

CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD

PUBLIC MEETING

Thursday, March 27, 2014
100 Church Street, 12th Floor
New York, New York 10007
Time: 9:20 a.m.

Reported By:
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APPEARANCES:

BOARD MEMBERS

SUZANNE A. BEDDOE, ESQ.
Chair, Commissioner & Chief Administrative Law
Judge

LT. DANIEL ALBANO
Police Department

ROBERT CARVER, ESQ.
Citizen Member

HON. ERNEST J. CAVALLO
Citizen Member

THOMAS SHPETNER, ESQ.
Citizen Member

DOUGLAS S. SWANN
Citizen Member

RUSSELL PECUNIES, ESQ.
Department of Environmental Protection

EMILY S. LALLY
Citizen Member

JORGE MARTINEZ, ESQ.
Department of Health

TAYO KURZMAN, ESQ.
Fire Department

MADELYNN LIGUORI, ESQ.
Department of Sanitation

ELIZABETH KNAUER, ESQ.
Citizen Member

(Appearances continue on the next page.)

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APPEARANCES:

ALSO PRESENT:

JAMES MACRON, ESQ.
Counsel to the Board
NYC Environmental Control Board

JOSEPH GREGORY

KELLY CORSO

THOMAS SOUTHWICK

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CHAIR BEDDOE: So good morning, everyone. Before we get to the substance of today's meeting, I just want to, first of all, welcome you to our new offices at 100 Church Street.

And as you all know, we've talked about before, pursuant to the new Open Meetings Law, this meeting is going to be recorded and we also have to create a transcript that will accompany the video recording and the audio. So what I'm going to ask is as we proceed in this new way, if you wait to be recognized before speaking. So if you raise your hand if you have a question or comment, so that you can be recognized so we end up having a clean record, that would be tremendously helpful.

Each speaker who is presenting, I'll ask them to go to the podium and then, of course, any

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presentation will be projected
behind me.

So let us begin with today's
Environmental Control Board
Meeting, March 27th, 2014.

First order of business, is
there a motion to adopt the minutes
from our last meeting, February
27th? All in favor?

(Whereupon, Board Members
make a motion by the raise of a
hand.)

CHAIR BEDDOE: Anyone
against?

(No response.)

CHAIR BEDDOE: Any
abstentions?

(No response.)

CHAIR BEDDOE: Thank you.

The first item on our
Agenda, I believe, that Madelynn
Liguori is going to present from
Department of Sanitation regarding
Penalty Schedules.

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MS. LIGUORI: Thank you, Sue. Sanitation has a very minor change to its it schedule. Local Law 77 of 2013 changed Section 16-308 by establishing a pilot program for an organics program. In doing so, it renumbered several sections that we currently enforce for generators of yard waste, both residential and landscapers. So this change just changes the provisions of those codes from 16-308(e) to 16-308(f) and from 16-308(f) to (g), and from (f) to (g). Very minor change. All penalty amounts remain exactly the same.

CHAIR BEDDOE: Any questions for Madelynn on that?

(No response.)

CHAIR BEDDOE: No substantive changes beyond ministerial changes?

MS. LIGUORI: No.

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CHAIR BEDDOE: Is there a motion to approve?

(Whereupon, Board Members make a motion by the raise of a hand.)

CHAIR BEDDOE: Anyone against?

(No response.)

CHAIR BEDDOE: Abstentions?

MS. LIGUORI: (Raised hand).

CHAIR BEDDOE: Emily Lally is just joining us now.

Emily, as I was just telling everyone, since this is our first time being recorded, before you speak, ask questions, comment, I just ask everyone to raise their hand so we could acknowledge you so we have a clean record and transcript. Thank you so much.

The next item up on our Agenda, Tayo Kurzman.

MS. KURZMAN: Actually, Joseph Gregory is here to present.

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CHAIR BEDDOE: Joseph Gregory from the Fire Department is going to be presenting on changes to the Notice of Violation form. And we've all been provided a copy of it.

MS. KURZMAN: Just to clarify, this is an additional copy because there was some typographical error on page 9 on the proof. So the new one corrects that.

MR. GREGORY: Good morning. The New York City Fire Department is requesting the Environmental Control Board's approval of its Notice of Violation form. Changes or amendments to the NOV form reflect amendments to Section 109-02 of Title 3 of the Rules of the City of New York. That section establishes the various Violation Categories, or VCs, for the purpose of enforcing provisions of the New

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York City Fire Code and other laws and rules and regulations that the Fire Department is authorized to enforce.

Pursuant to a Statement of Substantial Need for Early Implementation, the changes to Section 109-02 will take effect on March 30th, 2014. This is the same day as the 2013 amendments to the Fire Code are also slated to take effect.

On the NOV itself, the Violation Categories that the Fire Department is proposing to amend are for VC 5, VC 8, VC 9, VC 24 and VC 30. As Members of the Board have already received correspondence which sets forth the exact language, I want to highlight the notable differences in the Violation Categories.

On the NOV for Violation Category 5, the proposed heading

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will remove the reference to the "Posting of Permits". The heading will bear the caption "Recordkeeping". The Violation Category amendment follows the amended section of the rule by deleting any reference to the posting of permits. Essentially, Violation Category 5 has been made more specific. Infractions that involve the posting of permits will be charged under VC 6, which remains unchanged and bears the heading "Signs, Postings, Notices and Instructions".

On the NOV with respect to Violation Category 8, proposed heading will read "Storage, Accumulation and Removal of Combustible Material and Waste". Fire Department removed the word "timely" within the charging language and added the words "storage" and "material". The

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Violation Category 8 amendment to the NOV filed to the amended section of the rule by expanding the list of infractions to include the storage of combustible substances other than just waste material.

On the NOV with respect to Violation Category 9, the caption currently reads "Means of Egress". The proposed heading on the NOV will add the phrase "Rooftop Access". Within the charging language on the NOV, we're adding the word "access". Violation Category 9 amendment to the NOV is consistent with the amended section of the rule which is specifically clarified to include "Rooftop Access". With the proliferation of cell phone towers and the expanded use of green technology such as solar panels, it has become increasingly important to ensure

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that firefighters have unimpeded access to the roof in the event of a fire or other emergency.

With respect to Violation Category 24 on the NOV, the proposed heading reads "Storage of Hazardous Materials/Commodities". There will not be any change in the charging language of the NOV. Prior to the amendment, Violation Category 24 addressed hazardous and combustible materials. However, if combustible materials are charged under VC 8, Fire Department will no longer enforce it under Violation Category 24. The Fire Department added the term "commodities" to the Violation Category 24 as certain commodities trigger certain storage requirements.

On the NOV with respect to Violation Category 30, the heading currently reads "Fire Safety in Office Buildings/Hotels/Motels".

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The proposed heading on the NOV will read "Emergency Planning and Preparedness". The charging language cites as a violation the failure to comply with specific emergency planning and preparedness requirements. The proposed changes are consistent with the amended section of the rule. The amendment takes into consideration the inclusion of both fire and non-fire emergencies. It also was amended to include all buildings and occupancies subject to emergency preparedness requirements, not just office buildings, hotels and motels.

Finally, in addition to some minor ministerial changes, we are proposing to change the skin color description to the complexion types on the Affidavits/Certificate of Service on the section that's provided to describe a person

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served with an NOV.

That concludes the notable differences with respect to the Violation Categories.

CHAIR BEDDOE: Let's take any questions or comments for Mr. Gregory. Dan Albano.

LT. ALBANO: The changes, specifically that change to the Affidavit of Service about the skin color, are we waiting until the existing stock of NOVs run out or are we going to use these right away?

MR. GREGORY: Go ahead -- well, my understanding is that we're going to continue to use the NOVs that we have in stock and we're going to use the new ones as they come into play.

MS. KURZMAN: Our stock is very low right now. We would have been ordering the new NOV probably three weeks ago had we not had

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these changes to the rules. So these will come out very quickly but the stock that's already been distributed will continue to be distributed.

LT. ALBANO: We have the same problem with the Affidavit of Service, some other issues on the NOV. But I don't know. I think our stock is pretty extensive.

CHAIR BEDDOE: Mr. Martinez just joined us. He wasn't with us when we first started the meeting. Do you have a comment?

MR. MARTINEZ: Yes. I notice that in the NOV, we indicate "failure to maintain/produce," but on the description of the NOV, you indicate "failure to maintain and/or produce". I know some of the other charges you include the "and/or" clause. I'm wondering why that was taken out.

MR. GREGORY: Repeat the

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question one more time.

MR. MARTINEZ: On the NOV,
if you look at Violation Code 5,
"Recordkeeping" indicates "failure
to maintain/produce records". But
on the description of the Violation
Code 5, "Recordkeeping," is
"failure to maintain and/or produce
required recordkeeping". I'm
concerned about the clause
"and/or". I'm wondering why it was
left out because I know some of the
other charges you do include the
"and/or" clause.

MS. KURZMAN: Do you want me
to handle this?

MR. GREGORY: Sure.

MS. KURZMAN: This is just a
spacing issue for the formatting
and how they formatted it. When
there's a selection, if you notice
in most of the Violation
Categories, when there's a
selection between different things

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such as on VC 1, "portable fire extinguisher, hoses/other," on VC 4, "manufacture, store, handle, use," VC 17, on the top of the next column, "certificate of fitness and qualification," they just use a slash most of the time. Sometimes they'll use an "and" or an "or" if there's, I guess, it is a spacing issue. But that's just how it's been and I think it's just a formatting issue.

CHAIR BEDDOE: How do you think that would impact the respondent receiving this?

MS. KURZMAN: How do I think?

CHAIR BEDDOE: Well, Mr. Martinez asked the question --

MR. MARTINEZ: Yeah, that was what I --

CHAIR BEDDOE: Well, what's your concern? What's your concern?

MR. MARTINEZ: I'm concerned

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how that would be read. I mean, I think the difference between "and" -- I read it as "maintain or" rather than "maintain and/or". I think there's a slight difference and I don't know whether that would impact on the respondent or not but some of the other violations do include that. So, you know, I just threw it out.

MS. KURZMAN: Our position would be that it would not impact. If it's only one, they circle the one that it is. If it's either, it could be either, they either circle both or just don't circle either.

CHAIR BEDDOE: Any other questions? Elizabeth.

MS. KNAUER: I have a question. It's actually not on one of the changes but it's in the language about the Certificate of Correction. In the second paragraph, under "Notice of

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Violation" in order to correct certified corrections at the top, it says the certificate of correction must be received by the Bureau of Legal Affairs by whatever date is put there. And then the next sentence says first offenders whose proof of correction is accepted by the Fire Department by such date will avoid a hearing. And there seems to be a difference about, you know, if I thought I just needed to submit my proof of correction by a certain date, but that, and we've seen it in some cases, that might not mean that it's accepted on that date and I might not avoid a hearing. So I find the language could be possibly confusing to somebody who receives it.

MS. KURZMAN: The language is that way on purpose. There is a requirement that it be received by

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a particular day. If we don't have an opportunity to review it on that day and we need to review it after that day, we are still able to submit the correction and they would still avoid the hearing. However, just because it's received doesn't mean that it will be accepted. So if we receive it on the first -- let's say they have until the 15th of a month to receive it, if we get it by the 15th and we don't -- let's say that's a Friday. We review it on Monday the 18th and we accept it, that would be fine. But if we receive it the 15th and it's not acceptable, then we'll still let them know that it's not acceptable and they have to go to the hearing.

MS. KNAUER: So it's essentially, even if it's not accepted by that date because of just administrative timing, it

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would be considered accepted as of
that date.

MS. KURZMAN: Correct, as
long as it's received on that date.

CHAIR BEDDOE: Any other
questions, comments, for the Fire
Department?

(No response.)

CHAIR BEDDOE: I have one
sort of global comment about the
Notice of Violation, and it's sort
of an ongoing concern in terms of
the Environmental Control Board's
relationship to respondents and to
the City agencies, is that we stand
as a neutral body to have fair
hearings, right? So we are in a
position of neutral arbiter of the
facts and we render decisions.
Now, when somebody receives this
kind of Notice of Violation, the
first thing they see up here is
"Environmental Control Board". It
creates the impression for those

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who don't know that that somehow the Environmental Control Board is issuing the violation. And we see that again and again. There's nothing on here visually except for a small seal that I can barely read that identifies this is issued from the Fire Department. And so my global concern is that we have something more prominent because the only prominent sort of logo on there or title on there is from the Environmental Control Board. So I wonder if that's something that globally we can address.

If you want to take it under advisement and kind of come back to that, but that's an ongoing concern and something that now the Fire Department is going to be issuing these Notices of Violation, I wish it could be addressed up-front, because it creates a public perception that somehow the court

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is also the issuing agency, and
that shouldn't be.

Elizabeth.

MS. KNAUER: I'm just kind
of following from your comment.
I'm wondering if the "Please take
notice" language could or should be
amended. Instead of saying "The
premises cited above is in
violation," should it be amended to
say "The Fire Department or the
petitioner has found the premises
cited above in violation"?

CHAIR BEDDOE: Well, this is
the thing: This is not ours so
we're not saying, you know, we
think there may be violations in
the Fire Department's finding or as
a statement of allegation. So I
leave that to you. But that's my
global concern.

Tom Shpetner.

MR. SHPETNER: It does note
"The Petitioner, New York City Fire

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Department, versus Respondent".
And it does further, in the part
that, you know, was cited earlier,
"is further ordered by the Fire
Commissioner". So your point is
well taken, of course, but there
are some places in here where it
does mention that it is the Fire
Department issuing the NOV.

CHAIR BEDDOE: I think these
kind of things would not escape
people who read the fine print,
like you and I, lawyers, but I
think for the general public, when
you get something like that, the
first thing you see is
"Environmental Control Board" and
you think, "What did they have to
do with it?"

Ernie, do you have a
comment? I saw you gesture and I
just --

HON. CAVALLO: No, I think
not.

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CHAIR BEDDOE: Okay. Any other comments or questions?

MS. KURZMAN: Just to let you know, I mean, we are kind of running low on the NOV stocks that we have and so we would like to get these out, but this is definitely something that we can look into on how to fix better for the next time, if that would be acceptable.

CHAIR BEDDOE: Well, my understanding is that you produce these that will last for --

MS. KURZMAN: About a year maybe, depending on how -- well, issuance has been going up so we've been ordering them much more frequently lately.

CHAIR BEDDOE: You know, my preference would be in that bucket up top to say "Fire Department".

MS. KURZMAN: I'm just concerned that that would take a number of additional approvals at

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this point and we're already going to run out of Notice of Violations before we receive these.

CHAIR BEDDOE: Well, I mean, I think that's an operational issue you can just run up the chain.

MS. KURZMAN: I'm just wondering if it's something that would hold this up or --

CHAIR BEDDOE: I think it's important to this organization. I would like to see that addressed but I'd leave that to the Board.

So with that, we could also approve it subject to that change.

Any other comments or questions?

(No response.)

Anything else from Mr. Gregory?

MR. GREGORY: No.

CHAIR BEDDOE: Okay. So let's put this to vote. Is there a motion to approve the form?

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(Whereupon, Board Members
make a motion by the raise of a
hand.)

CHAIR BEDDOE: Anyone
against?

(No response.)

CHAIR BEDDOE: Any
abstentions?

LT. ALBANO: We're approving
the form subject to some of the
concerns that Mr. Martinez raised,
that you raised, or we're approving
the form as it is?

CHAIR BEDDOE: Well, the
question would be: Would you
approve the form as it stands?
That's the first question. So is
there a motion to approve the form
as it stands without any changes?

(Whereupon, Board Members
make a motion by the raise of a
hand.)

CHAIR BEDDOE: Anybody else
who would approve subject to the

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changes?

(Whereupon, two Board Members make a motion by the raise of a hand.)

CHAIR BEDDOE: Two.

Any abstentions?

MS. KURZMAN: (Raised hand).

MR. PECUNIES: Could I just ask a question on that?

CHAIR BEDDOE: Yes.

MR. PECUNIES: For future revisions of NOV forms, because I know our air, noise, and asbestos forms are formatted similarly -- they say "ECB City of New York" on the top -- is that something that you want agencies to change as they are redoing their forms?

CHAIR BEDDOE: It's something that I'd like agencies to explore because I think that for your sake and for our sake, it doesn't help to have the public confused about who the issuing

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person or group is. And so very often when these come to us, they'll say, "Why did you give us this ticket?" And we have to send it back to the issuing agency. They're very confused about who they're getting the ticket from and the fact that then, well, "Are you giving me the ticket?" And then, "Are you hearing the same ticket?" So that's where the confusion comes in. So that's a long-winded way of saying yes, I would like agencies to really reconsider revising their NOVs as they come up to more prominently feature the issuing agency itself as the issuer.

MR. PECUNIES: Because I know ours doesn't even have a logo on it or anything.

CHAIR BEDDOE: Yeah, some identifier.

Yes, Madelynn.

MS. LIGUORI: So what about

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the paper tickets that we receive for ECB? They prominently say "Environmental Control Board" on them.

MS. SLIFKA: Not anymore.

MS. LIGUORI: They don't anymore?

MS. SLIFKA: No. We've removed it.

MS. LIGUORI: Then also we should be revising our handheld, which we just ordered stock a couple months ago on.

CHAIR BEDDOE: Well, when it comes up for the next cycle, it's just something I'd like you to consider because I think it's more helpful.

Tom.

MR. SHPETNER: This is maybe a silly observation, but when I saw this initially and I saw "Vanguard Direct," I conflated it with a mutual fund company. And I don't

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know what Vanguard is, but maybe that's the spot where you put "Fire Department".

MS. KURZMAN: So this is just a tab and then they're tear-off sheets. So nobody actually sees that, but that is the vendor who produces these forms.

MR. SHPETNER: I immediately thought it was a mutual fund company. I thought I received the wrong information from Frances.

MS. KURZMAN: I understand that but that company is the company that does the NOV's. So when somebody gets this, as you see there's a number of pages so it's a 5-part form, and they're perforated right at that line, that dotted line, under the Vanguard Direct logo.

MR. SHPETNER: So the respondent would never see it?

MS. KURZMAN: The respondent

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does not see that. I don't even know if it prints on there. I'm not sure. But it is on this form.

CHAIR BEDDOE: Any other questions or comments before we move on?

(No response.)

CHAIR BEDDOE: So the next item up on the Agenda is a presentation by Russell Pecunies for the Department of Environmental Protection.

MR. PECUNIES: So this month we have the usual 28 requests for Cease and Desist Orders pertaining to failure to install backflow prevention devices.

So I guess if there are any questions on any of those, I'll take those first.

CHAIR BEDDOE: And do you want to do them all together?

MR. PECUNIES: We'll do the 28 backflow ones first, and then

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there are 2 other ones.

CHAIR BEDDOE: So as you know, we've all received the packet with the 28 backflow details.

Any questions for Russ on those?

(No response.)

CHAIR BEDDOE: Is there a motion to approve? We're going to do this collectively. A motion to approve all 28?

(Whereupon, Board Members make a motion by the raise of a hand.)

CHAIR BEDDOE: Thank you very much.

And you're abstaining?

MR. PECUNIES: Yes, absolutely.

Then we have two requests for Cease and Desist Orders under the Air Code. These are the same as the six that were made at the last Board Meeting. These are for

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locations where the respondent has been cited for failing to renew the Certificate of Operation for a boiler that is using No. 6 fuel oil. They have been adjudicated in violation. It has been over 30 days since they were adjudicated in violation and the certificate has not been renewed based on which the Department is requesting in each of these cases for 2200 Grand Avenue and 2198 Cruger Avenue, both in the Bronx, that the Board issue an Order to Cease and Desist.

CHAIR BEDDOE: Any questions for Russ on either of those two requests? Emily.

MS. LALLY: I just wanted to ask are either of them residential buildings and is this still going to go through a process where they come in for pre-sealing hearing?

MR. PECUNIES: The Cease and Desist Hearing will be for the

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purpose of them coming into compliance with the requirement to renew the Certificate of Operation. Since they are no longer able to renew a certificate of operation to use No. 6 oil, they will essentially be forced to convert to 4 or 2 or natural gas in order to comply with the order.

MS. LALLY: I'm just wondering what happens if there are residential tenants in that time frame. If they say they're forced to convert, you shut their old boiler but they don't get a new one?

MR. PECUNIES: The question is -- can you --

MS. LALLY: I'm just concerned -- are either of those residential?

MR. PECUNIES: I suspect that almost all of these will be apartment buildings. So if the

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equipment has to be sealed, they'll have to get a temporary boiler. I mean, I believe that last summer when we brought this concept to the Board to do the cease and desist, that that question was asked and we did make inquiries. And buildings get temporary boilers all the time because the boiler breaks or whatever. And if we did have to seal one of these, that's what they would have to do.

CHAIR BEDDOE: Elizabeth.

MS. KNAUER: I've been hearing reports on the news about the public housing buildings and the Rockaways that have had to have temporary boilers and they're costing \$1 million per month.

MS. PECUNIES: Well, that may be -- I mean, you see --

MS. KNAUER: When we first were presented with this, that information, I don't think I'd

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heard that. It seems it's not just a simple matter.

MR. PECUNIES: Well, I mean, I can inform the Board maybe as to what the average cost of what a temporary boiler would be next month. I don't know why the Housing Authority is paying \$1 million a month for a boiler, but they don't cost \$1 million a month.

CHAIR BEDDOE: I don't know if it's impacted obviously by the size of the boiler you need and how many units are at issue.

MR. PECUNIES: And they would only be sealed, again, if they either disregarded the Cease and Desist Hearing or refused to comply. But by next summer, everybody will have to be off No. 6 oil.

CHAIR BEDDOE: I just want to recognize you before speaking,

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Mr. Martinez.

MR. MARTINEZ: You may have addressed this when you brought this proposal before us the first time, but how long does it take to convert from No. 6 to the proper number oil?

MR. PECUNIES: The conversion process from 6 to 4 is very easy and not that expensive. Some buildings may want to convert to natural gas, so we may get some people who get the Cease and Desist Orders who will come in and they will say, "We don't want to convert to 4 right away. Con Ed is, like, going to bring us natural gas in three months and we want to wait for natural gas." We want everybody to convert to natural gas who says they want to convert to natural gas. So in those circumstances, we will agree to appropriate adjournments of the

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Cease and Desist Hearing to allow them to convert to natural gas if that's what they want to do.

CHAIR BEDDOE: Any other questions on this issue?

(No response.)

CHAIR BEDDOE: Let's go ahead with the vote. So we're going to vote collectively. Is there a motion to approve?

(Whereupon, Board Members make a motion by the raise of a hand.)

CHAIR BEDDOE: Anyone against?

(No response.)

CHAIR BEDDOE: Abstentions?

MR. PECUNIES: Abstention.

And just for an informational note, on one of the six that was approved last month, because of my misreading of the inspector's handwriting on the ticket, the request was put in for

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301 West 72nd Street. In fact, the ticket was issued for 305 West 72nd Street. And when I pointed this out to ECB staff, they said that I should just mention that to the Board this month and the Cease and Desist Order will be revised so that it goes to the right address.

CHAIR BEDDOE: Thank you for that.

MR. PECUNIES: Thank you.

CHAIR BEDDOE: Next we have pre-sealing reports. Kelly Corso from Environmental Control Board is going to be presenting on those.

MS. CORSO: Good morning. We have 21 pre-sealing reports for today's Board, all of which were issued at the live hearings. Twenty of the pre-sealing reports pertain to failure to install backflow device violations. All 20 reports recommend that there be no sealing or other action given

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respondent compliance. The remaining pre-sealing report pertains C&D Order 2013/C for a violation of the Air Code. And I'll discuss this one in a little bit more detail. In this case, the predicate violation was issued in January of 2011 to Oz Realty LLC for failure to obtain a valid operation certificate for boiler equipment at a multiple dwelling located at 1920 Osborne Place in the Bronx.

A default Judgment in Order was issued for the predicate violation in February 2011 imposing a penalty and order in compliance with the Air Code.

An inspection of the equipment in July of 2013 showed that the respondent continued to operate the boiler in violation of the Air Code, and subsequently, a C&D Order was approved by the Board

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in July of 2013.
The pre-sealing hearing was held on March 11th, 2014, following eight adjournments. At the hearing, the respondent's representative provided proof of a valid operating certificate from DEP that brings the equipment into compliance with the Air Code. Based on the evidence of compliance, ALJ Hort, has recommended that the sealing be stayed pending reinspection and further reinspection by DEP at the Boiler Equipment Unit confirming no Air Code violations.
CHAIR BEDDOE: Any questions for Kelly on that?
(No response.)
CHAIR BEDDOE: Thank you very much.
I just wanted to mention, since I always like to keep you informed of what's going on at ECB

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since you have vested interest in all of that, Kelly Corso used to be the managing attorney for the special motion part reviewing all of the cases that fell into default when people make motions to reopen. She since moved on to be the Assistant Director for Adjudications overseeing a few of our offices, and was recently promoted to Assistant Commissioner. I just wanted to let you know that.

(Applause.)

CHAIR BEDDOE: And I think a lot of the agencies have contact with her. She does a great job for us. And we're very, very proud of her advancement.

Thank you, Kelly.

MS. CORSO: Thank you.

CHAIR BEDDOE: With that -- did we take a vote on that? I was so busy congratulating.

Is there a motion to

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approve?

(Whereupon, Board Members
make a motion by the raise of a
hand.)

CHAIR BEDDOE: Anyone
against?

(No response.)

CHAIR BEDDOE: Abstentions?

MR. PECUNIES: Abstention.

CHAIR BEDDOE: So now we are
at the point where we have to go
into Executive Session to discuss
litigation and appeals. Is there a
motion to go into Executive
Session?

(Whereupon, Board Members
make a motion by the raise of a
hand.)

(Whereupon, the Board goes
into Executive Session at 9:54 a.m.
and returns to Public Session at
10:48 a.m.)

CHAIR BEDDOE: Our court
reporter is back with us. We are

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again in Public Session and we have heard extensive back and forth on the matter of New York City versus Pilon Bar & Restaurant Corporation, Appeal No. 1301301. We're going to take a vote. We have a number of different options. I'll ask you to raise your hand when you agree with the option we are articulating.

The first option is to sustain the violation. And that is to reverse the ALJ's finding, sustain the violation on the grounds of the decibel level, exceeded the legal level, the agreement between the parties was ambiguous and should not have been reasonably relied upon and could not be then used as a defense in this case. So that's option one. So those of you who vote for option one to sustain the violation, please raise your hands.

(Whereupon, Board Members

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make a motion by the raise of a
hand.)

CHAIR BEDDOE: We have four.
The second option is to dismiss the
violation and to sustain the ALJ's
finding. So essentially we would
be saying that the parties reached
an agreement and that the
respondent reasonably relied on
that agreement; however, we would
add a caveat that the Board find
that the agreement resulted in a
noise level that did exceed the
legal level and was ineffective in
maintaining that legal requirement
and so the agreement cannot be
relied upon going forward. That is
option number two. Those of you in
favor of that option, I'll ask I
see a show of hands, please.

(No response.)

CHAIR BEDDOE: Option number
three would find the respondent in
violation, it would reverse the

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ALJ's finding, and it would find that the respondent did violate -- I'm sorry, that there was a violation but that the fine is mitigated to the minimum of \$2,000 and that the bar can no longer -- the respondent, the Pilon Bar, can no longer rely on the agreement and it must come into the compliance with the legal noise level of 42 decibels. So those of you who are voting for option there, can I see a show of hands, please.

(Whereupon, five Board Members make a motion by the raise of a hand.)

CHAIR BEDDOE: And abstentions?

MR. PECUNIES: (Raised hand).

LT. ALBANO: (Raised hand).

CHAIR BEDDOE: There were two appeals panels from March 6th and March 20th. I'll ask if we can

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vote on those collectively.

Anyone affirming those
decisions?

(Whereupon, Board Members
make a motion by the raise of a
hand.)

CHAIR BEDDOE: Anyone
against?

(No response.)

CHAIR BEDDOE: Any
abstentions?

(No response.)

CHAIR BEDDOE: I think that
concludes our bit of business.

Tom, is that all we had on
appeals?

MR. SOUTHWICK: That is, but
I'd like to say on the record that
our turnaround time this month is
the lowest it's been for these 110
appeals with just over 77 days.

CHAIR BEDDOE: Fantastic.
Thank you for that.

With that, thank you for

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your time, your effort. I know
this was quite a debate. But thank
you so much for your service. I'm
always glad when we have these kind
of lively debates.

Is there a motion to
adjourn?

(Whereupon, Board Members
make a motion by the raise of a
hand.)

CHAIR BEDDOE: Thank you.

(Time noted: 10:52 a.m.)

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