

UNITED STATES OF AMERICA

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CHEMICAL SAFETY & HAZARD INVESTIGATION BOARD

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PUBLIC MEETING

+ + + + +

KALTECH INDUSTRIES GROUP, INC.

+ + + + +

TUESDAY

SEPTEMBER 30, 2003

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The above-entitled matter came on for notice, pursuant to call, at 9:30 a.m., in the Sutton Room of the Hilton New York, 1335 Avenues of the Americas, New York, New York, Carolyn Merritt, Chair, presiding.

PRESENT:

- CAROLYN MERRITT, Chairman and Chief Executive Officer
- CHARLES JEFFRESS, Chief Operating Officer
- CHRIS WARNER, General Counsel
- JOHN BRESLAND, Board Member
- GERALD POJE, Board Member
- IRV ROSENTHAL, Board Member
- ANDREA K. TAYLOR, Board Member
- STEPHEN SELK, Lead Investigator
- JORDAN BARAB, Recommendations Specialist

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P-R-O-C-E-E-D-I-N-G-S

1 (9:29 a.m.)

2 MS. MERRITT: Good morning and welcome to
3 this public meeting of the U.S. Chemical Safety and
4 Hazard Investigation Board. I'm Carolyn Merritt and
5 I'm Chairman and CEO of the Chemical Safety Board.

6 With me this morning, our other Board
7 members, I'd like to introduce Dr. Irv Rosenthal, Dr.
8 Andrea K. Taylor, Dr. Jerry Poje, and Mr. John
9 Bresland. Also with us this morning is our General
10 Counsel, Chris Warner, and our COO, Charles Jeffress.

11 And I'd like to welcome all of you here
12 this morning. Also I'd like to welcome those who are
13 joining us on the world wide web through our web site
14 csb.gov. We're being broadcast live through that web
15 page.

16 Right now I'd like to ask anybody in the
17 audience who has a cell phone if you would to please
18 turn it on vibrate or turn it off so that we're not
19 disturbed during these proceedings.

20 Also, I'd like to let you know where the
21 fire exits are. These two doors, if you would head

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1 straight out through the door across the hall, that
2 leads you to the second floor foyer. And the
3 escalators will take you down to the lobby and then
4 out to the main street.

5 The CSB is an independent federal agency
6 that does scientific investigation of chemical
7 accidents that occur at fixed facilities. We
8 investigate these accidents to determine their root
9 cause and to make safety recommendations to prevent
10 this type of accident from happening again.

11 It is not our place here today to place
12 blame or to apportion liability. It is certainly to
13 report the facts as we have investigated and found
14 them in this event.

15 Our subject today is a serious chemical
16 explosion that occurred at the Kaltech Industries
17 Group in the Chelsea District of Manhattan on April
18 25, 2002. The explosion occurred during the middle
19 of the work day and it injured 36 people.

20 The blast occurred in a ten-story
21 building which is mixed use and houses professional
22 offices and service firms as well as Kaltech which

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1 manufactured metal signs and used a variety of
2 hazardous chemicals in that process.

3 Most of the building occupants had no
4 idea about the life-threatening dangers that they
5 faced from activities in the basement of this
6 building where Kaltech Industries stored and handled
7 hazardous chemicals.

8 The explosion raises troubling questions
9 about Kaltech's safety practices and about the layers
10 of governmental oversight that are supposed to
11 protect the public from this kind of hazard.

12 The Chemical Safety Board team arrived
13 shortly after the explosion on April 26th. It
14 included Lead Investigator Steve Selk and Board
15 member Dr. Jerry Poje. On April 15th of this year,
16 the full Board convened here in New York for a half-
17 day public hearing on the accident and its
18 implications to public safety.

19 Neither the U.S. Occupational Safety and
20 Health Administration, known as OSHA nor the State of
21 New York environmental authorities had ever inspected
22 Kaltech despite the company's status as a large

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1 quantity hazardous waste generator. New York City
2 fire inspectors had inspected portions of Kaltech on
3 an annual basis.

4 As we learned from the April meeting, the
5 New York fire codes lack many modern requirements for
6 hazardous material safety such as labeling,
7 submission of chemical inventories, a building safety
8 plan, separation of incompatible materials, and
9 worker training.

10 Public witnesses at the hearing expressed
11 deep concern about the adequacy of governmental rules
12 and their enforcement. We've considered those
13 concerns carefully in crafting the recommendations to
14 be presented today.

15 This is truly a historic opportunity to
16 prevent recurring dangerous chemical accidents. New
17 York City fire inspectors deserve a fully updated
18 fire code and they deserve the training, expertise,
19 and resources to enforce that code.

20 Our meeting today will be divided into
21 three sections. First we'll hear the investigators
22 present their final report and recommendations.

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1 After Board questions, there will be an opportunity
2 for the public to comment. If you wish to comment,
3 please sign up now at the entrance with Ms. Spires.

4 Your comments should be relevant to this
5 case and limited to three minutes. While your
6 comments are welcome and encouraged, we can't take
7 questions for the Board directly or of the staff.

8 At that point, finally the Board will
9 consider and vote on this final report and the
10 recommendations. At that point, we'll adjourn for a
11 live press conference, chaired by Dr. Poje right here
12 in this room. Anyone is welcome to attend that
13 session as well but questions must be limited to
14 members of the press.

15 Like the Board meeting, the press
16 conference will be broadcast live over the internet.

17 With that, I'd like to ask if there are any other
18 Board members who have comments that they'd like to
19 make before we begin. Dr. Poje?

20 DR. POJE: Madame Chair, thank you for
21 that opportunity. I do want to thank you for
22 recognizing that I did start the work as a Board

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1 member in this investigation back in April of 2002.
2 I did work carefully with the staff and the Board
3 throughout this very detailed and exacting
4 investigation.

5 And it is a matter of personal gratitude
6 to serve in this institution in a way that returns
7 service to my native city of New York City. I grew
8 up in Brooklyn and Staten Island and was schooled in
9 Manhattan in the same category as Dr. Rosenthal, both
10 going to New York University.

11 I have brothers and sisters who live in
12 this city and numerous cousins. And I think it is a
13 mark of honor to be able to serve in an institution
14 that would seek to bring the facts of this terrible
15 case to light and issue pathways forward for us to be
16 preventative in any future event. So I'm very happy
17 to be here.

18 MS. MERRITT: Thank you. Well, with that
19 I would like to recognize our Chief Operating
20 Officer, Charles Jeffress, who will introduce the
21 investigative team. Mr. Jeffress?

22 MR. JEFFRESS: Thank you, Madame Chair.

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1 As you mentioned, Board member Poje and Steve Selk
2 were on site of the incident in April 2002. And
3 Steve Selk, as the Lead Investigator, will lead the
4 presentation this morning.

5 I'd like to mention the other folks on
6 the team who have contributed to this report, some of
7 whom will help in the presentation. Steve is the
8 Investigation Supervisor and was the lead, as I
9 mentioned.

10 Other people who participated were Don
11 Holmstrom, Kevin Mitchell, Randy, McClure, Jordan
12 Barab, and Francisco Altemarano. Helping Steve with
13 the presentation this morning will be Jordan Barab.

14 Now just a word about the two presenters
15 if I may. Steve is the Investigation Supervisor for
16 the Chemical Safety Board. He has almost 30 years of
17 chemical engineering experience in the area of plant
18 operations and design and management as well as
19 accident reconstruction.

20 He's held several professional
21 engineering licenses, is a member of the American
22 Academy of Forensic Sciences, the Canadian Society of

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1 Forensic Science, the American Institute of Chemical
2 Engineers, and the American Society of Mechanical
3 Engineers.

4 Assisting him in the presentation is
5 Jordan Barab. Mr. Barab joined the Agency a year ago
6 today as a matter of fact. Congratulations on your
7 anniversary.

8 He's been in the occupational safety and
9 health field for over 20 years, including three years
10 as a special assistant to the Assistant Secretary for
11 OSHA. He directed the health and safety programs for
12 the American Federation of State, County, and
13 Municipal Employees. And has worked at the AFL-CIO
14 health and safety department there.

15 Mr. Selk, if you would begin the
16 presentation?

17 MR. SELK: Good morning, Madame Chair and
18 members of the Board --

19 MS. MERRITT: Excuse me, our monitor is
20 not on here. Can somebody please get our monitor so
21 we can see? Thank you. Go ahead.

22 MR. SELK: -- Mr. Warner, and good

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1 morning to the interested parties and media
2 representatives that are here with us today.

3 My colleague Jordan Barab and I are ready
4 to submit for the Board's the staff's report on the
5 explosion that occurred on April 25, 2002 in a
6 building in Chelsea in Manhattan here in New York
7 City.

8 The report includes recommendations to
9 New York City's administration and agencies, New York
10 State, the Occupational Safety and Health
11 Administration, and to Beyond Signs, Incorporated, a
12 successor company to Kaltech Industries Group, the
13 business where the explosion actually occurred.

14 The recommendations contained in the
15 report have been specifically crafted to help prevent
16 an incident like this from happening again. We
17 believe the recommendations included in the report
18 are both practicable and doable.

19 It's been a year and one-half since the
20 incident happened. And I have some news footage to
21 play to remind us what happened that day. I did have
22 the opportunity to meet with several of the injured

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1 people during the course of the investigation.

2 The explosion in Chelsea caused dozens of
3 injuries. Overall, 36 people, at least 36 people
4 were injured. Some of the injuries were serious.
5 Thirty-one were taken to local hospitals for
6 treatment. And coming so soon after the tragic event
7 of September 11th, the incident caused widespread
8 anxiety amongst city residents.

9 These things alone seem ample
10 justification for making recommendations. However,
11 the investigation revealed at least three additional
12 factors that make the incident a matter of real
13 concern. The most important of these is the
14 consequences could have been worse.

15 The explosion originated in the basement
16 of a building. But the blast traveled up the center
17 hall stairwell, causing it to collapse. That
18 stairwell was the primary means of egress and entry
19 to the basement. Furthermore, the explosion caused
20 parts of the ceiling in the basement to collapse.

21 There was so much debris that the other
22 two stairways from the basement were obstructed,

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1 rendering them unusable, too. The significance of
2 this is that many of the injured were trapped.

3 A firefighter was amongst the first to
4 arrive on the scene. He told me that he had to go to
5 the adjoining building and make his way to the roof,
6 cross from one roof to another, and then descend ten
7 stories in the damaged building to commence rescue
8 efforts.

9 The explosion then precipitated a fire in
10 the basement. Fortunately for those trapped there,
11 only a small portion of the flammable solvents that
12 were actually stored in the basement became involved.

13 And in spite of the explosion damage to the ceiling,
14 the sprinkler system retained its integrity and
15 knocked down the fire.

16 Finally, the investigation revealed that
17 the explosion was a consequence of an unintended
18 chemical reaction. I am aware Madame Chair that
19 mishaps caused by chemical reactions are a matter of
20 particular interest to you and the other members of
21 the Board.

22 In mentioning these things, I don't mean

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1 to understate the impact that the event did have on
2 those who were actually injured. I know for a fact
3 that many of them suffered considerably, undergoing
4 surgery to reset broken bones and healing from burns.

5 But what I do want to emphasize is that
6 they actually could have perished. We need only look
7 back to the tragic events that happened in Chicago
8 and in Rhode Island this past year to remind
9 ourselves how serious fires in buildings can be.

10 The principal means for fire and
11 explosion prevention in buildings is the application
12 of fire and building codes. Therefore, the
13 investigation included a review of the codes that are
14 currently in place in New York City. Other codes
15 such as model fire codes and those in effect in other
16 cities were considered, too. Our findings in this
17 regard are reflected in the report in its
18 recommendations.

19 You will recall, Madame Chair, that the
20 Board met in session here in New York last April. At
21 that time, I reported on the midterm status of the
22 investigation. The Board was advised that the

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1 explosion was the result of inadequate chemical
2 handling practices.

3 At the hearing, you also heard from a
4 distinguished panel of fire code experts. These
5 experts from the National Fire Protection Association
6 and the International Code Council testified about
7 some of the ways that model fire codes, such as the
8 Uniform Fire Code and the International Fire Code,
9 deal with hazardous materials.

10 City officials also testified. Fire
11 department officials stated that model fire codes
12 appear to be more complete in scope and breadth than
13 the city's current fire code.

14 Finally at the hearing, you also heard
15 from concerned members of the public.

16 In a few moments, I'll describe the
17 staff's conclusions about the root and contributing
18 causes of this incident. And then my colleague, Mr.
19 Barab, will go over the specifics of the reports
20 recommendations.

21 Before we do that, let me briefly restate
22 some of the details of the explosion as I described

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1 them last April. The building on West 19th Street
2 held a variety of tenants. There were professional
3 offices on some floors, service firms on others.
4 Kaltech Industries Group was the only manufacturing
5 concern in the building.

6 Kaltech was in the business of making
7 architectural quality metal signs. Panels for the
8 signs were cut from steel, brass, zinc. Then the
9 letters were engraved into the signs by means of a
10 photochemical etching process. And then polished and
11 coated with lacquer or paint.

12 Various chemicals were in use at Kaltech.
13 These included a strong solution of ferric chloride
14 and hydrochloric acid was used to etch the pattern
15 into the signs. Flammable solvents such as alcohol
16 and lacquer thinner were also present as were
17 petroleum mineral spirits. And there was a container
18 of nitric acid.

19 In the course of its day-to-day
20 operations, Kaltech generated hazardous waste. It
21 consisted primarily of paint, dirty solvent, and
22 spent waste-etching solution. The waste was removed

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1 every few months by a licensed hazardous waste
2 transporter.

3 But over time, as the business grew
4 larger, the volume of hazardous waste being produced
5 occasionally exceeded a metric ton per month. At
6 that point, Kaltech had become a large quantity
7 generator as classified by the Environmental
8 Protection Agency regulations. That's a status
9 expected to require a high level of waste handling
10 proficiency.

11 On the day of the explosion, employees
12 were cleaning up. That morning, several drums of
13 waste had been taken to the street level and removed
14 from the building by the hazardous waste transporter.

15 And that proceeded without incident.

16 However, later that morning, further
17 clean up was underway. A container believed to
18 contain waste-etching solution was leaking. The
19 foreman asked the workers to transfer the contents of
20 that container to a 55-gallon drum.

21 The workers proceeded to transfer the
22 contents of that container and about a dozen to 15

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1 others to drums. And they used an electric pump to
2 do that.

3 But the investigation revealed that the
4 workers also transferred over the contents of the
5 nitric acid container. And, in fact, that was the
6 last material to be pumped over. Workers weren't
7 aware that the container held nitric acid because it
8 wasn't labeled.

9 Even then, had it been labeled, they had
10 not received training on the hazards of nitric acid.

11 They were unfamiliar with material safety data
12 sheets. And they spoke many different languages. In
13 such circumstances, it is important for them to have
14 a communication program. But workers at Kaltech had
15 never learned about the information contained in
16 material safety data sheets.

17 I mentioned earlier that the last
18 material to be pumped over was nitric acid. Nitric
19 acid is an extremely reactive substance. It is
20 reputed to be the chemical most often implicated in
21 unintended chemical reactions.

22 A minute or so after the workers finished

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1 pumping the nitric acid to the drum, a noise was
2 heard coming from one of the drums. It started as a
3 hissing sound. It quickly rose to become a roar.
4 Liquid began to spray upwards from the drum.
5 Employees started to flee from the basement. But
6 before many could escape, the drum exploded.

7 Now the basement of buildings is a
8 confined environment. Consequently, when an
9 explosion happens in a basement, the gases produced
10 aren't readily dissipated.

11 The explosion in Chelsea vented wherever
12 it could. It traveled up the center hall stairwell.

13 And that's what caused that part of the building to
14 collapse. It also traveled up an elevator shaft.
15 The walls of the elevator shaft were blown out of the
16 basement, mezzanine, and first-floor levels.

17 Windows shattered all the way up to the
18 fifth floor sending shattered glass onto 19th Street.

19 Large portions of the masonry ceiling in the
20 basement collapsed. And walls on the mezzanine level
21 fell over.

22 Members of the Board, the team has

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1 identified two root causes for this incident. The
2 team concludes that the root case was that Kaltech
3 did not have a chemical hazard training program for
4 its employees as required by federal safety and
5 health standards applicable to businesses that handle
6 hazardous materials.

7 Kaltech never compiled a list of the
8 hazardous materials it had at hand. There were
9 unlabeled containers in the workplace, also contrary
10 to federal standard. And no formal training was
11 provided to employees.

12 A second root cause was that Kaltech did
13 not comply with all of EPA's hazardous waste
14 requirements. Again, training was inadequate.
15 Appropriately trained and overseen workers would have
16 known that waste should have been fully identified
17 and characterized for hazards before they were mixed.

18 Now while the root causes of this
19 accident clearly reside at the firm where it
20 happened, public and workers' safety is also effected
21 by government oversight and enforcement. As there
22 are speed limits and safety standards for motor

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1 vehicles, there are federal, state, and local
2 regulations describing how hazardous materials should
3 be handled.

4 The investigation team recognizes that
5 Kaltech was a small business. And smaller businesses
6 sometimes don't have the resources and the ability
7 for becoming aware of all the practices, codes, and
8 standards they need to adhere to in what is an
9 increasingly complex business environment.

10 The investigation team believes that
11 oversight and enforcement by various government
12 authorities is an important component of public
13 safety. While legal obligations clearly place the
14 responsibility for maintaining a safe workplace on
15 the employer, a vital benefit of enforcement and
16 oversight is the incentive that it provides business
17 to educate themselves.

18 Consequently the staff's report also
19 identifies several contributory causes. These are
20 systems that had they been in place could have served
21 to prevent the incident from happening.

22 First, we note that in New York City, as

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1 is often the case elsewhere, it is the fire
2 department that approves applications for the storage
3 and use of hazardous materials. And it's the fire
4 department that issues permits for these materials.

5 Fees are collected whenever a permit is
6 issued. These funds support the program. Consistent
7 with this authority, the New York City Fire
8 Department's Bureau of Fire Prevention inspects
9 businesses in the city on a regular basis to ensure
10 that those entities are in compliance with the fire
11 code.

12 At this local level, practices for
13 storage and use of hazardous materials are dictated
14 by the code that is in place. The fire code
15 currently in place in New York City is almost 100
16 years old. It probably served the city very well in
17 days past. But it has never been subject to a
18 substantial revision. As such, it doesn't
19 incorporate many recent developments in hazardous
20 material safety.

21 We have identified the outdated nature of
22 the code as a contributing cause of the event. Let

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1 me explain why.

2 Currently, if New York City fire
3 inspectors observe unlabeled chemical containers such
4 as the unlabeled container of nitric acid that
5 triggered this explosion, they have no authority
6 under the current code to correct the situation.
7 Likewise, they can't insure that material safety data
8 sheets are present and available in the workplace.
9 Other fire codes do provide for these measures.

10 Most importantly, the city fire code does
11 not require users of hazardous substances to
12 formulate and submit a hazardous materials management
13 plan for approval prior to introducing them into a
14 city building. Model fire codes such as those from
15 the National Fire Protection Association and the
16 International Code Council are much better in this
17 regard.

18 The importance of the submission of a
19 detailed code compliant hazardous materials
20 management plan can't be overemphasized. When New
21 York City fire inspectors did visit Kaltech, they
22 didn't inspect the operations in the basement. They

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1 didn't know that there was any hazardous operation
2 going on down there.

3 Had the tenant and landlord been required
4 to submit a hazardous materials management plan at
5 the outset, the basement operations would likely have
6 been described in that plan and then fire inspectors
7 would have gone there.

8 Another area that the model fire code
9 speaks strongly to is the importance of separating
10 incompatible materials from each other, materials
11 like nitric acid. The city's building code, which
12 does not generally speak to chemicals, does have a
13 clause that deals specifically with nitric acid.

14 But within the city's fire code, the
15 practice of separating incompatible materials from
16 each other appears only to be required of wholesale
17 drug distribution houses and chemical supply houses,
18 a somewhat archaic concept. But today's incompatible
19 hazardous materials could be found in many
20 workplaces.

21 Another safety system that could have
22 prevented this incident functions at the state level.

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1 New York State's Department of Environmental
2 Conservation is responsible for enforcing hazardous
3 waste regulations. They do conduct inspections of
4 hazardous waste generators. But their resources for
5 doing this are limited.

6 They use a comprehensive checklist during
7 inspections to ensure that waste generators are doing
8 all the things necessary to handle waste safely.
9 It's likely that had Kaltech been inspected by the
10 state, deficiencies in waste-handling practices would
11 have been corrected.

12 The report notes that Kaltech was a
13 large-quantity generator of hazardous waste, defined
14 as one that produces more than a metric ton per
15 month. But Kaltech had never been inspected by the
16 state. Because resources for state inspections are
17 limited, the state has a prioritization program in
18 place for identifying waste generators that pose the
19 highest risks.

20 The current prioritization program is
21 based on the size of the generator, its history of
22 violations, and whether or not it has been inspected

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1 before. Those are all appropriate risk factors. But
2 we've still identified that as a cause that they
3 never got there. And we have a recommendation aimed
4 at them.

5 We've identified a final contributing
6 cause and this one resides at the federal level.
7 OSHA regulations require businesses to have an
8 appropriate hazardous materials communication plan.
9 But OSHA never checked in on Kaltech either.

10 Like the State Department and
11 Environmental Protection, OSHA's resources are
12 limited. And it is unlikely they would ever inspect
13 a business like Kaltech, absent a complaint or some
14 incident. And we have a recommendation that aims at
15 working around this as well.

16 As described earlier, in New York City it
17 is the fire department that holds the authority for
18 issuing permits for hazardous materials. However,
19 the city's Department of Environmental Protection,
20 known as DEP, also plays a role. DEP gathers
21 information on the hazardous materials present in the
22 city through a right-to-know law.

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1 Any entity in possession of hazardous
2 materials is required to self-report annually to the
3 department what their inventories are. And like the
4 fire department, imposes a fee at this time.

5 DEP then compiles all the hazardous
6 materials information that it has into a unified
7 database. And that database is transferred to the
8 fire department who uses it for emergency response
9 purposes. So they know what hazardous materials they
10 might have to contend with in an emergency.

11 This slide describes the process where
12 the user self-reports to the Department of
13 Environmental Protection. Of course, they also have
14 to apply for a permit to the Bureau of Fire
15 Prevention. So we've got information flowing to two
16 places. And that information makes its way to the
17 firefighters.

18 But the information gathered by DEP,
19 which is really separate information, never makes it
20 to the Bureau of Fire Prevention.

21 It seems logical that this hazardous
22 materials information be shared. If the data was

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1 shared completely, it could be useful as a cross
2 reference to ensure that those who had self-reported
3 having materials also would have a permit.

4 When we met recently with the Department
5 of Environmental Protection, they estimated that the
6 city's right-to-know law is actually capturing about
7 50 percent of the hazardous materials believed to be
8 present in the city.

9 Yet when the Bureau of Fire Prevention
10 issues a hazardous materials permit, that information
11 doesn't travel to DEP. DEP would like to have that
12 information.

13 So those are the root and contributing
14 causes as determined by the team of investigators,
15 Madame Chair. I'll welcome any questions you or the
16 other members of the Board may have about the
17 investigation.

18 MS. MERRITT: Yes, at this time, I would
19 open the floor to the Board members. If you would
20 ask to be recognized so we can get that recorded
21 properly. Dr. Taylor?

22 DR. TAYLOR: Mr. Selk, I have a couple of

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1 questions. One is you mentioned that the Kaltech
2 management had not trained its employees on the
3 hazards of the work site. There was no labeling on
4 containers. The workers did not have access to
5 material safety data sheets. Nor did they manage
6 hazardous waste properly.

7 So right off the bat, it sounds like to
8 me there was a blatant disregard for any OSHA, EPA
9 law. Now, when small businesses are set up, like
10 this one, aren't they given information? Does OSHA
11 or EPA provide them with information regarding the
12 rules and regulations that they are required to
13 follow:

14 MR. SELK: I think these organizations do
15 make some attempt to provide information. You know
16 it is available on the internet, for example. But
17 does small business necessarily go looking for it on
18 the internet?

19 DR. TAYLOR: But there's no entity that
20 gives them this information when they are setting up
21 their business?

22 MR. SELK: We didn't find that to be in

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1 place in New York City. And we did note in one other
2 major city, one of the ones that we looked at, that
3 there was a licensing system, a bona fide licensing
4 system in place that I think would more or less force
5 the situation in terms of local compliance.

6 DR. TAYLOR: So there is a licensing
7 system?

8 MR. SELK: Well, there does not appear to
9 be a licensing system for manufacturing concerns in
10 New York City. But we did one in place in one of the
11 other cities that we looked at. We only looked at
12 two or three other cities.

13 DR. TAYLOR: Because I'm still trying to
14 understand, you know, if you are setting up your new
15 business and you know that there are certain
16 requirements under the law -- well, it seems like
17 that somehow this information would automatically be
18 given so that they could understand.

19 MR. SELK: I think, again, it is self-
20 awareness that really sets the system. And that's
21 where government can help by pointing out to small
22 business what the requirements actually are.

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1 DR. TAYLOR: Okay. My second question
2 goes to the large quantity versus the small quantity
3 generator. You said that Kaltech reported that it
4 was a large quantity generator. To whom do they
5 report? And then what happened in the system of
6 identifying Kaltech continually as a small-quantity
7 generator once they became a large-quantity
8 generator?

9 MR. SELK: Well, Dr. Taylor, the
10 investigation found that whenever a generator ships
11 hazardous waste, a manifest travels with the
12 shipment. A copy of that manifest is transferred to
13 the Department of Environmental Conservation, the
14 state offices. And the data from those manifests
15 goes into the state system and that's how firms are
16 identified as being large-quantity generators.

17 Now when we met with state authorities,
18 you know they are picking up many of the large-
19 quantity generators but they're not quite 100 percent
20 there in identify them all. But I think they will be
21 there soon.

22 DR. TAYLOR: So the state is changing

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1 their system for identifying which ones are large
2 quantity versus small quantity?

3 MR. SELK: Well, I think they have a
4 system in place but it may not be 100 percent. But
5 they have the information. And we have a
6 recommendation that suggests something that they
7 could do with that information.

8 DR. TAYLOR: Okay. Those are my two
9 questions.

10 MS. MERRITT: Are there other questions
11 from members of the Board? Dr. Poje?

12 MR. SELK: Steve, I'm very interested in
13 the aspects of fire codes. I've had a chance to
14 review the New York City fire code. And we did
15 receive, as you pointed out, information in April
16 from experts on other codes.

17 A wise sage once told me you've got to
18 plan your plan and then you work your plan and then
19 you follow through if you really are going to
20 succeed. You mentioned model codes having an aspect
21 of a hazardous materials management plan.

22 How fleshed are those provisions in these

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1 model codes? Either the Uniform Code or the
2 International Fire Code?

3 What kind of substance would they have?
4 And how would they educate presumably smaller
5 businesses as Dr. Taylor has referred in what is an
6 appropriate approach for hazardous materials
7 management?

8 MR. SELK: Well, I'm glad you asked that
9 question. Model fire codes are under continuous
10 development. And I was looking this week at the
11 Uniform Fire Code published by the National Fire
12 Protection Association.

13 And it has a very comprehensive
14 requirement for the submission of a plan. The
15 business is going to submit this plan at the outset.

16 The plan contains things like the quantity of
17 material. First, the identification of everything,
18 then the quantity. Where it is, so a site plan is
19 required as is a floor plan.

20 And one has to demonstrate that workers
21 are training in normal procedures and the emergency
22 procedures. You know there should be both, day-to-

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1 day procedures and normal procedures for the
2 materials that are hazardous.

3 The model fire codes have forms, custom-
4 designed forms that are designed to walk the
5 submitter through the process so that the submitter,
6 being the business, picks up on all the things that
7 it is expected to do. Materials are to be classified
8 as to their chemical character and so on.

9 I think one of the interesting things
10 about that system is that the burden is imposed on
11 the private sector to get it done. It's the entity
12 that wants to have the hazardous materials that has
13 to submit the plan. And the plan covers all the
14 things that they should be doing. And that is just
15 not present in the existing New York City fire codes.

16 MS. MERRITT: Are there other questions?

17 Mr. Bresland?

18 MR. BRESLAND: Thank you, Madame Chair.
19 One question again about the fire codes. In the
20 actual report itself, and I don't think you mentioned
21 this this morning in your abbreviated presentation on
22 the report, you talk about New York State having

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1 adopted one of the uniform fire codes. But that
2 doesn't apply to New York City.

3 Can you expand on that a little bit as to
4 why that would be the case? And what would be
5 required for New York State to require New York City
6 to have a similar fire code?

7 I wish I could. I'm not sure why it is
8 that way. You have described accurately, Mr.
9 Bresland, a situation that it was more than ten years
10 ago that New York State adopted the International
11 Fire Code and its provisions for all municipalities
12 in the state. But those with a population of greater
13 than one million were exempted. There is only one
14 with a population of greater than one million and
15 that's this city.

16 I suppose the state could exercise its
17 authority and force the adoption. But my response to
18 that is you really ought to want to do it. And New
19 York City wanted to do it in 1918 when it came out
20 with what was in its day a very fine code I'm sure.
21 But they haven't done it in the 85 years that have
22 gone by since.

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1 So I don't know enough about the
2 governmental process in New York State to
3 specifically answer your question but I think they
4 ought to do it.

5 MR. BRESLAND: Thank you.

6 MS. MERRITT: Are there any other
7 questions? I have one. You mentioned that there are
8 permit fees or fees that are levied for inspections
9 in the city by the fire department. What is that
10 for? And are there other fees that are charged for
11 licensing or inspections for chemical handlers?

12 MR. SELK: In New York City, there is no
13 licensing system per se as we did note there was in
14 place elsewhere. A fee is collected when the permit
15 is issued. When the fire department issues a permit
16 saying okay, you're going to have this quantity of
17 hazardous materials, a fee is levied.

18 It is not a trivial fee. It is a
19 substantial fee. And I mentioned I believe it
20 supports the program. And the program is a program
21 of inspections.

22 So we understand that the Bureau of Fire

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1 Prevention, which is the arm of the fire department
2 that issues these permits conducts in excess of
3 100,000 inspections per year in the city that are
4 related to hazardous materials. And, of course, that
5 is a big program and one that requires funding.

6 But one source of the funding is the
7 permits themselves.

8 MS. MERRITT: Okay.

9 MR. SELK: If not the entire source.

10 DR. POJE: If I could just --

11 MS. MERRITT: Dr. Poje?

12 DR. POJE: -- get one clarification on
13 that very point again? We know from your
14 investigation that the largest -- the entity with the
15 largest reach in penetrating into the community in
16 New York City that they handle hazardous materials is
17 the city's fire department, the Bureau of Fire
18 Prevention.

19 Comparatively speaking, how does that
20 look in relationship to the DEC, the state-based
21 agency that has responsibilities for hazardous waste
22 enforcement and the federal Occupational Safety and

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1 Health Administration which has responsibilities for
2 the administration of the Hazard Communication
3 Standard?

4 MR. SELK: All right. Well, I think the
5 difference, Dr. Poje, is that it is hard for the
6 state to be everywhere. The state programs are not
7 funded to the degree to allow every workplace to be
8 inspected. And neither is the Occupational Safety
9 and Health Administration.

10 And I'm not sure that that is the intent
11 of the legislature in formulating the regulations.
12 These bodies do formulate the regulations. They
13 formulate what the good practice is but their main
14 purpose is not enforcement.

15 You know the difference is that the fire
16 department do get to all these places every year and
17 they are very well positioned to exercise control
18 over the materials and I would suggest that their
19 requirements ought to be no less stringent than the
20 state and federal requirements.

21 MS. MERRITT: How many inspectors does
22 the State of New York have for Manhattan?

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1 MR. SELK: The state has divided the
2 realm into a number of regions. Each region has two
3 inspectors. Region 2, which covers the New York City
4 area and beyond, has two inspectors. They currently
5 inspect I think it is 78 hazardous waste generators
6 per year. They would have to double that number if
7 they wanted to hit all the large-quantity waste
8 generators. They'd have to double their resources.

9 MS. MERRITT: And OSHA, how many
10 inspectors does OSHA have?

11 MR. SELK: I'm afraid I don't know the
12 answer to that question. But as I did say, it is
13 unlikely that OSHA would ever get to a small business
14 like Kaltech. But, again, I emphasize those
15 organizations promulgate standards that describe what
16 business needs to do.

17 And that is one of their primary roles
18 certainly. I mean they do engage in prosecutions.
19 But why not exercise the content of those standards
20 at the local level as well? Because we do have local
21 enforcement, too.

22 MS. MERRITT: Okay, thank you very much.

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1 At this time, I'd like to -- oh, Irv? Dr.
2 Rosenthal?

3 DR. ROSENTHAL: You've known me long
4 enough to call me Irv.

5 MS. MERRITT: Okay, Irv?

6 DR. ROSENTHAL: Just curious, the one
7 difference between OSHA, EPA, and the fire department
8 is, of course, OSHA regulations are designed
9 primarily to protect workers who presumably
10 voluntarily take a job and get some compensation, and
11 have some idea what is going on in the workplace.

12 Presumably the fire department inspects
13 every facility because all of the tenants are at risk
14 and they are at risk by actions that they themselves
15 may be no party to. Am I correct on this score?

16 MR. SELK: I think so.

17 DR. ROSENTHAL: Yes, so that I think
18 there has to be a distinction between those hazards
19 which pose serious risks to what we call other
20 occupants of buildings and facilities and those which
21 pose risks only to the employees of that particular
22 entity. And I just wanted to make that point.

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1 MR. SELK: Well, I think that is a very
2 useful clarification, Dr. Rosenthal. Thank you for
3 that.

4 MS. MERRITT: Thank you. If there aren't
5 any other questions, then at this time, I'd like to
6 ask you to introduce Mr. Barab for our
7 recommendations.

8 MR. SELK: Well, thank you Madame Chair.
9 That's the important part. And Mr. Jeffress already
10 described to you Jordan's background. He's just one
11 member of the team but has participated with us
12 extensively in the development of recommendations.
13 And he'll describe to you the specifics of what we
14 recommend be done to increase the layers of
15 protection in New York City.

16 MS. MERRITT: Thank you.

17 MR. BARAB: Thank you, Madame Chairman,
18 Board members, Mr. Jeffress, Mr. Warner, and members
19 of the public.

20 I'm here to present the recommendations
21 for this report. I will take a moment to explain for
22 the benefit of the public the recommendations

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1 process. Recommendations are the primary tool used
2 by the Chemical Safety Board to motivate
3 implementation of safety improvements and to prevent
4 future incidents that may endanger lives,
5 communities, or the environment. Recommendations are
6 made to businesses, trade associations, labor unions,
7 and other organizations.

8 The CSB's independent accident
9 investigation process identifies trends and issues
10 that may otherwise be overlooked. The CSB not only
11 identifies specific issues that may have prevented
12 this specific incident but also identifies changes in
13 management systems that could prevent other similar
14 incidents as well.

15 In developing this report, the CSB
16 researched issues, consulted with experts on industry
17 best practices, government regulations, and fire
18 codes, and held hearings, as you heard, in the City
19 of New York last April where we heard from city
20 officials, experts on fire codes and hazardous
21 materials management, and members of the public that
22 were effected by this incident.

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1 Recommendations are issued and closed by
2 a vote of the Board.

3 I will now describe the recommendations
4 and I'll read the text of the recommendations. The
5 first three recommendations go to the Mayor and the
6 Council of the City of New York. The three
7 recommendations deal with the revision of the fire
8 code, the safety of buildings with mixed occupancies,
9 and information exchange between the agencies.

10 The first recommendation derives from the
11 conclusion of the report, that unlike model fire
12 codes that are enforced in many cities and states
13 around this country, the 85-year old New York City
14 fire code does not address many recent developments
15 in hazardous materials management. These include
16 chemical identification, labeling and training, and
17 prohibitions against mixing incompatible substances.

18 The Mayor and the City Council have the
19 authority to revise or to issue a new fire code.
20 Therefore, because of the clear gaps in the New York
21 City fire code, we are making the following
22 recommendation to the City and the Council of the

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1 City of New York.

2 I'll read the recommendation:

3 Revise the fire prevention code, Title
4 27, Chapter 4 of the New York City Administrative
5 Code to achieve more comprehensive control over the
6 storage and use of hazardous materials such as nitric
7 acid that could cause a fire or explosion when
8 inadvertently mixed with incompatible substances.

9 Base these revisions on model fire codes
10 such as the International Code Council's
11 International Fire Code and the National Fire
12 Protection Association's Fire Protection Code.

13 Require that all hazardous materials be
14 identified and labeled;

15 That hazardous materials permit
16 applications include a submission of a management
17 plan and an inventory statement;

18 The material safety data sheets be
19 accessible to the workforce;

20 The personnel working with hazardous
21 materials be trained on the hazards and safe handling
22 techniques in languages understood by the workforce;

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1 That incompatible chemicals be adequately
2 separated to improve safety in manufacturing
3 facilities;

4 That New York City fire inspectors
5 receive sufficient training to meet the skills and
6 knowledge to verify code compliance and recognize
7 problems regarding storage, handling, and use of
8 hazardous material.

9 Include in the training hazard
10 communication requirements, identification of
11 hazardous materials storage and use areas, safe
12 storage and handling practices such as the need to
13 separate incompatible chemicals and to limit
14 quantities.

15 The second recommendation to the Mayor
16 and the Council of the City of New York addresses the
17 problem of mixed occupancy buildings. By mixed
18 occupancy, we mean buildings that may have retail
19 establishments, commercial establishments, and
20 businesses with what we call hazardous occupancy,
21 which means businesses that use and store dangerous
22 amounts of hazardous chemicals.

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1 The object of this recommendation is to
2 find a way on a building-wide basis to address the
3 potential dangers presented by the use and storage of
4 hazardous materials in mixed use buildings and to
5 assure the tenants have the information they need to
6 protect themselves.

7 Therefore, we are making the following
8 recommendation to the Mayor and the Council of the
9 City of New York:

10 Amend the New York City Administrative
11 Code, paragraph 27-4267 to require that the owner or
12 other person having charge of a mixed-occupancy
13 building with a hazardous occupancy be required to
14 develop a building hazardous material safety plan and
15 designate a responsible individual to ensure that the
16 plan is implemented;

17 A building hazardous material safety plan
18 -- incorporate information from the hazardous
19 materials management plans, inventory statements,
20 right-to-know facility inventory forms, and fire
21 prevention code permits of any tenants who use
22 hazardous materials;

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1 The building hazardous material safety
2 plan be distributed to all tenants.

3 The third recommendation to the Mayor and
4 the Council of the City of New York addresses
5 information exchanged by the fire department and the
6 Department of Environmental Protection, which
7 administers the New York right-to-know law.

8 As Mr. Selk detailed, the Department of
9 Environmental Protection or DEP gathers information
10 on facilities that use or store hazardous materials.

11 DEP requires submission by these businesses of
12 annual facility information forms.

13 DEP compiles this information on the
14 location, quantity, and identification of hazardous
15 materials and shares this information with the Fire
16 Department of New York. But only with the part of
17 the fire department that is concerned with emergency
18 response, not, as Mr. Selk said, with the Bureau of
19 Fire Prevention, which conducts more preventive
20 inspections as part of their permit process.

21 Therefore, the third recommendation that
22 we are making to the Mayor and the Council of the

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1 City of New York reads as follows:

2 Ensure that the New York City Fire
3 Department and the Department of Environmental
4 Protection establish a program to exchange facility
5 information regarding hazardous chemical inventories
6 to enhance inspection and enforcement activities.

7 Our next group of recommendations go to
8 the New York Department of Environmental
9 Conservation. As Mr. Selk related, the New York
10 Department of Environmental Conservation administers
11 the state's RCRA program. RCRA stands for the
12 Resource Conservation and Recovery Act.

13 RCRA requires businesses to deal safely
14 with their hazardous wastes and requires that all
15 hazardous waste generators properly identify, store,
16 mix, and treat their hazardous waste. RCRA also
17 requires that hazardous waste generators train their
18 workers in safe working procedures.

19 As I said, EPA confers RCRA authority on
20 the states. And in the State of New York, the
21 Department of Environmental Conservation administers
22 the RCRA program

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1 Kaltech, as the report indicated, was
2 never inspected by DEC despite the fact that
3 periodically over the last ten years, Kaltech was a
4 large-quantity generator and the fact that that it is
5 located in a mixed-occupancy building in a densely
6 populated area.

7 As Mr. Selk said, DEC is divided into
8 nine regions throughout New York State. Each region
9 has only two inspectors. That includes Region 2
10 which covers the whole City of New York, all five
11 burroughs of New York. To inspect each large-
12 quantity generator at least once every five years,
13 Region 2 of the DEC would have to double the number
14 of inspections that it does every year.

15 The report, therefore, recommends to the
16 New York State Department of Environmental
17 Conservation that the agency, and I'll read the
18 recommendation, raise the priority of inspections of
19 large-quantity generators located in mixed occupancy
20 facilities within densely populated areas.

21 The second recommendation to the
22 Department of Environmental Conservation addresses a

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1 common theme that we've talked about already of
2 information exchange, in this case provision of
3 Department of Environmental Conservation information
4 from Region 2 to the city Department of Environmental
5 Protection and the Fire Department of New York.

6 I will read the following recommendation
7 to the Department of Environmental Conservation:

8 Share Region 2 data such as the Resource
9 Conservation and Recovery Act by annual report with
10 the New York City Fire Department and the Department
11 of Environmental Protection concerning the identity,
12 location, and hazardous waste inventories of large-
13 quantity generators within the city to enhance
14 inspection and enforcement activities.

15 The next recommendations go to Kaltech
16 Industries Group, Incorporated, and its successor
17 business Beyond Signs, Incorporated. As the report
18 indicated, the root causes of this incident were the
19 failure of Kaltech to implement an effective hazard
20 communication program as well as the failure of
21 Kaltech to implement an effective hazardous waste
22 management program.

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1 The Board, therefore, recommends to
2 Kaltech Industries Group and Beyond Signs,
3 Incorporated that they develop and implement a
4 written hazard communication program that includes
5 the following requirements:

6 Maintenance of a list of hazardous
7 materials used in the workplace;

8 Labeling of hazardous materials;

9 Maintaining and making material safety
10 data sheets available to the workforce;

11 Training of employees on chemical hazards
12 and their safeguards in languages understood by the
13 workforce.

14 Two, implement hazardous waste management
15 practices that include the following:

16 Characterization of unknown waste
17 materials prior to mixing or disposal;

18 Labeling of all waste containers with the
19 words "Hazardous Waste" or any other language
20 necessary to communicate the specific hazards
21 associated with the material; and

22 Implementation of a formal hazardous

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1 waste management training program.

2 Our next recommendations go to the
3 Occupational Safety and Health Administration, OSHA
4 Region II. As the reported stated, Kaltech workers
5 spoke a variety of different languages. In fact, to
6 conduct our interviews, our investigators required
7 the services of translators in Spanish, Polish, and
8 Swahili.

9 Our investigation revealed that none of
10 the Kaltech workers were aware of OSHA's hazard
11 communication standard nor were they aware of role of
12 OSHA in safeguarding workplace safety and health.

13 In order to facilitate communication
14 about safe handling of hazardous chemicals, the
15 report recommends that Region II of the Occupational
16 Safety and Health Administration, and I'll read the
17 recommendation:

18 Disseminate information on the
19 requirements of the hazard communication standard, 29
20 CFR 1910.1200, in the major languages spoken by
21 workers in New York City with limited or no English-
22 speaking proficiency.

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1 I'll go on to the second recommendation
2 to OSHA. As the report indicated, OSHA had never
3 inspected Kaltech. And as the report indicated,
4 absent any major event such as the one that occurred
5 that caused numerous injuries, or absent a fatality,
6 or in the unlikely event in this case of a worker
7 complaint, it is highly unlikely that OSHA ever would
8 have visited Kaltech or a business as small as
9 Kaltech despite the obvious hazards present as well
10 as the low level of compliance with OSHA standards.

11 On the other hand, as the report
12 indicated, the Fire Department of New York conducts
13 frequent inspections in small businesses as part of
14 their hazard permit process.

15 Because the Fire Department of New York
16 is in a position to identify possible workplace
17 safety and health hazards which may be outside their
18 specific jurisdiction, we are recommending a referral
19 process between OSHA and the Fire Department of New
20 York. This would work in the following way:

21 Where the Fire Department of New York, in
22 the course of its regular inspections, happen to

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1 notice there are possible violation notice standards
2 or possible workplace health and safety hazards, they
3 would make a referral to Region II of the
4 Occupational Safety and Health Administration.

5 I will read the actual recommendation:

6 Establish a complaint and referral system
7 with the New York City Fire Department to provide for
8 a coordinated enforcement effort that addresses the
9 following issues:

10 Policy and practice for referring to OSHA
11 possible safety and health violations or unsafe
12 conditions observed by the Fire Department personnel
13 in the course of conducting inspections but outside
14 of Fire Department responsibility;

15 Periodic training programs for Fire
16 Department personnel on how to recognize and refer
17 serious workplace safety and health problems.

18 The report also contains an identical
19 mirror recommendation for the New York City Fire
20 Department, which I will not read.

21 Finally, it is our custom in order to
22 facilitate broad communication of our investigations

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1 to recommend that certain organizations communicate
2 the findings and recommendations of this report to
3 their membership.

4 Because of the significance of the
5 recommendations made in this report, we are making
6 these recommendations to both local and national
7 organizations.

8 The local organizations, in alphabetical
9 order, are the New York City Central Labor Council,
10 AFL-CIO, the New York Committee for Occupational
11 Safety and Health, the New York State Conference of
12 Mayors and Municipal Officials, the Real Estate Board
13 of New York, and the Skyscraper Safety Campaign.

14 The national organizations, again in
15 alphabetical order, are the Association of State and
16 Territorial Solid Waste Management Officials, the
17 Building Owners and Managers Association, the
18 National Conference of Mayors, and the National
19 League of Cities.

20 Board Members, this completes the package
21 of recommendations we are proposing at this time and
22 I would be glad to entertain any questions.

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1 MS. MERRITT: Thank you, Mr. Barab. At
2 this time, I'd like to open the floor for Board
3 members to be recognized with any questions they
4 might have. Dr. Taylor?

5 DR. TAYLOR: Thanks, Jordan, for that
6 presentation. And I really like the extent of the
7 recommendations and where they are going. But the
8 question I have for you as well as for our
9 recommendation staff is now that you've proposed
10 these recommendations, what would be your plan for
11 following up to ensure that these recommendations are
12 implemented?

13 MR. BARAB: Okay, as part of the
14 recommendations process, we work with the
15 recommendations recipient to assist them in adopting
16 the recommendations and closing out the
17 recommendations eventually. We will notify them of
18 the recommendations. We will explain to them what we
19 are talking about. And, again, we'll work with them
20 to comply with our recommendations.

21 DR. TAYLOR: And do we give them a time
22 frame or something?

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1 MR. BARAB: We'd like them to close these
2 recommendations as quickly as possible. We, of
3 course, realize that there are different types of
4 recommendations. In other words, the recommendations
5 that we have to the City Council and the Mayor of New
6 York for a new fire code is a rather large
7 recommendation.

8 Some of the recommendations, for example,
9 to Kaltech where we are asking them to adopt a hazard
10 communication program and a hazardous waste program
11 are things that they can't accomplish very quickly if
12 they haven't accomplished them already.

13 DR. TAYLOR: Okay. Thank you.

14 MS. MERRITT: I have a question about
15 recommendations to Kaltech and to their Beyond Signs
16 successor. Could you explain to me what that
17 relationship is? I mean Kaltech I understood -- do
18 they still exist?

19 MR. BARAB: Kaltech at this point does
20 not exist. Kaltech, again, has gone out of business.
21 Mr. Kahlfan, who was the owner of Kaltech, now works
22 with his son who is the owner of Beyond Signs, a

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1 similar business which we consider to be a successor
2 business.

3 And so we made our recommendation to
4 Kaltech should it ever resurrect itself as well as to
5 Beyond Signs which is currently in existence.

6 MS. MERRITT: Is that in the City?

7 MR. BARAB: Yes, that is in the City. It
8 is in Queens, I believe.

9 MS. MERRITT: And if Beyond Signs goes
10 out of business and they open up a business somewhere
11 else, do we sort of follow them along in order to see
12 that this is implemented?

13 MR. BARAB: We will attempt to make sure
14 that this information is communicated to whatever
15 successor businesses follow out of Kaltech and out of
16 Beyond Signs. This is a frequent occurrence among
17 these companies. They often change ownership and we
18 do try to follow the recommendations throughout the
19 ownership.

20 MS. MERRITT: Okay. Thank you. Are
21 there other -- Mr. Bresland?

22 MR. BRESLAND: Just as an aside. Does

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1 Kaltech have any plans to relocate its activities to
2 Washington, D.C.?

3 (Laughter.)

4 MR. BARAB: We didn't ask if they were
5 expanding to that.

6 MR. BRESLAND: Okay, good. A question
7 about recommendation No. 2 to the Mayor and the
8 Council --

9 MR. BARAB: Yes?

10 MR. BRESLAND: -- which is the
11 recommendation having to do with the safety plan and
12 the designation of a responsible individual. The
13 people who were in the building who didn't work for
14 Kaltech, who would be the people on the upper floors
15 --

16 MR. BARAB: Right.

17 MR. BRESLAND: -- do we know if they were
18 aware of the materials that were being used in the
19 building by Kaltech? The hazardous materials?

20 MR. BARAB: We don't believe so. And
21 this would not be uncommon for people not to
22 necessarily be aware of what other business are

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1 happening in the rest of the building. In fact, as
2 you heard, none of the agencies that provided
3 oversight were even aware, for example, that there
4 were chemicals present in the basement of the
5 building.

6 MR. BRESLAND: So in this building there
7 were flammable materials and nitric acid? What sort
8 of people worked in the upper floors of the building?
9 What types of businesses were there?

10 MR. BARAB: I'm not sure. I don't know -
11 - Mr. Selk if you could help me there?

12 MR. SELK: Well, there was an
13 architectural firm I remember. There was a firm that
14 serviced the theater industry in New York. A costume
15 firm that held their inventory of costumes there.
16 Yahoo.com had their offices in that building.

17 So there was a real variety of tenants.
18 There was one other hazardous occupancy and that was
19 a piano refinishing service business. I believe it
20 was located on the fifth floor. We may have with us
21 some of those tenants today in the audience.

22 MR. BRESLAND: So they were apparently

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1 ignorant or innocent of the fact that there were
2 hazardous materials being used in the building?

3 MR. SELK: Well, right. And this
4 recommendations aims at taking the information from
5 the hazardous materials management plan and
6 incorporating that into a building-specific plan so
7 people in the building know what to do if there is an
8 emergency.

9 MR. BRESLAND: Okay. Thank you.

10 MS. MERRITT: Are there other questions?
11 Dr. Poje?

12 DR. POJE: Yes, thank you Jordan and
13 Steve. I appreciate the difficulty of trying to
14 practically figure out what could be done to be
15 improving of the preventative approaches in this
16 community.

17 We have federal responsibilities, we have
18 state responsibilities, we have local responsibility.

19 And I think you've -- and private sector business
20 responsibilities -- and I think you've apportioned
21 them correctly.

22 I do want to return though and just seek

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1 some clarification about the two elements of training
2 that are encompassed within the first recommendation
3 to the Mayor and City Council. Could you just review
4 with me once again who the audience is for those two
5 training aspects? And any reflection you have about
6 the effectiveness of well-run training programs in
7 leading to a more preventative approach.

8 MR. BARAB: Yes, there are two levels, at
9 least two levels of training that we've been
10 addressing in our recommendations. As we related, we
11 are recommending fairly extensive revisions to the
12 fire code of New York, if not a new fire code should
13 they deem that necessary.

14 The main focus of those recommendations
15 is to significantly beef up their ability to address
16 hazardous materials issues within the City. In order
17 to do that, the staff at the Bureau of Fire
18 Prevention or whatever entity actually has
19 responsibility for that would obviously need to be
20 trained to carry out those new responsibilities.

21 And we're talking about if you look at
22 the existing model fire code, you look at some of the

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1 systems in place in cities around the country, we're
2 talking about some fairly extensive training in order
3 to, again, address these hazardous materials issues
4 within the revised fire code.

5 Now there are actually two other levels
6 of training. Hazardous waste generators need to
7 receive training on how to deal with hazardous waste
8 and there are a variety of points within the
9 recommendations where workers also need significant
10 amounts of training in hazard communication, in other
11 words to deal safely with the chemicals that they are
12 working with in their workplace as well as to deal
13 with the hazardous waste that are in their workplace.

14 DR. POJE: If I can interrupt on that
15 point? Do you or Mr. Selk know of any training
16 opportunities on the hazardous waste management
17 issues that were afforded to this company? And what
18 actions took place as the result of that?

19 MR. BARAB: Yes, actually the hazardous
20 waste carrier, the company that actually picked up
21 Kaltech's hazardous waste did provide a training
22 program to its clients and it had offered that

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1 training to Kaltech. They declined to take the
2 training. So they had it available to them but they
3 did not avail themselves of that opportunity.

4 DR. POJE: And as far as you know under
5 current circumstances, that's not a mandatory
6 requirement?

7 MR. BARAB: Well, actually, I mean RCRA
8 does require, again, hazardous waste generators to be
9 trained and requires that they train their workers.
10 So, yes it is a requirement under RCRA and,
11 therefore, a requirement that should be enforced by
12 the State Department of Environmental Conservation.
13 So that is a requirement. And they did not avail
14 themselves of that.

15 MS. MERRITT: Actually signing the
16 manifest is a certification that you've been trained.

17 DR. POJE: And then the last point is
18 more of a point of clarification.

19 You are seeking in one recommendation to
20 have the OSHA federal agency work with the City of
21 New York's fire department, presumably the Bureau of
22 Fire Prevention, to develop a referral system. Is

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1 this a -- give me some scope about how rare or unique
2 such a recommendation would be. Has it ever occurred
3 before?

4 MR. BARAB: Well, it's a rare -- this is
5 the first time we've made such a recommendation.
6 However, these referral programs between OSHA and --
7 usually between OSHA and other government agencies
8 are fairly common. OSHA has a number of these around
9 the country. And even has several of these within
10 this region.

11 They deal with such common subjects, for
12 example, one of the ones I'm most familiar with is
13 OSHA has a -- I believe in New Jersey -- it has a
14 referral program with the Highway Patrol where the
15 Highway Patrol will, when they observe workplace
16 health and safety problems in highway construction
17 projects, they will refer that to OSHA. And there
18 are many examples of that throughout the country.

19 DR. POJE: Thank you.

20 DR. ROSENTHAL: Have you ever -- just as
21 a kind of rhetorical question -- tried to list all
22 the regulations and provisions that a small business

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1 owner needs to be familiar with in order to legally
2 carry out his business in full compliance with the
3 law?

4 MR. BARAB: I have not personally done
5 that although I've heard stories of it.

6 DR. ROSENTHAL: That was just in passing.
7 A factual question -- am I correct that the firm
8 that was licensed and actually performed the removal
9 of the waste from the Kaltech site did offer a
10 service by which they would collect the individual
11 wastes and composite them off site?

12 MR. BARAB: Yes, I believe so. That's
13 correct, yes.

14 DR. ROSENTHAL: I have some comments on
15 that I'll make later. Thank you.

16 MS. MERRITT: One last question, I guess,
17 is you used the term between these two companies,
18 Kaltech and Beyond Signs as successor company. That
19 has a specific legal meaning. Could you describe
20 what the relationship is between these two companies?

21 MR. BARAB: Yes, again, I'm not an
22 attorney so I can't speak to this legally. But I

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1 mean in the broadest sense Beyond Signs is owned and
2 operated by the son of the owner of Kaltech.

3 MS. MERRITT: So they're not common
4 businesses?

5 MR. BARAB: No, no. Kaltech, itself,
6 does not exist at this point.

7 MS. MERRITT: But they do the same --

8 MR. BARAB: Yes, it's a sign-making
9 thing. And Mr. Kahlfan, who owned Kaltech, also
10 works in his son's business at this point.

11 MS. MERRITT: All right. Are there any
12 other questions at this time?

13 (No response.)

14 MS. MERRITT: Well, then if there are no
15 other questions, I'd like to open -- thank you Jordan
16 very much for your presentation. I'd like to open
17 the floor to public comment. I would again like to
18 remind you to please keep your comments germane to
19 this particular case and incident. And also to keep
20 your comments to three minutes or less.

21 And when you come to the podium up here
22 which is the microphone we've provided, would you

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1 please state your name and your affiliations so that
2 our recorder properly get your name and who you are
3 affiliated with.

4 Our first person who has registered is
5 Jeremy Hoffman. He is a Legislative Director with
6 Councilwoman Christine Quinn's office.

7 MR. HOFFMAN: Good morning. I appreciate
8 the opportunity to share our thoughts in response to
9 this report and we appreciate the hard work of this
10 Board.

11 And I apologize. I don't have too many
12 comments but I did want to kind of show some quick
13 thoughts. This explosion April 25th, I would imagine
14 that none of the members of the Board were in New
15 York and the investigators came quickly thereafter.

16 I was actually by chance several blocks
17 from the explosion at a meeting. And quickly after
18 hearing the sirens and getting a lot of emergency
19 calls on my cell phone, I immediately rushed to the
20 scene actually kind of at the same time the
21 responders did. So it actually hadn't been secured.

22 It was a truly horrific and terrifying

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1 sight. And coming on the heels of other events in
2 New York City was a lot to deal with and a lot to
3 see.

4 And I want to say that our first
5 responders within the fire department and the police
6 department really did a tremendous job responding to
7 that horrific scene when information was not clear
8 what was going on. Nobody knew what was in that
9 building. Nobody knew if it was an accident or some
10 other means.

11 And true to their obligation to their
12 work, that did not restrain the fire department and
13 police department from rushing in and getting the
14 situation under control. Thankfully there were no
15 fatalities.

16 And I'd also like to say that the Board
17 quickly set investigators up and they did a very
18 tremendous and prompt job of communicating with
19 myself and Council Member Quinn who, unfortunately,
20 isn't able to be here this morning.

21 And I'll be honest, I was not familiar
22 with the work of this Board or, frankly, its

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1 existence. And it took a while to figure out who you
2 were and what you did. But on behalf of the Council
3 Member and really on behalf of our constituents who
4 include the rest of Chelsea really thank the hard
5 work and the detailed kind of follow up that you've
6 been doing.

7 In Councilman Quinn's district does
8 include Chelsea. It goes all the way up to 55th
9 Street and down to Canal Street and includes Chelsea,
10 the village, midtown, Hell's Kitchen, other
11 neighborhoods. This explosion was a real wake up
12 call for, I think, those of us in city government.

13 Chelsea is a community that has gone
14 through a transformation from what used to be a
15 manufacturing district to now mixed use and
16 increasingly residential and, frankly, increasing
17 affluent residential. So there are a lot of
18 different uses in that community. So this is
19 particular important information for us.

20 I've just seen the report. I just was
21 reviewing it when I was sitting down. The
22 recommendations of the Board, I think, are very

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1 intriguing and I think very important. Some of them
2 -- I'd spoken with your investigator earlier in the
3 process.

4 So we pledge to you and really, frankly,
5 the residents of our district in New York City to
6 look at and begin to work very quickly and promptly
7 on the implementation. We hope to collaborate with
8 the administration. We hope to work closely with the
9 officials at the fire department as well as the
10 experts within the unions that represent both the
11 firefighters and the fire officers.

12 I would like to ask -- and I'm not sure
13 what the procedure is -- but I'd like to be able to
14 continue the dialogue with the Board and frankly your
15 investigators to kind of continue to draw upon their
16 recommendations because I think they are particularly
17 timely and important.

18 Changing the fire code is a huge
19 undertaking. And I'm not even sure how long it is
20 going to take. I think the investigators alluded to
21 this. So I can't give you a firm time line.

22 I know the city has been going through a

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1 very extensive and exhausting review of the building
2 codes. In areas, as was mentioned, the City of New
3 York is given a large restriction of fire code as it
4 is in many issues of state public policy.

5 But it is something we will look at,
6 something we will look at in as aggressive a time
7 line as we can. That's going to be a matter of
8 months, not weeks. And requires a lot of input from
9 a lot of experts, continued input from the Board, but
10 as well as a variety of stakeholders.

11 The fire code, you would know better than
12 I, really impacts a tremendous community of entities
13 in New York City that are all going to want to review
14 it and have input on it. So it is a lengthy process
15 but one that we want to get started and one that we
16 have begun to start on.

17 We were going to move -- originally we
18 were going to move very quickly on trying to review
19 this process but really thought that it made sense to
20 let the Board do its investigation, get some real
21 technical expertise. That's why we kind of slowed up
22 a little bit. And now, I'm happy to have this

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1 information and to continue forward.

2 And those really are my thoughts but I
3 once again really did want to thank the diligence of
4 your Board and your investigators who did a
5 tremendous job in communicating with us in City Hall,
6 at least to the Council. And I imagine you did as
7 well on the Mayor's side of City Hall.

8 If there are questions, I'm happy to
9 answer them.

10 MS. MERRITT: Thank you very much.
11 Appreciate it.

12 MR. HOFFMAN: Sure. Okay. Thank you.

13 MS. MERRITT: Next we have Victoria Lamb,
14 Parsons-Meares. And if I'm not pronouncing these
15 correctly, please correct me. It doesn't hurt my
16 feelings.

17 MS. LAMB: Thank you for allowing me to
18 speak. And thank you for the hard work of the
19 investigative team.

20 I am Victoria Lamb and I represent
21 Parsons-Meares. We were located on the sixth floor
22 of 121 West 19th Street. We are a costume shop. We

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1 produce costumes for many of the productions and
2 films that I hope you've all seen or will see soon.

3 We were not aware of the activities of
4 Kaltech. They entered a separate entrance. We never
5 saw the workers that we saw on TV after the
6 explosion.

7 We were aware of the hazardous materials
8 on the seventh floor where the piano company was
9 located. We smelled fumes, et cetera, and we were
10 able to work with these people to bring that under
11 control. And we think they abided by any rules.

12 What happened on the 25th, we were lucky
13 we had a small staff that day, able bodied. And with
14 the help of subcontractors in the building, our
15 people were able to break through a locked, gated
16 window, and were assisted in jumping to another
17 building and exiting that way.

18 All of these recommendations are valid.
19 That the fire code has to be updated is clear. What
20 happens after an explosion, however, is unclear.
21 Despite requests to everyone, every governmental
22 agency that we could come up with, the only agency

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1 that responded to us in writing was one that said,
2 "If we had information, we wouldn't give it to you
3 because there is a criminal investigation."

4 We understand that this is a hazardous
5 chemical site, a hazardous explosion. I have 26
6 employees who don't know today whether they were
7 contaminated or not, whether they will suffer future
8 health problems.

9 There must be some sort of resource for
10 us to get information post explosion. Thank you.

11 MS. MERRITT: Thank you very much. The
12 next person registered is Robert Young, I believe, of
13 Florham Park Fire Official.

14 MR. YOUNG: Good morning.

15 MS. MERRITT: Good morning.

16 MR. YOUNG: My name is Robert A. Young.

17 I'm the fire official for the Borough of Florham
18 Park. I have 35 years of experience in the fire
19 service. I've been a firefighter and I've been a
20 chief of the department. I'm also a licensed
21 building inspector in the State of New Jersey, a
22 state that does have the International Building Codes

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1 and Fire Codes.

2 I'm here to talk about -- I didn't hear
3 you talking about what happens to the first
4 responders and the fire department who show up on the
5 scene knowing about these incidents. I'm a member of
6 the International Fire Chiefs Association and been to
7 several cities throughout the country.

8 And what I would like to see typical to
9 the building at Kaltech and other buildings like this
10 is the building be posted with the DOT placard
11 showing corrosive, health, flammability, and water
12 hazards, too, with the numbers on the building.

13 In the City of Indianapolis and St.
14 Louis, they've gone about posting these buildings.
15 It makes it aware to the first responders and people
16 going into these buildings if they are trained about
17 these chemicals, they'll know what these signs mean.

18 And we could be aware of to our first
19 responders and medical personnel as well so they may
20 be prepared for these incidents.

21 Also in your plan, I'd like to see an
22 evacuation plan for the buildings included in your

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1 recommendations to the people who are handling the
2 hazardous chemicals.

3 Thank you very much.

4 MS. MERRITT: Thank you very much for
5 your comments. Next is Jeff Glances, Glancer, I'm
6 sorry, I'm not pronouncing that right, a business
7 owner.

8 MR. GLANCE: Hi, my name is Jeff Glance.

9 And I had Jeff Glance Photography on the tenth floor
10 of 121 West 19th Street.

11 I would like to thank the Board and I'd
12 like to thank -- I didn't remember her name, the
13 woman from Parsons-Meares. She brought up a lot of
14 good points. I'd also like to thank Mr. Rosenthal
15 and Mr. Bresland for bringing up about problems with
16 the tenants, or the effects to the tenants.

17 At the last hearing I went to, and this
18 hearing doesn't seem to be much in the way of how it
19 really effects the people involved in the building
20 that weren't working for the company where the
21 explosion happened.

22 I personally have had emotional trauma

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1 and financial, major financial troubles from this. I
2 know that some people have gone completely out of
3 business that have been effected by this.

4 I may be preaching to the choir on this
5 but it seemed that the landlord was probably aware of
6 some of these problems and the people in the building
7 -- some of the people in the building were aware of
8 these problems. And that the inspections should have
9 some teeth to them to that people conform to the
10 standards.

11 There were several instances where we had
12 telephone repairmen in the building that had to go in
13 the basement to work on the phones. And they came
14 back up and they said that they refused to work down
15 there because of the fumes, ventilation problems in
16 Kaltech and the basement area.

17 We also got -- as far as what she was
18 bringing up about environmental problems from the
19 explosion -- we seem to get different stories from
20 the landlord and the EPA months after the explosion.

21 First there was contamination up to the fifth floor.
22 Then there was an environmental cleaning of the

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1 building that went on for quite a while.

2 Then we were told it was all clean and it
3 was fine and we could enter the building to retrieve
4 personal items from our businesses. Then we were
5 told by the landlord that there was major
6 contamination and that we would have to have our
7 floors environmentally cleaned.

8 I was on the top floor. They had told us
9 there was only problems up to the fifth floor. Then
10 they changed their minds and said no, major
11 contamination on the ninth and tenth floor. And then
12 they changed their minds and said no, everything is
13 fine. So we never had an idea of what has been
14 involved there.

15 Thank you very much.

16 MS. MERRITT: Thank you very much. Next
17 is Stacey Horton, Launch Radio.

18 MS. HORTON: Hi there. I was on the
19 second floor that day so I was, in fact, a tenant.
20 And just in reference to a question that was brought
21 up. We were absolutely unaware that there was
22 anything in the basement of the office that I worked

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1 in. I only knew that I worked next door to a sign
2 shop.

3 And someone else had mentioned there was
4 chemical used on the seventh floor regarding a piano
5 company. I also was unaware that they used chemicals
6 above us as well.

7 So I just wanted to, in reference to your
8 point, I had absolutely no idea. And wish I had
9 known.

10 MS. MERRITT: Thank you very much. At
11 this time, is there anyone else in the audience who
12 would like to speak. You certainly are welcome to.
13 Would you please come to the microphone and give us
14 your name and your affiliation?

15 MR. SCHUFRO: My name is Joel Schufro. I
16 am Executive Director of the New York Committee for
17 Occupational Safety and Health, NYCOSH.

18 In 1988, the City of New York passed its
19 city right-to-know law which gives residents and
20 community members the right to request information
21 about the toxic substances used by facilities that
22 are stored in the community.

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1 This is a very potent law, we think, that
2 allows community members to express concern and to
3 put in the public's sphere information about the
4 hazardous substances being used.

5 Since 9/11, the city has -- or shall I
6 say the police department -- has redacted all
7 information on requests filed by its residents. My
8 organization recently filed a right-to-know request
9 to get information about toxic substances used by a
10 facility in Brooklyn.

11 We received a response from the city
12 which gave us the name of the facility and every
13 other piece of information about the toxic substances
14 stored by that facility was withheld because they
15 were concerned that it would be used by an
16 organization, I assume, that's considered to be a
17 terrorist organization, and might use it for whatever
18 purposes.

19 We think that this is unfortunate. We
20 think that there is a need for citizens to know what
21 substances are being used in the communities in which
22 they work and live. And we would hope that the

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1 Chemical Safety Board would, in its recommendations,
2 consider developing a -- or recommending to the city
3 that a balanced policy of information release be
4 adopted.

5 Thank you.

6 MS. MERRITT: Thank you. If there are no
7 other comments, then I'd like to open the floor to
8 the Board for questions or comments about the vote.
9 Are we ready to --

10 DR. TAYLOR: There were a couple of
11 things.

12 MS. MERRITT: Yes?

13 DR. TAYLOR: Madame Chair, there were a
14 couple of things that were raised during public
15 comment. I just was wondering if I could get the
16 staff?

17 MS. MERRITT: Yes, Dr. Taylor?

18 DR. TAYLOR: Mr. Selk, regarding the
19 recommendation about DOT placards? Or evacuation
20 plans in the building? And then the last
21 recommendation for communities to be reminded of the
22 city right-to-know law and that there be a balanced

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1 policy.

2 Has there been any thought by our
3 recommendation staff or by the investigative staff on
4 any of those issues that were raised during our --

5 MR. SELK: Well, Dr. Taylor, regarding
6 the second one, no, which is the right-to-know law.
7 Current policy about acknowledging to an inquirer
8 about what materials are there, no, we haven't
9 investigated that matter so we can't comment on it.

10 Regarding placarding, it was the position
11 - we didn't consider it. The position of the report
12 was that they have a system in place here. And that
13 system is that the right-to-know data is gathered,
14 combined into the database, and then that database is
15 available to the responders when they are on the way
16 to the scene.

17 And they get the information, as we
18 understand it, as to what is in the building when
19 they are on route or they can make an inquiry from
20 the office as to what they may have to contend with.

21 So that's the system and we didn't
22 venture into distinguishing if that system was any

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1 better than any other system.

2 DR. TAYLOR: Okay.

3 MR. BARAB: Let me just add one thing to
4 the first part of the question regarding the right-
5 to-know law. Again, as Mr. Selk said, we didn't
6 investigate the effectiveness or the city's
7 compliance with the city's right-to-know law. I do
8 want to turn you though to one recommendation we did
9 make again, that dealt with information that we
10 recommended be provided to building tenants.

11 And that was in our second recommendation
12 to the City of New York, the Mayor and the Council of
13 the City of New York.

14 DR. TAYLOR: Okay.

15 MR. BARAB: And let me just read that one
16 more time.

17 DR. TAYLOR: All right.

18 MR. BARAB: We recommended that each
19 building have a hazardous material safety plan. This
20 hazardous material safety plan would incorporate
21 information from the hazardous materials management
22 plans, inventory statements, right-to-know facility

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1 information forms, and the fire prevention code
2 permits of any tenants in the building that use
3 hazardous materials.

4 And then we are recommending that this
5 hazardous material safety plan be distributed to all
6 tenants. Now it doesn't quite say that the raw
7 materials be -- I mean the raw information be
8 delivered directly to the tenants. But be
9 incorporated in the building safety plan and that
10 that plan then be communicated to the tenants in the
11 building.

12 MR. SELK: And just to clarify, that
13 hazardous material safety plan would only to apply to
14 buildings that had a hazardous occupancy.

15 DR. TAYLOR: Okay.

16 MS. MERRITT: Mr. Bresland?

17 MR. BRESLAND: I have a question of
18 clarification on the first two recommendations.

19 The recommendations to the Mayor and the
20 Council of the City of New York in general deal with
21 the issue of what we call in here hazardous
22 materials. The recommendations to NYDEC refer in

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1 general to hazardous waste.

2 And I just want to make sure that it is
3 your feeling that the term hazardous materials in the
4 recommendations on the fire code and the
5 recommendations to the City of New York would also
6 apply in the generic sense to hazardous waste?

7 MR. SELK: Well, we have advised the city
8 to make reference to model fire codes when it
9 formulates its plans or its regulations. The Uniform
10 Fire Code does specifically speak to the need to
11 identify what materials are wastes and to
12 characterize them accordingly. That's the 2003
13 version of the Uniform Fire Code.

14 So if the city refers to the good work
15 that has been done, they should capture it.

16 MR. BRESLAND: I guess the point I'm
17 trying to make here is if you have a container of, in
18 this case it was nitric acid, that's being used in
19 their process, that would be, in your term, that
20 would be a hazardous material that would be covered
21 by the fire code.

22 If the same nitric acid is being deposited

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1 of, it's still nitric acid and it would now be called
2 its waste. But it's still a hazardous material and
3 the regulations should still apply to it.

4 MS. MERRITT: Yes.

5 MR. SELK: Well, absolutely, and that is
6 our intent. And I believe that the Uniform Fire Code
7 specifically speaks to it.

8 MS. MERRITT: I believe also definition
9 under the regulations, just because it is designated
10 as a hazardous waste does not remove it from
11 hazardous substance category.

12 MR. BRESLAND: Yes, yes, okay.

13 MS. MERRITT: Are there other questions?

14 (No response.)

15 MS. MERRITT: Then what I would like to
16 do is offer this. I think there have been some
17 really excellent points raised. One of the things
18 that we do -- our recommendations while I know people
19 who have been impacted would often like these to be
20 viewed as regulation, they are not. They are non-
21 binding.

22 But while we have the weight of the

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1 incident and the weight of our investigation and kind
2 of the bully pulpit behind us with regard to these
3 recommendations, and we have a very high percentage
4 of people who respond in a positive way to them, I
5 would strongly recommend that people who have
6 concerns about regulation concerning public buildings
7 and other items that were mentioned here, should work
8 with your City Councilmen and the City of New York
9 and possibly even the State of New York to make sure
10 that these elements are included in state and city
11 regulation.

12 Even if we have included some of these in
13 our recommendations, they would be non-binding over a
14 long period of time. And even though I'm concerned
15 about lack of enforcement on the regulations that
16 already exist, these actually would be voluntary
17 issues.

18 And I think that working with your city
19 and state governments to have these become part of
20 the code is certainly going to have a stronger impact
21 than if we were to include them as recommendations.

22 The other thing is is I would like to

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1 offer that -- and often we have very excellent ideas
2 that are raised and concerns that are raised for
3 which people who have contacted agencies have gotten
4 little or no response, and certainly not satisfied,
5 what I have done in the past and I would like to
6 propose to do here is we have recorded your requests.

7 And what I would do is write a letter to
8 the head of OSHA or the head of the EPA and other
9 people who have authority over these issues to
10 request that they communicate with you concerning
11 your questions.

12 And I will be happy to write that letter
13 under the authority of the Agency and the Board. And
14 also to copy you so that you know that that letter
15 has been sent. I would ask that communication be
16 made directly to you so that we don't become a middle
17 man in between you and actual information.

18 So unless the Board feels that some of
19 these ideas should be modified into our
20 recommendations, I would offer to do that at this
21 time.

22 Dr. Poje?

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1 DR. POJE: Yes, Madame Chair, I think
2 that is an admirable recommendation on how to proceed
3 with this newer information. I just would like to
4 elevate the testimony from Mr. Schufro.

5 This is a matter that we had discussion
6 with the Department of Environmental Protection in
7 April about this new tension to be had between
8 preparing effectively for emergency response and
9 having full access to knowledge about the hazards
10 that you must be capable of responding to.

11 And the need to be shielding such
12 information from people whose knowledge of it and use
13 of it could precipitate a problem for those people
14 who are innocents in the situations.

15 This is not unique to New York City. It
16 is a problem across the whole country right now. And
17 I think we are, as a nation, trying to grapple with
18 the most effective approach.

19 Clearly we have to have residents in
20 mixed-use buildings fully armed and effective for
21 responding during emergencies and ways to protect
22 themselves, their coworkers and the surrounding

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1 community. And that requires more than just that the
2 information is had somewhere else under lock and key.

3 MS. MERRITT: Yes. Then if there are no
4 other comments, I guess I would ask the question as
5 to whether or not the Board is ready to bring the
6 report and the recommendations for a vote. And if
7 there is a motion so stating?

8 DR. TAYLOR: Madame Chair, I move that we
9 approve the CSB staff investigative report and
10 recommendations regarding a chemical waste mixing
11 incident on April 25, 2002, at Kaltech Industries
12 Group, Incorporated, Report No. 200202-1NY.

13 MS. MERRITT: Thank you, Dr. Taylor. Do
14 you have any or would you like -- is there a second
15 please?

16 DR. POJE: Second it.

17 MS. MERRITT: And would you have any
18 comment or do you have any discussion you would like
19 to begin?

20 DR. TAYLOR: Well, for me there are
21 really no additional comments other than your
22 proposal for the public comments that we received. I

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1 believe it was a good route to go. I think that the
2 report that we have before us is very good. A lot of
3 research and a lot of time was spent in getting this
4 report. And I applaud the investigators and the
5 staff, the recommendations staff.

6 And my hope from this point is that based
7 on the recommendations, that they will be
8 implemented.

9 MS. MERRITT: Thank you. Is there any
10 other discussion?

11 DR. ROSENTHAL: Yes.

12 MS. MERRITT: Dr. Rosenthal?

13 DR. ROSENTHAL: Yes, I also would like to
14 commend the staff for a very excellent job. And
15 barring any last minute comments from my fellow Board
16 members, I think I will vote that we move this report
17 as completed.

18 However, there is one issue that I would
19 like to bring up as part of not the official record
20 of the report but at least hopefully to the attention
21 of the various authorities for future consideration
22 beyond what transpires in the report.

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1 As I said, the report is very good.
2 We're dealing with a hazard, that is materials that
3 are both flammable and reactive.

4 And this particular incident is related
5 to a scenario in which two hazardous materials that
6 are incompatible were mixed together during disposal
7 and they reacted. That is only one particular way in
8 which these hazards could be expressed and cause
9 injury.

10 And it's not the most common thing in the
11 world because these incidents aren't occurring every
12 day. But the consequences are potentially extremely
13 serious.

14 The reaction of these types of materials
15 is not something that is easily known by many people.

16 As best as a record I can see developed, the Kaltech
17 owners were ignorant, not malicious. It was not a
18 question of someone knowing that this danger existed
19 in doing it. It was ignorance.

20 And there were problems with the agencies
21 due to the lack of resources and authorities. And
22 this is a fairly general problem. And whereas if the

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1 recommendations of the staff are followed, the
2 authorities will be increased.

3 Unless the world changes dramatically,
4 inevitably there will be a period of time in which
5 the resources will be decreased again. And the
6 report's recommendations, if fully implemented and if
7 fully funded, would go a long way towards addressing
8 this problem.

9 However, based on past history, it is
10 likely that this problem will reoccur with lack of
11 inspection again. And I would like to suggest that
12 the city in its longer-range plans consider an
13 inherently safer approach to addressing this problem.

14 This particular accident occurred when
15 two incompatible materials were mixed on site prior
16 to being disposed of. And it lead to a chemical
17 reaction, whose consequences were the explosion.

18 There are presently means for reducing
19 the likelihood that this mixing will occur. And that
20 is to have an ordinance or practice by which the
21 person who is a large waste disposer in a mixed-use
22 building be required to have the compositing done off

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1 the site.

2 And the firms that presently dispose of
3 the wastes, presently offer the service of taking the
4 waste in their initial containers without compositing
5 and mixing them off site. And during the time that I
6 worked at a fairly sophisticated chemical company, we
7 did not think we were knowledgeable enough in the
8 research laboratories to mix on site. And we had the
9 mixing done off site.

10 But in any case, this would be an
11 inherently safer approach. The means of doing this
12 presently exists. The firms would be anxious to do
13 the business. And lots of firms now utilize it. And
14 so I just suggest that somehow either privately or by
15 means of this comment, we ask the city to in the
16 longer run think about this possibility.

17 Thank you.

18 MS. MERRITT: And at this time, do you
19 want to change something in the recommendations or
20 are these your observations and comments?

21 DR. ROSENTHAL: No, I believe that the
22 recommendations in place are in order. And I believe

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1 that the further delays in issuing this report are
2 not warranted. And I think that we can go ahead and
3 just append this in a letter or something for them to
4 consider outside of the report.

5 MS. MERRITT: Okay. Dr. Poje?

6 DR. POJE: Yes, just as a short epilogue
7 to Dr. Rosenthal's comment, I think he makes
8 important ones. But we did just two weeks ago also
9 review in session at the Board, in public session, a
10 report about an incident in the city of Cincinnati
11 which involved a waste disposal company for whom
12 vigilance also needs to be observed.

13 If they are doing it off site, they must
14 be doing it in a way that is also carefully measured,
15 monitored, fully equipped with a plan for doing it
16 safely because in that incident, they took off site
17 waste materials and started to process them in a very
18 inappropriate portion of that facility. And caused
19 an incident that could have been quite deadly for an
20 individual worker in that workplace.

21 So the training must be observed with the
22 same degree of oversight and vigilance to bring about

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1 the actions that we would like to have. But I think
2 Dr. Rosenthal raises a very important point about
3 this longer term issue of how to manage when we know
4 the way of the world will be quite difficult for all
5 regulatory agencies and administrative bodies.

6 DR. ROSENTHAL: I think the issue of
7 inherently safer can be extended to all aspects of
8 the waste disposal practice. The reason I think it
9 requires special attention is that we're dealing in
10 the -- our friends who had this waste disposal plant
11 with workers who were able bodied and presumably
12 knowing that they are dealing with hazardous
13 materials even though they are not fully instructed.

14 But in a mixed-use building, as some of
15 our commentators pointed out, there may be people who
16 are not physically able and certainly many who are
17 not in any way being compensated for being exposed to
18 the added hazard of these materials.

19 And so I think there is an even deeper
20 reason for going to inherently safer measures where
21 you are exposing a mixed public whose physical
22 condition and whose stake in the outcome of the

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1 operations is reduced.

2 DR. POJE: Very fair point, I just meant
3 to emphasize that even as they go off site, we want
4 to retain the highest degree of vigilance about
5 safety matters to ensure the protection of people in
6 those communities be they workers or surrounding
7 neighbors.

8 MS. MERRITT: Thank you, Mr. Bresland?

9 MR. BRESLAND: Yes, I'd also like to
10 commend the staff on a very complex investigation.
11 The incident itself, I guess, was relatively
12 straightforward in terms of what happened. But the
13 ramifications, the political ramifications, the
14 complexity of your recommendations are duly noted.
15 And you've certainly done an excellent job.

16 Dr. Poje was kind enough to bring along a
17 copy of the New York City Fire Law Handbook, which
18 is, I guess, the New York City Fire Code. And I was
19 just glancing at it here and I see subchapter 16
20 refers to the control of calcium carbide.

21 Calcium carbide, for those of you who
22 don't know or who may be younger than me, is the

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1 chemical that when you mix it with water, it forms
2 acetylene and was used in acetylene lamps back in the
3 older days.

4 I don't imagine that anybody is using
5 calcium carbide to light their homes or their
6 businesses these days. So it's just an interesting
7 example of how quite out of date the fire code is.
8 Well, I guess it might have been useful during the
9 electrical blackout a few weeks ago.

10 (Laughter.)

11 MS. MERRITT: Thank you. And if there
12 are no other comments or any other amendments to be
13 raised with regard to the motion that has been made
14 and seconded, I will read the question. The motion
15 is approve the CSB's staff investigative report and
16 recommendations regarding the chemical waste mixing
17 incident on April 25, 2002 at Kaltech Industries
18 Group, Incorporated, Report No. 200202-1NY.

19 I'd like to take a roll call vote if I
20 have properly read that. I have? Then Dr. Taylor?

21 DR. TAYLOR: Approved.

22 MS. MERRITT: Dr. Rosenthal?

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1 DR. ROSENTHAL: Approved.

2 MS. MERRITT: Dr. Poje?

3 DR. POJE: Approved.

4 MS. MERRITT: Mr. Bresland?

5 MR. BRESLAND: Approved.

6 MS. MERRITT: And I also approve. With
7 that, the motion is carried unanimously.

8 Thank you staff and thank you Board for
9 your attention through this entire matter from
10 beginning to end. And Dr. Poje for your guidance
11 also when this event occurred and following.

12 With that vote, we're to the end of the
13 planned agenda for today's meeting. And many thanks
14 go to Steve Selk and Jordan Barab for their
15 outstanding work on this complex and important issue.

16 In a few moments, we will adjourn to
17 convene a press conference to be chaired by Dr. Poje,
18 the Board member who was on scene at that incident
19 back in 2002.

20 In the mean time, I have a few closing
21 observations. As a nation, we have a great many
22 safety regulations on the books, state, local, city,

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1 and federal. The regulations range from simple to
2 complex.

3 As a society, we should have confidence
4 that enforcement of these regulations will protect us
5 from preventable hazards as we go about our daily
6 lives. We invest a great deal of our tax dollars and
7 civic effort to ensure that these rules are followed
8 and that workers and the public are protected.

9 Most responsible companies do follow
10 these regulations, whether or not they ever get
11 inspected. But some do not comply. The Chemical
12 Safety Board has plenty of opportunities and examples
13 that we've investigated as the result of these
14 companies' failure to comply and follow good business
15 practice.

16 I have a growing concern and we have
17 expressed here on this Board about how many of our
18 investigations involve small companies, those who
19 don't either know about the laws the govern their
20 businesses or don't recognize the hazards of the many
21 chemicals that they are actually dealing with.

22 Here is a case where a company operated

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1 for many years seemingly oblivious to some of the
2 most basic chemical safety rules and employees'
3 rights. The company was inspected by some
4 authorities and yet continued to do business until
5 its operations nearly destroyed a building filled
6 with people.

7 This same situation could exist in many
8 other buildings right now as we speak. As citizens,
9 we're right to be concerned.

10 We're right to be concerned that other
11 state and federal authorities never visited this
12 company. We're right to be concerned that some local
13 authorities visited this site many times but did not
14 detect or correct existing safety conditions.

15 As we heard back in April, New York City
16 conducts more than a 100,000 fire inspections every
17 year that relate to hazardous materials. Fire
18 inspectors visit every site in the five burroughs
19 where regulated hazardous chemicals are used or
20 stored.

21 New York City fire inspectors are
22 handicapped by an antiquated fire code that was last

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1 overhauled in 1918. And yet there are rules that are
2 on our books that have requirements for notification
3 and safety procedures, some of them issued in 1984
4 with regard to material safety data sheets and
5 employee right to know.

6 Fire inspectors not only need a stronger
7 code, they also need better knowledge of the
8 overlapping requirements of state and federal safety
9 and environmental rules. This is time for change.
10 It is a time for change before another event happens
11 where people may be killed.

12 At the end of the April hearing, I stated
13 that the Kaltech accident challenges us to do a
14 better job as government safety agencies of which I
15 call ourselves one. The recommendations we adopted
16 today offer an opportunity to better protect the
17 public from chemical hazards in their midst.

18 I urge the Mayor and the Council of the
19 City of New York to move forward swiftly, to update
20 the fire codes. And I urge all those who receive
21 recommendations to act quickly as well.

22 Now if there are no other comments from

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1 any other members on the Board, then I call this
2 meeting adjourned. Thank you.

3 (Whereupon, the above-entitled meeting
4 was concluded at 11:24 a.m.)

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