared

NYPD Seeks an Air Monitor Crackdown for New Yorkers

A city councilman and the cops don't want you to have that Geiger counter without their permission
by Chris Thompson

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Damn you, Osama bin Laden! Here's another rotten thing you've done to us: After 9/11, untold thousands of New Yorkers bought machines that detect traces of biological, chemical, and radiological weapons. But a lot of these machines didn't work right, and when they registered false alarms, the police had to spend millions of dollars chasing bad leads and throwing the public into a state of raw panic.

OK, none of that has actually happened. But Richard Falkenrath, the NYPD's deputy commissioner for counterterrorism, knows that it's just a matter of time. That's why he and Mayor Michael Bloomberg have asked the City Council to pass a law requiring anyone who wants to own such detectors to get a permit from the police first. And it's not just devices to detect weaponized anthrax that they want the power to control, but those that detect everything from industrial pollutants to asbestos in shoddy apartments. Want to test for pollution in low-income neighborhoods with high rates of childhood asthma? Gotta ask the cops for permission. Why? So you "will not lead to excessive false alarms and unwarranted anxiety," the first draft of the law states.

Last week, Falkenrath made his case for the new law before the City Council's Public Safety Committee, where Councilman Peter Vallone introduced the bill and chaired the hearing. Dozens of university researchers, public-health professionals, and environmental lawyers sat in the crowd, horrified by the prospect that if this law passes, their work detecting and warning the public about airborne pollutants will become next to impossible. But Falkenrath pressed on, saying that unless the police can determine who gets to look for nasty stuff floating in the air, the city would be paralyzed by fear.

"There are currently no guidelines regulating the private acquisition of biological, chemical, and radiological detectors," warned Falkenrath, adding that this law was suggested by officials within the Department of Homeland Security. "There are no consistent standards for the type of detectors used, no requirement that they be reported to the police department—or anyone else, for that matter—and no mechanism for coordinating these devices. . . . Our mutual goal is to prevent false alarms . . . by making sure we know where these detectors are located, and that they conform to standards of quality and reliability."

Vallone nodded his head, duly moved by Falkenrath's presentation. Nevertheless, he had a few concerns. When the Environmental Protection Agency promised that the air surrounding Ground Zero was safe, Vallone said, independent testers proved that such assurances were utterly false. Would these groups really have to get a permit before they started working? "It's a good question, and it has come up prior to this hearing," Falkenrath replied. "What I can assure you is that we will look extremely carefully at this issue of the independent groups, and get the opinion of the other city agencies on how to handle that, and craft an appropriate response." And if people use these detectors without a permit, Vallone asked, do we really have to put them in jail? Afraid so, Falkenrath answered.

Councilman John Liu was considerably less impressed. Why, he asked, should a community group like Asthma-Free School Zones have to tell anyone, much less the police department, that they're testing for air pollution? "We have no interest in regulating air-quality sensors around schools," Falkenrath promised. "That's not what this is about."

"But then can't we just get that in the legislation from the outset, as opposed to putting it in the regulations afterwards?" asked Liu.

That, said Falkenrath, was asking too much. "It becomes a very slippery slope, and it would then be possible for many other entities to sort of drive things through that loophole."

And Liu was just the start of the critics' parade. Manhattan Borough President Scott Stringer said the bill aims to fix a problem that doesn't even exist. "I cannot think of evidence or events in our recent past involving false alarms that would create any urgency for this sweeping legislation," he said. "If Manhattanites have any anxiety related to this bill, it is the very marked anxiety that residents have about their air quality."

Dave Newman, an industrial hygienist for the New York Committee for Occupational Safety and Health, claimed that under this law, the West Virginia air-quality experts who tested the air after 9/11 would have been a bunch of criminals. Dave Kotelchuck, deputy director of the New York/New Jersey Education and Research Center, pointed out the absurdity of having police regulate and permit research science. "Think about industrial-hygiene folks who are going from Boston to Atlanta to measure, and have atmospheric detectors," he said. "They land in LaGuardia and JFK. As soon as they land, because possession is a misdemeanor, they've committed a misdemeanor. They're not going to test in New York City; they're just travelling through. But *possession*, which is the way the law has stated it, alone is a misdemeanor—not use. Not attempting to make measurements—just possession. That is just unwarranted."

After an hour of this, poor Peter Vallone looked shell-shocked. He had planned to fast-track this legislation—in fact, the law was supposed to have been voted on last week—but that was before the critics had heard about it. As the opposition mounted, Vallone pulled the proposed legislation just before the meeting's end and agreed to give it a second look. "When I was first given a briefing only weeks ago, the potential problems did occur to me," he said in a later interview. "But the extent of the opposition, on such short notice, was a bit surprising."

But don't think Vallone has given up or anything. He and his colleagues will try to accommodate all the concerns when they redraft the bill, he said, but one way or another, the cops are going to have this new power. "No one's going to be completely happy in the end," Vallone said, "but I think the police department gave some very impressive testimony on the stand, and also expressed a willingness to listen to concerns." After all, if you let research scientists and community groups do their jobs, the terrorists will have already won.