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2 particular section seems to suggest.

3 CHAIRPERSON SPIGNER: Thank you.

4 Council Member DiBrienza.

5 COUNCIL MEMBER DiBRIENZA: Thank you,

6 Mr. Chairman.

7 CHAIRPERSON SPIGNER: Steve DiBrienza.

8 COUNCIL MEMBER DiBRIENZA: Thank you,

9 Mr. Chairman.

10 Commissioner, I just want to make a
11 brief preface to what I hope is a series of
12 questions. I am trying to make sure I understand the
13 comparison between Stan Michels' bill of which I am
14 a co-sponsor and this bill that is being discussed
15 which I do not support.

16 And let me preface it this way: There
17 are five principles that I think should guide our
18 efforts to protect children from lead poisoning, the
19 work practices for removing lead paint must be safe.
20 Lead violations must be corrected as quickly as
21 possible. Older buildings must be presumed to have
22 lead paint. The landlords must continue to inspect
23 for lead paint hazards, as the law now requires and
24 ultimately children who were lead poisoned must
25 continue to have the right to bring civil action

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2 against those who are responsible for their injury.

3 Now, with those five guiding
4 principles, it seems to me the bill we are debating
5 fails on virtually all five.

6 So, let me ask you a couple of
7 things.

8 Is it correct that in this new bill
9 only peeling lead paint or paint on deteriorated
10 surfaces would have to be dealt with, as opposed to
11 all five where any condition that causes exposure to
12 lead, from lead-contaminated dust, soil, paint
13 peeling or present or accessible services, anything
14 that could harm a child would have to be dealt with.

15 This is more narrow; is that correct?

16 COMMISSIONER ROBERTS: I think this is
17 my first interaction with you in this body, and,
18 yes. I have seen enough of it --

19 COUNCIL MEMBER DiBRIENZA: Okay.

20 Currently there is a duty to prevent
21 and correct any lead hazard, new law only peeling
22 lead paint; is that correct?

23 COMMISSIONER ROBERTS: Right. Let me
24 say, again, this gets to the issue that I discussed
25 with Council Member Ognibene, which is that the

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2 approach to remediation is different under this bill
3 which goes to these issues of the surfaces that are
4 deteriorated as opposed to expanded. So, yes, both
5 of those questions the answer is yes.

6 COUNCIL MEMBER DiBRIENZA: Okay.

7 In terms of a kind of investigation
8 and figuring out, our law sets up a situation
9 similar to the window guard law, annual notices sent
10 to tenant, et cetera, this bill uses essentially a
11 model as best it has been analyzed that is similar
12 to the old window guard law which was changed
13 because it didn't work.

14 That is to say, no means to verify
15 whether the landlord will send a notice, no penalty
16 for non-compliance, exempt from liability unless
17 actual notice, not just constructive notice -- so, I
18 just want to make sure that we are in an area that
19 when it comes to that kind of investigation where
20 the law is very different.

21 COMMISSIONER ROBERTS: Yes, I think we
22 can get into that, I think with the exception of the
23 liability questions, which I know you will get to
24 later as well, I am not so sure that that - I mean,
25 I think we could disagree as to the --

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2 COUNCIL MEMBER DiBRIENZA: Not overall
3 liability. That is a slightly different argument.

4 I was talking about just in regard to
5 notices of children and so on.

6 COMMISSIONER ROBERTS: Right and that
7 is I guess what I am saying. I think as it relates
8 to the -- with the exception of the last point, I
9 think that some of the provisions actually work in a
10 similar way.

11 COUNCIL MEMBER DiBRIENZA: Yes,
12 actually, I am not necessarily asking you to defend
13 the bill, which I think is ultimately indefensible.
14 I am asking you to just see if I have the right
15 comparison chart between what I would like and what
16 I see is before us. So we can save some time.

17 COMMISSIONER ROBERTS: No, what I am
18 saying is, I mean your question was old window guard
19 law, new window guard law, requirements, you know
20 annual, the second one so on and so forth. So, I
21 guess with the exception of the last one you
22 indicated, I guess I am not going to concede that
23 there are major differences.

24 COUNCIL MEMBER DiBRIENZA: Okay, fair
25 enough.

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2 In terms of the time that HPD has to
3 act -- is it correct generally, let me try to add
4 several points, I don't have to go through each and
5 every one, that generally the time for inspections,
6 and compliance, the time for issuing violations,
7 inspections and the like, basically all of the time
8 periods have been elongated in the proposed laws
9 opposed to 205?

10 COMMISSIONER ROBERTS: As compared to
11 205, yes. But that was both in our conversations
12 here with this Committee and also separately with
13 the principal sponsor. We indicated that that was
14 our concern.

15 COUNCIL MEMBER DiBRIENZA: Right. I
16 understand you don't have enough inspectors, you
17 don't have enough personnel.

18 COMMISSIONER ROBERTS: Again, as I
19 said earlier this morning, it is making this
20 hazardous condition consistent with other conditions
21 in the Housing Maintenance Code. So we are not
22 comparing it to 205.

23 COUNCIL MEMBER DiBRIENZA: We don't
24 want to work down to a lower standard though
25 necessarily. We may bring those others up if there

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2 are a lot of hazardous --

3 COMMISSIONER ROBERTS: Operationally I
4 think certainly the performance of the Department I
5 think has been good and is improving, and I think we
6 are inside those time frames.

7 COUNCIL MEMBER DiBRIENZA: I
8 understand, but that is, again, not judging your
9 performance, just to sum up, not judging your
10 performance per se, which I do think is better under
11 your tenure, it is whether or not the standard is
12 high enough, even if you meet it. And I don't think
13 you lower it, but rather, you know, (a) you keep it
14 higher, either for this or for all of them, if you
15 really think they all should be treated the same.

16 Lastly, there are a series of
17 requirements regarding schools, day care centers,
18 playground equipment, in other words, facilities way
19 beyond the home, I think it is fair to say 205
20 speaks to some, if not all of them, and this bill
21 speaks and limits it to the home; is that correct?

22 COMMISSIONER ROBERTS: That's correct.

23 COUNCIL MEMBER DiBRIENZA: So, for
24 those whole host of reasons and others, it seems to
25 me that the Administration is missing one point.

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2 Intro. 205 is not a bill out somewhere in the
3 extreme and that what should be juxtaposed to it is
4 another extreme when we somehow find the middle. I
5 submit to you Intro. 205 found the middle and you
6 guys are bringing it to the far end and that is the
7 problem.

8 CHAIRPERSON SPIGNER: All right,
9 Commissioner -- Council Member Freed is not in the
10 room, or is she?

11 COUNCIL MEMBER DiBRIENZA: There are
12 two events going on, Mr. Chairman. As I am stepping
13 down I will try to send her up for you.

14 CHAIRPERSON SPIGNER: One last
15 question then for you, Commissioner.

16 Do you believe it is necessary for
17 landlords of buildings that have been gut rehabbed,
18 walls, ceilings, windows, et cetera, is it
19 appropriate for them, this is a pre-60 building, gut
20 rehabbed, to perform annual inspection of a
21 lead-paint-based hazard, given that no lead-based
22 paint remains in such a building; should we exempt
23 such building from the annual inspection requirement
24 contained in the proposed legislation?

25 COMMISSIONER ROBERTS: Well I think

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2 that it is something that we should definitely look
3 at because there would be significant removal of
4 the, if not complete removal of the conditions that
5 would be of some concern. But I think we would get
6 ourselves into a discussion about definitionally
7 (sic) what would constitute a gut rehab and so
8 forth, but I think we would have to all be
9 comfortable on that.

10 CHAIRPERSON SPIGNER: Commissioner, I
11 want to really apologize. I was distracted.

12 COMMISSIONER ROBERTS: I think it is
13 an important concept that I think we should address.

14 CHAIRPERSON SPIGNER: It should be
15 addressed.

16 Okay, one other question. What is the
17 purpose of the registry of lead-based paint
18 violations, the registry, as it relates to
19 lead-poisoned children? What is the purpose of the
20 registry of lead-based paint violations? Are you
21 aware of that, that there is a registry of
22 lead-based paint violations?

23 COMMISSIONER ROBERTS: In terms of
24 either the -- oh, that is in Local Law 1.

25 CHAIRPERSON SPIGNER: That is in Local

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2 Law 1?

3 COMMISSIONER ROBERTS: Yes, that is in
4 Local Law 1.

5 CHAIRPERSON SPIGNER: Okay.

6 All right, I don't have any
7 additional questions.

8 Council Member Michels, two minutes.

9 COUNCIL MEMBER MICHELS: Yes, Mr.
10 Commissioner, I think one of the problems here, and
11 I don't blame you because I understand your
12 situation, but the fact of the matter is, there is a
13 lot here that people don't understand, the basic
14 concept.

15 One of them is that the reason Local
16 Law 1 had a problem is because of the
17 state-of-the-art at that time believed that the lead
18 poisoning was caused by lead chips. We are now
19 understanding, and it is from the federal
20 government, that it comes from lead dust, which
21 bothers me terrifically because in the proposed
22 legislation we have in front of us, there is not
23 even mention of the word lead dust, which is the
24 state-of-the-art. And we even changed the definition
25 of lead-based paint hazard. The feds define it as

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2 the lead contaminated dust, is one of the
3 definitions. The Health Department rules talk about
4 lead dust tests, but nowhere in this bill do we talk
5 about lead dust. To me that really shows how
6 misunderstood this legislation is, how bad it is,
7 and how the complete concept is different.

8 That is not my question, I just made
9 that statement.

10 This legislation and you keep talking
11 in your statement about interim controls. Now,
12 people should understand that interim controls is a
13 word of art, because you are saying interim controls
14 because you don't want to use the word abatement,
15 and the word abatement is a very significant word
16 and nowhere do we talk about abatement in this bill,
17 as another way of changing things around. Because
18 abatement, as you know, under the federal rules
19 would require a certified worker, and that is why
20 you say everything, no matter how terrible the
21 condition is that the inspector finds he cannot
22 issue a lead abatement order, he can only issue an
23 interim control order, which says he doesn't follow
24 the Health Department and EPA rules you have to
25 follow within here.

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2 Now, to me that is so hypocritical
3 and so revealing of the length that has been gone to
4 here to protect the Administration and protect the
5 landlord.

6 Now, I am looking right now at the
7 federal rules, it says projects resulting in
8 permanent elimination of lead-based paint hazards
9 are those that are conducted to response to state or
10 local abatement order.

11 Sir, my question is to you, why do
12 you support a bill that does not permit you to issue
13 a lead, a local abatement order, so that you would
14 have to have a certified worker on a very dangerous
15 condition?

16 CHAIRPERSON SPIGNER: That is your
17 last question, Councilman.

18 COUNCIL MEMBER MICHELS: Yes.

19 COMMISSIONER ROBERTS: You know, I am
20 not aware of any discussions around that particular
21 principal, Council Member --

22 COUNCIL MEMBER MICHELS: You are not
23 aware of it.

24 CHAIRPERSON SPIGNER: Council Member,
25 will you let him respond. Because it is a very long

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2 day. We have got a very long day ahead of us.

3 COUNCIL MEMBER MICHELS: We do.

4 My comment on that is that we have a
5 very important piece of legislation affecting the
6 lead agency, HPD, and this is one of the most
7 important issues --

8 CHAIRPERSON SPIGNER: If you will let
9 him answer --

10 COUNCIL MEMBER MICHELS: And the
11 Commissioner has not had -- they have never had the
12 opportunity with the people who have drafted this to
13 discuss this issue with the Commissioner. That is
14 reason enough why this bill should not be passed and
15 we should delay it.

16 COMMISSIONER ROBERTS: Can I respond
17 to that, because that is not what I said.

18 What I said was that particular
19 technical issue that the Council Member outlined is
20 not an issue that is aware of that has come up in
21 the discussion or negotiation.

22 COUNCIL MEMBER MICHELS: Because I
23 have been there, that's why.

24 COMMISSIONER ROBERTS: I can't speak
25 to where you have been or have not been, but what we

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2 do know is that we have outlined a series of
3 protocols, controls, what process, whatever you want
4 to refer to it as, that I think outlines a manner
5 for performing this work that we are comfortable
6 with.

7 COUNCIL MEMBER MICHELS: All in
8 violation, what I think of the federal rules, which
9 calls for abatements and serious conditions. You
10 have said everything is in interim control, that is
11 what is in this legislation. Why don't we use the
12 word abatement?

13 CHAIRPERSON SPIGNER: Council Member,
14 you have made your point.

15 I don't see Council Member Linares.

16 Commissioner, I want to thank you for
17 your testimony, and we will continue our discussions
18 as we proceed.

19 Commissioner Neal Cohen of the
20 Department of Health, if you will identify yourself,
21 we will be happy to take your testimony.

22 Do you have written testimony, sir?

23 COMMISSIONER COHEN: I am Dr. Neal
24 Cohen, Commissioner of the Department of Health. To
25 my left is Dr. Susan Clitzman, Assistant

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2 Commissioner for Environmental Risk Assessment and
3 Communication.

4 As I have testified before you on
5 previous occasions, we, as a City, have experienced
6 a very dramatic success in reducing --

7 CHAIRPERSON SPIGNER: Are there copies
8 of your statement?

9 COMMISSIONER COHEN: I don't believe
10 so at this time.

11 COUNCIL MEMBER MICHELS: So we don't
12 have copies to follow.

13 COMMISSIONER COHEN: We, as a City,
14 have experienced dramatic success in reducing the
15 occurrence of childhood lead poisoning over the past
16 30 years.

17 In 1970 when the Health Code was
18 first amended to require environmental investigation
19 for the children with certain blood levels and the
20 first lead poisoning control program was implemented
21 at the Department of Health, there were 2,649 newly
22 identified cases at the action level of 55
23 micrograms per deciliter.

24 In 1998 there were 1,074 cases at or
25 above the current action level for environmental

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2 investigation and case management of 20 micrograms
3 per deciliter.

4 Fewer than five percent of these
5 cases had blood levels at the old action levels of
6 55 micrograms per deciliter. In other words, we have
7 managed to reduce the severity of cases by over 95
8 percent.

9 The incidence in severity of
10 childhood lead poisoning continues to decline each
11 year. Just since 1994, the number of newly diagnosed
12 cases declined by almost 50 percent. And as the
13 City's public health leader, it is my responsibility
14 to continue on this well-established course.

15 Last December I testified before this
16 Committee and expressed my deep concern that the
17 NYCCELP Court decisions would set us back.

18 We discussed the urgency of updating
19 the current law enacted in 1982 to reflect new
20 scientific evidence and new technology available
21 since the law was enacted.

22 At that time I shared with you my
23 conviction that the Court's interpretations of the
24 law, which requires the disturbances on intact paint
25 would create new lead paint hazards. Such a policy

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2 is inconsistent with the National Consensus on Lead
3 Poisoning Prevention and tragically could lead to a
4 new wave of lead poisoned children in New York City,
5 diminishing the dramatic progress in reducing lead
6 poisoning which has been made over the past three
7 decades.

8 A tremendous amount of work has been
9 devoted to this very difficult issue of childhood
10 lead poisoning prevention. A bill has been crafted
11 that represents an incentive-based and workable
12 approach to reducing lead hazards and contains many
13 important advances over the existing legislation.

14 Most importantly, from a public
15 health perspective, it incorporates many of the key
16 principles of a responsible health-based approach
17 that I discussed in my testimony last December.

18 I would like to briefly outline what
19 I believe to be some of the many important
20 improvements which this bill would engender in the
21 City's childhood lead poisoning prevention program.

22 The proposed new law updates outdated
23 standards, it defines lead-based paint as 1.0
24 milligrams of lead per square centimeter or greater,
25 modernizing the antiquated standard of 0.7

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2 milligrams per square centimeter in Local Law 1.
3 This definition is consistent with federal
4 guidelines and state regulations.

5 The proposed law also represents a
6 more accurate scientific approach to testing. It
7 provides for lead paint testing based on a mass by
8 area measurement of lead that is milligrams per
9 square centimeter.

10 In the past, lead paint testing could
11 also be based on a mass by weight measurement or the
12 percent of lead by weight. This required that paint
13 chips be collected and submitted to a laboratory for
14 analysis. Taking chips from an already deteriorated
15 component causes even further destruction to its
16 service and increases the potential for young
17 children to be exposed to a lead hazard if lead is
18 present.

19 The proposed changes will reduce the
20 hazards created by removing paint chips. The
21 proposed law requires that more accurate equipment
22 be used when testing for lead-based paint.

23 For example, correcting for substrate
24 bias, that is elements in building material that can
25 distort test results.

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2 The proposed law addresses the most
3 critical lead-based paint hazards, namely lead-based
4 paint that is peeling on a deteriorated or on a
5 deteriorated subsurface in multiple dwelling units
6 in which a child under six resides.

7 The peak age for childhood lead
8 poisoning is between one and a half and two and a
9 half years of age. Older children generally outgrow
10 the hand-to-mouth behavior that puts them at risk
11 for lead poisoning, unless they have pica or
12 developmental disabilities.

13 Focusing on hazards in multiple
14 dwelling units in which a child under six resides,
15 will lead to more effective enforcement by enabling
16 the private and public sectors to concentrate the
17 expenditure of scarce housing and maintenance
18 resources most appropriately.

19 The proposed language also addresses
20 the major concern we had with the course
21 interpretations of the current law that would
22 require the abatement and disturbance of intact
23 paint which would create unnecessary dust and
24 potential exposure that experience has shown will
25 increase the incidence of lead poisoning among

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2 children.

3 This proposal requires many measures
4 for safety, correcting peeling paint and minimizing
5 and controlling lead-containing dust.

6 If enacted these amendments will
7 require that for the first time safe work practices
8 followed by an owner fulfilling the duty to correct
9 lead-based paint hazards, even before a violation
10 has been issued by HPD, the prescribed safe work
11 methods are intended to minimize the creation of a
12 lead dust and debris by prohibiting unsafe work
13 methods such as dry scraping and dry sanding.

14 The bill requires that safer methods
15 using a scraper and water mister to remove paint be
16 used. As part of the correction, deteriorated
17 subsurfaces must be repaired and all doors,
18 including cabinet doors and windows must be adjusted
19 to assure that no painted surfaces bind.

20 Where practicable, the work area
21 would have to be sealed off to restrict access.
22 Objectives on floors in the work would have to be
23 covered, work materials would have to be safely
24 stored, and any dust and debris would be removed and
25 the work area surfaces thoroughly cleaned by washing

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2 with a detergent solution or HEPA-vacuuuming.

3 The proposed law will also reinforce
4 and support the voluntary efforts of owners to
5 comply quickly and consistently with their duty to
6 maintain lead-based paint in good condition and to
7 repair deteriorated lead paint conditions.

8 It creates an explicit duty of owners
9 of multiple dwelling units before 1960 to determine
10 if a child under age six resides in the dwelling
11 unit and to inspect for and repair peeling paint on
12 a regular basis. A process encompassing notification
13 to tenants and annual inspections will create a
14 reasonable method for owners to know if resident
15 children are at risk, and to constantly monitor
16 potential risks.

17 This process also provides incentives
18 for landlords to act quickly and responsibly to
19 correct problems before government involvement, and
20 thus hold the promise of greatly reducing the number
21 of lead exposures and the length of time a child may
22 be exposed while such a hazard exists.

23 This preventive strategy is further
24 strengthened by imposing an explicit duty upon the
25 owner to repaint, repair peeling paint and

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2 deteriorated subsurfaces and attend to other
3 potential risks during each vacancy.

4 The law for the first time creates
5 mandatory time frames for inspection, we didn't have
6 that before, owner compliance and enforcement,
7 including reinspections by HPD after the owner has
8 certified that violations have been corrected.

9 This will lead to a reduction in the
10 length of time during which children may be exposed
11 to lead hazards.

12 It is important to remember that for
13 the overwhelming majority of residential properties,
14 the risk of lead hazards appear to be quite low.

15 More than 96 percent of these
16 properties have never been issued a lead-based paint
17 violation by the Department of Health. Even in the
18 small percentage of dwellings where violations have
19 been issued, the vast majority have been repaired
20 and there is no evidence of recurrent problems. This
21 bill will encourage responsible landlords to be
22 vigilant in maintaining their properties safely
23 without the need for government intervention, while
24 focusing the City's enforcement resources on a
25 smaller number of properties with significant and

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2 recurring problems that require enhanced level or
3 protection.

4 Finally, and of great importance to
5 enforcement efforts, the legislation clarifies that
6 the Department of Health and the Board of Health can
7 address issues related to environmental
8 interventions where children are lead poisoned as
9 set forth in the Health Code.

10 This authority includes the ability
11 to define lead-based paint and lead-based paint
12 hazards and to order abatements of such hazards to
13 be undertaken within specified time frames and in
14 accord with work practice standards necessary to
15 protect lead-poisoned children. This allows the
16 Department greater flexibility in addressing cases
17 of lead-poisoned children to assure immediate and
18 effective remediation.

19 For the reasons I have mentioned, I
20 believe that the provisions outlined when taken
21 together go a long way in strengthening and
22 improving a current law that has been unenforceable
23 and improperly crafted, according to current
24 scientific knowledge, and a long way in reducing and
25 removing lead-containing paint chips, as well as

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2 lead dust.

3 Thank you.

4 CHAIRPERSON SPIGNER: Thank you,
5 Doctor.

6 What are your Department's, the
7 Department of Health's expected costs associated
8 with enforcing the rules and regs that are being
9 established under this legislation?

10 COMMISSIONER COHEN: We will have to
11 get back to you.

12 CHAIRPERSON SPIGNER: As it relates to
13 the rules and regs, prior to you appearing, issues
14 were raised surrounding a clearance test to
15 determine the efficacy of the remediation.
16 Specifically what is your opinion on the use of dust
17 wipe test to clear work areas in residences for
18 occupancy after interim controls have been performed
19 on lead-based paint hazards?

20 COMMISSIONER COHEN: Councilman, I
21 want to be very clear, that in my view we must
22 ignore the dangers of lead-contaminated dust. We
23 know now that lead-contaminated dust is the
24 predominant source of lead poisoning, and most
25 likely the best predictor of children's risk. And

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2 there are studies at the federal level that confirm
3 that preparation work for paint repair does
4 frequently generate high levels of lead dust.

5 Even when performed with care by
6 highly trained professionals, repairing peeling
7 paint will often unfortunately still leave dust
8 hazards behind. And because lead dust can be
9 invisible to the naked eye, clearance tests I
10 believe are important to confirm that the work has
11 been done safely. And while wet scraping and wet
12 sanding are beneficial in decreasing work exposures,
13 we believe that they do not have a significant
14 effect on the amount of lead dust generated and they
15 cannot be seen as a substitute for dust clearance
16 testing.

17 In my view, clearance dust testing
18 provides the best quality control check that is out
19 there. It is not a perfect test, it is flawed, there
20 are many challenges to it, but in balance I am an
21 advocate for having a dust clearance test that would
22 allow us to feel comfortable that work is being
23 carried out properly and safely and that does not
24 pose any further significant exposure to lead dust
25 to the children in those apartment units that we are

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2 trying to protect.

3 CHAIRPERSON SPIGNER: What is the
4 estimated cost of that test? Do you have any idea
5 what it costs, in terms of collecting the
6 information and submitting it to credible
7 laboratories for analysis?

8 COMMISSIONER COHEN: We can provide
9 different estimates for you. It is a test whose
10 price we understand have been coming down
11 significantly over the course of years. I don't
12 think the test itself is prohibited. There are
13 issues, though, that we would very much welcome that
14 the test be performed immediately upon completion of
15 repair work. I think in fairness both to landlords,
16 the family members, to anyone concerned that we get
17 a result that is a responsible measure of the
18 activity being carried out, that we create an
19 opportunity for dust clearance testing to be carried
20 out immediately upon conclusion of the work. The
21 test itself is not expensive, and in my view,
22 although we need to work up numbers, this will not
23 add a significant cost to the program, whatever cost
24 it adds to the program I think on balance will be
25 well worth the results that we gain from carrying

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2 this quality control check forward.

3 CHAIRPERSON SPIGNER: Well, what
4 happens if the test has failed? Does that mean you
5 have to start again from scratch? In your view?

6 COMMISSIONER COHEN: No, it is not a
7 matter of starting from scratch. You know, we have
8 in this bill some significant definition of safety
9 standards for repair work.

10 For the first time we have safety
11 standards that clarify the work methods, the
12 materials and the clean-up that has to be done, the
13 HEPA-vacuumping or the washing with detergent.

14 CHAIRPERSON SPIGNER: That is already
15 in the bill, right?

16 COMMISSIONER COHEN: That is in the
17 bill. And it is our view that if carried out
18 properly, dust clearance testing will be able to
19 support that the work has been done effectively.

20 In the event that there is higher
21 than acceptable threshold levels of dust, it signals
22 the repair and maintenance staff that they need to
23 go back and do absolutely more careful clean-up.
24 This is a clean-up that doesn't necessarily change
25 the maintenance work, so much as it impacts on the

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2 way they leave the apartment for the tenant.

3 CHAIRPERSON SPIGNER: So the purpose
4 of the task force would be to ensure that when the
5 clean-up is completed, that there is no lead dust to
6 contribute to further contamination. It doesn't say
7 that there will never again be the evidence of lead
8 dust, we know it comes from many sources, but as it
9 relates to that specific job, it should meet some
10 standards of clearance.

11 COMMISSIONER COHEN: We understand
12 that the strongest correlation with future lead
13 poisoning in a child in a unit where repair work has
14 been done would be lead dust level that was
15 established at the site closest to the performance
16 of the repair work.

17 CHAIRPERSON SPIGNER: Let me ask you a
18 question. In terms of the complexity of the test, do
19 we have to have some highly trained technician with
20 various levels of degrees and licenses to perform
21 this test? Or is collecting the dust for the test
22 separate and apart from the laboratory that does the
23 analysis; what level of worker could collect the
24 dust samples, in your opinion?

25 COMMISSIONER COHEN: In my opinion,

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2 and I believe in the opinion of many, many people,
3 the actual methodology to carry out the clearance
4 dust test does not require a high level of
5 professional expertise so much, it does require
6 training in how to carry out the dust tests.

7 We would be able to look at the
8 Department of Health resources or other resources,
9 it is a relatively -- it is not a lengthy period of
10 time that would be required to train people
11 sufficiently. In some municipalities
12 paraprofessional people, community people, are
13 carrying out the tests. Individuals from
14 community-based organizations have been known to
15 carry out the tests. So the test itself does not
16 call upon a level of professional expertise that
17 would not be trainable in a recently short period of
18 time.

19 CHAIRPERSON SPIGNER: Finally, are
20 there any areas within a dwelling unit where
21 landlords and the City should concentrate their
22 inspection efforts, because of the possibility of
23 lead in those areas? Based on your history of
24 violations and inspection results.

25 If you will identify yourself, Ma'am,

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2 we will be happy to have your views on this.

3 ASSISTANT COMMISSIONER CLITZMAN: My
4 name is Dr. Susan Clitzman, I oversee the Department
5 of Health's Lead Poisoning Prevention Program. For
6 the inspections that the Department of Health
7 conducts, primarily in dwelling units where we have
8 identified a child with a blood lead level of 20
9 micrograms per deciliter greater, we do see as a
10 result of the testing that we perform certain
11 components in a dwelling unit tend to have higher
12 levels of lead than other components.

13 I don't know how representative that
14 data is with the housing stock of the entire City.
15 You know, we would be happy to share that
16 information with you.

17 CHAIRPERSON SPIGNER: Okay, I will
18 accept that.

19 All right, my final question relates
20 to the training.

21 Doctor, do you believe that the
22 training, licensing and certification requirement
23 for lead abatement workers, there is going to be a
24 great deal more work out there once we get moving,
25 recently adopted by New York State which goes into

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2 effect in August, do these requirements, in your
3 opinion, adequately acknowledge, adequately address
4 your concerns?

5 COMMISSIONER COHEN: You are asking
6 whether the EPA standards for lead abatement meet
7 the requirement for quality controls and necessary
8 expertise in carrying out lead abatement work?

9 CHAIRPERSON SPIGNER: The New York
10 State requirements.

11 COMMISSIONER COHEN: Yes. Yes, there
12 is no question that lead abatement does require a
13 level of training and expertise in how to carry out
14 the necessary safety standards that are currently
15 under the jurisdiction of the Health Code and the
16 Board of Health, and we continue to be vigilant to
17 maintain our jurisdiction over those activities,
18 because lead abatement in itself is certainly
19 critical to reducing lead poisoning of children in
20 this City and throughout the country and we would be
21 strong advocates to ensure that people who are
22 carrying out lead abatement work have the necessary
23 training, knowledge and tools to do the work well.

24 CHAIRPERSON SPIGNER: Okay, thank you.
25 Council Member Michels, followed by

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2 Council Member Freed.

3 COUNCIL MEMBER MICHELS: Commissioner,
4 I am very glad that you are back and we are able to
5 ask some questions of you. When you finished your
6 statement you said the bill was acceptable to you,
7 and then you now said that you need the clearance
8 test and that it is very important, would you think
9 the bill without the clearance test is an effective
10 piece of legislation?

11 COMMISSIONER COHEN: My comments were
12 to compare this bill with Local Law 1 and I provided
13 you with a number of reasons where there were
14 advances over what I think now was a totally
15 unacceptable bill.

16 And with regard to peeling paint and
17 also the likelihood that we would be able to safely
18 reduce, if not eliminate, high lead dust levels,
19 this bill I believe will accomplish what it sets out
20 to do.

21 My testimony now, I am speaking to
22 the significance of clearance dust testing as the
23 best quality control measure we have.

24 COUNCIL MEMBER MICHELS: Do you think
25 the bill without the clearance test is an acceptable

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2 piece of legislation? Without the clearance. The
3 bill doesn't have a clearance test. You say you
4 should have clearance tests, is the bill acceptable
5 without clearance testing?

6 COMMISSIONER COHEN: The bill has
7 many, many significant qualities that advance it
8 from the current legislation and my view --

9 COUNCIL MEMBER MICHELS: Fine, but is
10 it acceptable without clearance testing?

11 COMMISSIONER COHEN: -- In my view, I
12 am an advocate for clearance dust testing and I
13 stated the reasons why.

14 COUNCIL MEMBER MICHELS: I am just
15 trying to say, because your predecessor Margaret
16 Hamburg testified before this Committee that the
17 bill was not acceptable without clearance testing.
18 And I am just wondering why you would not say the
19 same thing.

20 COMMISSIONER COHEN: Well, my
21 predecessor and I are in agreement about the
22 potential value of clearance dust testing, and I am
23 clear that it provides us with a necessary quality
24 control measure --

25 COUNCIL MEMBER MICHELS: We agree.

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2 COMMISSIONER COHEN: That even with
3 the best trained of individuals who would carry out
4 this work, we know from a number of studies that
5 there remains a risk of lead dust that can be
6 invisible to the eye.

7 COUNCIL MEMBER MICHELS: Right. I have
8 said the same thing.

9 And you are the Chairman of the Board
10 of Health, aren't you?

11 COMMISSIONER COHEN: Yes, I am.

12 COUNCIL MEMBER MICHELS: And you know
13 the Board of Health is the one that issues the Board
14 of Health regulations for the City of New York, and
15 you know that clearance testing is provided for in
16 those health rules, the presently existing enforced
17 health rules provides for clearance testing; isn't
18 that correct?

19 COMMISSIONER COHEN: That's correct.

20 COUNCIL MEMBER MICHELS: Right. And it
21 talks about lead dust.

22 Do you know there is no mention in
23 this legislation about lead dust at all? Absolutely
24 none.

25 You talked about how well thought out

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2 this bill, and the improvements over Local Law 1,
3 you know Local Law 1 and this bill is supposed to be
4 a prevention, right? The whole idea is to get to the
5 child, clean up the problem before you get a child
6 lead poisoning. But yet, something that was in Local
7 Law 1 is not in this draft, which was very
8 important, and that is, when there was a violation
9 placed, to refer that violation over to your
10 Department, the Health Department so you could check
11 out the children. That is not in this bill. That has
12 been taken out of this bill. So, in a very big way
13 we have done away with some prevention. You are not
14 going to see a child until it is lead poisoned. It
15 is horrible. Why is that not in here? Are you aware
16 that is not in here, Commissioner?

17 There is no reference from HPD to DOH
18 about the fact there is a lead hazard violation
19 placed on an apartment?

20 COMMISSIONER COHEN: As you know,
21 Councilman, Local Law 1, which was crafted in 1982
22 was before there was mandatory lead testing for all
23 children in New York City --

24 COUNCIL MEMBER MICHELS: I know that.

25 COMMISSIONER COHEN: -- At the age of

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2 one, at the age of two. So, we currently have in
3 place a significant opportunity --

4 COUNCIL MEMBER MICHELS: A state law,
5 I might add.

6 COMMISSIONER COHEN: State law.

7 COUNCIL MEMBER MICHELS: Right.

8 COMMISSIONER COHEN: -- To reach out
9 and with the compliance from practitioners and from
10 clinics --

11 COUNCIL MEMBER MICHELS: That is not
12 my question.

13 Don't you think --

14 COMMISSIONER COHEN: -- We have an
15 ability to look at which children are at highest
16 risk throughout the City, even if their violations
17 are not coming to the attention of HPD or to
18 landlords.

19 COUNCIL MEMBER MICHELS: Don't you
20 think when HPD has found a lead hazard that you
21 should be able to examine the children in that
22 apartment to see if they were poisoned? Instead of
23 having to wait around, it just so happened you may
24 have tested a kid or somebody is tested, you know
25 about 40 percent of the kids are not tested?

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2 I think you agree with me on this
3 one.

4 Sir, I have another question for you.
5 I will wait.

6 Isn't it true, sir, isn't it true
7 that the paint removal and clean-up protocols in the
8 preconsidered bill, the bill in front of us, for the
9 first 21 days after issuance, are less specific than
10 the Department of Health's existing regulations, and
11 that they give more discretion to the landlords? The
12 bill that is presently in front of us? Isn't that
13 true?

14 COMMISSIONER COHEN: The bill lays out
15 safety standards for the conduct of work area
16 preparation, work methods and materials, and clean
17 up that are very, very clearly articulated.

18 COUNCIL MEMBER MICHELS: But they are
19 less stringent than the Department of Health rules,
20 aren't they, sir?

21 You know they don't provide six mil
22 polyethylene plastic to be applied to the apartment.
23 Six mil disposable polyethylene sheeting, that is
24 not provided for.

25 I can go down and spend 20 minutes

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2 reading all of the things that are in the Department
3 of Health regulations, you are the Chairman, they
4 were issued under your auspices, that are not in
5 this bill. Isn't that true?

6 So, you are supporting a bill that
7 goes against the regulations that you as Chairman of
8 the Board of Health have promulgated.

9 Do you find that acceptable?

10 In your considered medical opinion,
11 sir, do you find that the health regulations or the
12 language in this bill are more protective of
13 children who are lead poisoned?

14 CHAIRPERSON SPIGNER: That is your
15 last question, Stanley.

16 COMMISSIONER COHEN: Well, I spoke to
17 the success of the lead poisoning and prevention
18 program. I do think this bill provides a sensible
19 and enforceable approach to being able to carry the
20 program forward in a very significant way. So that
21 there are a specific duty for landlords to carry out
22 inspections that doesn't exist now so that the very
23 high safety standards that are articulated in the
24 Health Code would not be required to be enacted as
25 frequently as they are, because we would have

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2 ongoing better maintenance and repair than we
3 currently have. And, sir, I do think that is an
4 advance, and I think that we will see fewer less
5 poisoned children as a result of that, and the
6 Department of Health will continue to work with HPD
7 to make sure that apartment units where children are
8 living where there are violations will have a full
9 opportunity, we will look at the linkage with
10 primary care health provider, we are moving into a
11 Medicaid Managed Care environment and where one
12 million and several hundred thousand children will
13 be --

14 COUNCIL MEMBER MICHELS: I think you
15 have answered my question by not answering it.

16 CHAIRPERSON SPIGNER: Thank you,
17 Doctor.

18 COUNCIL MEMBER MICHELS: Can I ask one
19 other question?

20 CHAIRPERSON SPIGNER: No, no. Council
21 member, you are out of order.

22 COUNCIL MEMBER MICHELS: Why do you
23 use the word abatement in your statement --

24 CHAIRPERSON SPIGNER: Council member.

25 COUNCIL MEMBER MICHELS: And there is

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2 no mention of abatement in this law? And you know
3 abatement calls for a certified worker and there is
4 not a word in this legislation that calls for an
5 abatement; how can you sit there and do that?

6 CHAIRPERSON SPIGNER: All right, thank
7 you.

8 Thank you, Council Member.

9 Council Member Freed.

10 COUNCIL MEMBER FREED: Thank you.

11 Commissioner, how long does it take
12 for a child to be lead poisoned?

13 COMMISSIONER COHEN: It can be very
14 quickly.

15 It depends upon the amount of
16 exposure, the amount of lead, whether it is chips,
17 peeling paint, lead dust. So, you can have very high
18 levels occurring very quickly, or it can be very
19 gradual over an extended period of time.

20 COUNCIL MEMBER FREED: Well, in a case
21 where it has already been discovered that you have
22 peeling paint where a child is capable of getting to
23 that peeling paint where there is lead dust around,
24 how long should that child continue to be exposed to
25 that potential lead poisoning or continual lead

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2 poisoning before the City actually moves in and does
3 something about it?

4 Do you think it is appropriate to
5 wait 20 days?

6 COMMISSIONER COHEN: There is no
7 question that from the public health perspective the
8 quicker the better. There is no scientific data,
9 Councilwoman, that I can give to you that would say
10 if we get to it within six days, 15 days, 20 days,
11 we will see different outcomes. There is no
12 question, though, that we encourage there to be a
13 rapid response -- we encourage our sister agency,
14 HPD, to be able to address and use its resources as
15 they can to shorten the time frames once these
16 violations have been cited to carry out
17 reinspections, so that we minimize any opportunity
18 that children would have to have continuing exposure
19 to lead.

20 COUNCIL MEMBER FREED: Right. But on
21 the other hand, I have already asked the
22 Commissioner of HPD why these standards in this bill
23 are actually less than the ones that they previously
24 recommended.

25 I mean, this bill basically says it's

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2 all right, once you discover there is a violation,
3 that it is all right to continue to expose children
4 for potentially months. In fact, if you have a
5 recalcitrant landlord, you could go for 60, 70, 90
6 days, maybe even more.

7 COUNCIL MEMBER MICHELS: Two-hundred.

8 COUNCIL MEMBER FREED: Two-hundred.

9 How can that be doing the right thing by the
10 children of this City, how can we -- as responsible
11 individuals, how can we allow this sort of condition
12 to exist when the condition is there, when we know
13 it is there, and we do nothing about it. How is that
14 responsible and how is that fulfilling your job to
15 protect the children of this City?

16 ASSISTANT COMMISSIONER CLITZMAN: If I
17 could just respond. We certainly share your concerns
18 about wanted hazards to be corrected as quickly as
19 possible, but in our experience we also see that
20 there are many things that can be done to reduce
21 children's exposure, such as working with families
22 to educate them about the risks.

23 COUNCIL MEMBER FREED: Please don't
24 put more of the onus on the tenants. I mean, they
25 basically cannot go out and clean up and cannot

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2 paint and cannot take care of their apartments. They
3 are prohibited by law, it has to be done by the
4 landlord.

5 ASSISTANT COMMISSIONER CLITZMAN: We
6 aren't disagreeing with anything that you are saying
7 or saying that education should take the place of
8 addressing the hazard and correcting the violation,
9 what I am saying is that we have seen that education
10 is extremely effective in reducing children's blood
11 lead levels, that when you tell parents, and you
12 educate them to wash their children's hands
13 frequently, stay away from the areas.

14 COUNCIL MEMBER FREED: Excuse me. If
15 you are living in an area where there is lead dust
16 all around you can wash their hands, you probably
17 can't wash their lungs.

18 The only way to get rid of it is to
19 guarantee that someone goes in there and cleans it
20 up immediately, and you have to have proper testing
21 afterwards.

22 I mean, isn't it true, as Stanley
23 pointed out, the regulations in this bill and the
24 protocols are actually less specific than the ones
25 that you have recommended. Isn't it also true they

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2 are less stringent than the federal HUD guidelines
3 for lead paint removal? Why can't we comply with
4 that?

5 How do we get away with this where we
6 continue to weaken the standards? I am sympathetic
7 with landlords who may have actually made an effort
8 to try and clean things up, but quite frankly, from
9 what I have observed and from what I have seen, too
10 many of them wait too long, they take too long and
11 they will fight it to the last day before they
12 actually take any steps.

13 And even then, as Commissioner Cohen
14 pointed out, it is very difficult to do proper lead
15 removal. I won't even say abatement. But who
16 oversees that the proper treatment is done?

17 I have seen too many instances where
18 unqualified people, in many cases they don't even
19 know that working with lead go in, some cases they
20 don't even wear masks because whoever is doing the
21 job doesn't have the right certification and yet
22 this bill doesn't talk about abatement, doesn't
23 require certifications, who is going to oversee
24 that?

25 CHAIRPERSON SPIGNER: That is your

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2 last question, Council Member.

3 COUNCIL MEMBER FREED: I didn't get
4 any answer.

5 CHAIRPERSON SPIGNER: I can only
6 guarantee your right to get a question in.

7 COUNCIL MEMBER FREED: All right.
8 Well, I think lack of an answer probably speaks for
9 itself.

10 COMMISSIONER COHEN: I appreciate the
11 concerns that you are raising. I pointed up earlier
12 in my testimony that 98 percent of residential
13 buildings that would be at risk have never been
14 cited for lead violations by the Department of
15 Health.

16 COUNCIL MEMBER FREED: Have they been
17 cited by HPD?

18 Have you done any analysis of when
19 lead poison comes from dwellings where HPD --

20 CHAIRPERSON SPIGNER: You asked for an
21 answer.

22 COUNCIL MEMBER FREED: I am sorry but
23 this is a follow up.

24 Where HPD had previously issued
25 violations for peeling paint or lead paint; has

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2 there been a follow-up on that?

3 How many cases are there of children
4 having been repoisoned?

5 CHAIRPERSON SPIGNER: Council Member,
6 you are being grossly unfair to your colleagues.

7 You can sit here and outshout me, but
8 please don't do that.

9 COUNCIL MEMBER FREED: I just wanted
10 to follow up on his response.

11 CHAIRPERSON SPIGNER: You have a
12 second round.

13 COUNCIL MEMBER MICHELS: I wave my
14 time for her.

15 COMMISSIONER COHEN: Councilwoman, you
16 asked how many children are repoisoned, it is very,
17 very rare. We can get some numbers for you, but I am
18 pleased to say it almost never happens and I think
19 that speaks to the quality of our effort to address
20 lead poisoning control in this City.

21 CHAIRPERSON SPIGNER: Council Member
22 Quinn.

23 COUNCIL MEMBER FREED: That is not
24 what this says.

25 COUNCIL MEMBER QUINN: Thank you.

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2 In response to Council Member
3 Michels' questions you described yourself,
4 Commissioner, as an advocate for lead containment;
5 is that correct?

6 COMMISSIONER COHEN: We were talking
7 about lead dust.

8 COUNCIL MEMBER QUINN: Right. And you
9 described yourself as an advocate for measures which
10 would address and contain --

11 COMMISSIONER COHEN: Of course.

12 COUNCIL MEMBER QUINN: Okay.

13 Recently I know that there have been
14 many public health experts who have reached out to
15 you who based on their knowledge that that is your
16 position as a public health professional have then
17 asked you to take the public position that you would
18 want the definition of lead paint hazard in this
19 bill changed.

20 And since I share your position as an
21 advocate on this issue, I can honestly say I cannot
22 vote for a bill which doesn't have the definition --
23 which has the present definition that this bill does
24 for lead-based paint hazard and that it would have
25 to be changed.

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2 Based on your statement to Council
3 Member Michels, I can then assume, but correct me if
4 I am wrong, that you have the same position that I
5 do that you cannot and will not support a bill that
6 has this definition of lead-based paint hazard and
7 therefore are in agreement with the various experts
8 who reached out to you.

9 COMMISSIONER COHEN: I have stated my
10 position that I do believe that dust clearance
11 testing is the best thing that we have right now, it
12 provides quality control to make sure that the work
13 being done does not leave any lead dust that would
14 pose a significant risk to children living in those
15 units. And I am saying this publicly, I have said
16 this to others before, and I would hope that by the
17 end of the day when this bill is enacted we would
18 see that those standards are met.

19 COUNCIL MEMBER QUINN: Let's just for
20 complete argument's sake, let's go to a place in our
21 minds where that doesn't happen, okay? And I vote
22 no, and shockingly, even though I vote no, the bill
23 gets out of the City Council and it gets to the
24 Mayor's desk, are you as the Health Commissioner
25 going to urge the Mayor not to sign the bill or not

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2 stand with him when he signs the bill, based on the
3 fact that people did not heed your advice as a
4 public health professional?

5 COMMISSIONER COHEN: I have no problem
6 with sharing my views to the Mayor, Councilwoman.

7 COUNCIL MEMBER QUINN: And so will you
8 publicly then as the Health Commissioner not support
9 this bill with this definition if it is passed by
10 the City Council?

11 COMMISSIONER COHEN: I communicate
12 with the Mayor frequently. I let him know my views
13 on public health matters, and I will certainly let
14 him know where I stand on this bill and how I think
15 the bill can be strengthened.

16 What I spoke to in my testimony
17 earlier where I think a number of meaningful and
18 significant advances over what we have today, and I
19 think what we have tomorrow, can be even better.

20 COUNCIL MEMBER QUINN: The
21 Commissioner of the Department of Housing
22 Preservation and Development said that it would be
23 your Department that could best address the
24 weakenings that this bill proposes for protections
25 in common areas; could you please pick up that ball

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2 and run with it?

3 COMMISSIONER COHEN: Well, in our
4 view, common areas of multiple dwellings don't
5 universally pose the same degree of risk as lead
6 paint hazards that are inside multiple dwelling
7 units, especially when you consider that the
8 population at greatest risk are toddlers between the
9 age of one and a half and two and a half. These
10 toddlers would spend generally most of their indoor
11 time inside their homes or apartments, it is our
12 finding that -- no, saying that, common areas should
13 be maintained by owners, but I think we are talking
14 about a bill that is crafted to create priorities,
15 in view of resource issues, and also what our own
16 common sense is regarding where to focus those
17 priorities, and in our view those lead hazards are
18 much greater inside dwelling units so that universal
19 mandates concerning all common areas in our view is
20 not necessary. When HPD finds a lead paint hazard in
21 a common area, where a parent or other guardian
22 might report that his or her child routinely plays,
23 the agency should have the discretion to issue a
24 violation to the owner.

25 COUNCIL MEMBER QUINN: Let me just ask

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2 two things to follow up to that.

3 I think we can all agree that there
4 is more risk inside the apartment than in a common
5 area, but are you saying there is no risk in the
6 common area? Because the bill we are discussing
7 today has no requirements for provisions in the
8 common areas, so I am assuming you are then saying
9 that there are no problems, therefore, no
10 requirements needed.

11 COMMISSIONER COHEN: No, I am not
12 saying that there is no risk. I am talking about
13 prioritizing risk, having a risk-based approach to a
14 bill that will make the activities required and
15 mandated by the bill much more enforceable and
16 likely to occur, than by putting in so many
17 different categories that the bill actually is not
18 carried out responsibly, that it is not enforceable
19 and that we did not meet our public health target to
20 safeguard the health of these children.

21 COUNCIL MEMBER QUINN: But to make no
22 restrictions then because you have been unable to
23 meet some you said, seems like quite -- it seems
24 like we would then say children in this City are not
25 meeting the reading levels we want in our public