

CORRECTED

NEW YORK CITY
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
ENVIRONMENTAL CONTROL BOARD

BOARD MEETING

Office of Administrative Trials and Hearings
OATH Multi-Purpose Training Room
100 Church Street, 12th Floor, New York, New York
August 3, 2023
9:40 a.m. to 11:59 a.m.

August 3, 2023

MEMBERS PRESENT:

Asim Rehman, Esq. - Commissioner/Chief Administrative Law Judge, OATH, Chair/Executive Director, OATH ECB
Shamonda Graham - Department of Buildings (DOB)
Joseph Gregory, Esq. - New York City Fire Department (FDNY)
Elizabeth Knauer, Esq. - Appointed Member (Water)
Madelynn Liguori, Esq. - Department of Sanitation (DSNY)
Russell Pecunies, Esq. - Department of Environmental Protection (DEP)
Matthew Schneid, Esq. - Appointed Member (Real Estate)
Thomas D. Shpetner, Esq. - Appointed Member (Business)
Matthew Smith, Esq. - New York City Police Department (NYPD)
Douglas S. Swann - Appointed Member (Air)

ALSO PRESENT:

Amy Allen, Esq. - Assistant Counsel, Department of Environmental Protection (DEP)
Lisa Ally, Esq. - Assistant Counsel, Department of Environmental Protection (DEP)
Rachel Amar - Senior Advisor to Commissioner, OATH
Sola Best, Esq. - Assistant General Counsel, OATH
Cindy Chen - Analyst, Office of Management and Budget (OMB)
Kelly Corso, Esq. - Assistant Commissioner/Hearings Division Adjudications, OATH
Amber Gonzalez, Esq. - Hearing Officer, OATH
Samiha Jamal - Legal Intern, Department of Environmental Protection (DEP)
David Johnson - Legal intern, Department of Environmental Protection (DEP)
Timothy Jones, Esq. - Senior Counsel, OATH
David C. Kim, Esq. - Assistant General Counsel, OATH
Karin McAvoy - Administrative Coordinator, OATH
Bridget Molnar - Legal Intern, Department of Environmental Protection (DEP)
Peter Schulman, Esq. - Deputy Commissioner/Appeals Division, OATH
Peter Santella - Legal Intern, Department of Environmental Protection (DEP)
Frances Shine - Secretary to the Board, OATH
Amy Slifka, Esq. - Deputy Commissioner/Hearings Division, OATH

August 3, 2023

Tom Southwick, Esq. - Assistant Commissioner/Appeals
Division, OATH

**Olga Statz, Esq. - Deputy Commissioner/General Counsel,
OATH**

Lisa Urban - Member of Public

Elizabeth Wescoe - Legal Intern, Department of
Environmental Protection (DEP)

August 3, 2023

INDEX

	Page
Asim Rehman, Esq.	5
David C. Kim, Esq.	6
Shamonda Graham	6
Joseph Gregory, Esq.	6
Elizabeth Knauer, Esq.	6
Madelynn Liguori, Esq.	6
Russell Pecunies, Esq.	6
Matthew Schneid, Esq.	7
Thomas D. Shpetner, Esq.	7
Matthew Smith, Esq.	7
Douglas S. Swann, Esq.	7
Olga Statz, Esq.	8
Rachel Amar	18
Peter Schulman, Esq.	18
Amber Gonzalez, Esq.	44

1 August 3, 2023

2 (The board meeting commenced at 9:40
3 a.m.)

4 ASIM REHMAN, ESQ., COMMISSIONER/CHIEF
5 ADMINISTRATIVE LAW JUDGE, OATH, CHAIR/EXECUTIVE
6 DIRECTOR, OATH ECB: Okay. Thank you, and good
7 morning, everyone. I'm Asim Rehman. I'm the
8 Commissioner and Chief Administrative Law Judge
9 here at OATH. Also, the Chair of the
10 Environmental Control Board. I'm very pleased to
11 call this meeting to order of the August 3rd ECB.

12 And I just want to take a moment to
13 welcome everyone in person, our Board members, as
14 well as our guests. It's really nice to, to have
15 a meeting that's in-person after being in this
16 [unintelligible] [00:00:30] for so long. There
17 is a meeting convenience to doing it online, but
18 there is something important to being in person.
19 It helps us, particularly with the important
20 issues that we deal with and the conversations we
21 have to have. Being in person helps us create
22 this sense of community that we need to have
23 those conversations. So, once again, thank you
24 for being here, and I look forward to many more

1 August 3, 2023

2 future meetings here at 100 Church.

3 So I will ask the GC team to take a roll
4 call and to verify quorum.

5 DAVID C. KIM, ESQ., ASSISTANT GENERAL
6 COUNSEL, OATH: Good morning, all. We will start
7 with Commissioner Asim Rehman.

8 MR. REHMAN: Present.

9 MR. KIM: Shamonda Graham?

10 SHAMONDA GRAHAM, DEPARTMENT OF BUILDINGS
11 (DOB): Present.

12 MR. KIM: Joseph Gregory?

13 JOSEPH GREGORY, ESQ., NEW YORK CITY FIRE
14 DEPARTMENT (FDNY): Present.

15 MR. KIM: Elizabeth Knauer?

16 ELIZABETH KNAUER, ESQ., APPOINTED MEMBER
17 (WATER): Present.

18 MR. KIM: Madelynn Liguori?

19 MADELYNN LIGUORI, ESQ., DEPARTMENT OF
20 SANITATION (DSNY): Present.

21 MR. KIM: Thank you. Harminderpal Rana?
22 Russell Pecunies?

23 RUSSELL PECUNIES, ESQ., DEPARTMENT OF
24 ENVIRONMENTAL PROTECTION (DEP): Present.

August 3, 2023

MR. KIM: Thank you. Matthew Schneid?

MATTHEW SCHNEID, ESQ., APPOINTED MEMBER
(REAL ESTATE): Present.

MR. KIM: Thank you. Thomas Shpetner?

THOMAS D. SHPETNER, ESQ., APPOINTED
MEMBER (BUSINESS): Present.

MR. KIM: Matthew Smith?

MATTHEW SMITH, ESQ., NEW YORK CITY
POLICE DEPARTMENT (NYPD): Here.

MR. KIM: Douglas Swann?

DOUGLAS S. SWANN, ESQ., APPOINTED MEMBER
(AIR): Present.

MR. KIM: Thank you. Jarrod
Whittington? Okay, we have a quorum, 10 out of
12.

MR. REHMAN: Great. Thank you very
much. Can we now ask for a motion -- we'll,
we'll now discuss the minutes of the June 1st
meeting. I hope everyone has an opportunity to
read them. Does anyone have any corrections to
the minutes of the June 1st meeting? I'd like to
request a motion to adopt the minutes. Okay, I
have a motion from Joseph Gregory. A second from

1 August 3, 2023

2 Madelynn.

3 MR. KIM: Are there any objections to
4 the motion approving the minutes of the June 1,
5 2023, ECB Meeting? Hearing none, seeing none,
6 the motion is approved unanimously.

7 MR. REHMAN: Okay, thank you, everyone.
8 I'll now turn it over to the OATH General
9 Counsel, Olga Statz, for a presentation on a
10 resolution concerning Open Meeting Law
11 procedures. Olga?

12 OLGA STATZ, ESQ., DEPUTY COMMISSIONER/
13 GENERAL COUNSEL, OATH: Hi. Good morning,
14 everybody. It's so nice to see everyone in
15 person.

16 So we've discussed this resolution
17 [Unintelligible] [00:02:39] and we've discussed
18 the ins and outs of the amendment to the Open
19 Meetings Law that, now, for a period of time, for
20 a period of one year, it's kind of like an
21 experiment of allowing video conferencing for, in
22 certain circumstances. And in order to take
23 advantage of that, the Board or the Commission
24 or, or the body would have to pass a resolution

1 August 3, 2023

2 allowing that, and that's what we've drafted, as
3 we discussed last time. We've drafted a
4 resolution for your consideration, which allows
5 us to take advantage of the opportunity for
6 certain members, under certain extraordinary
7 circumstances, to ste-, to, to participate
8 through video conference. So I've presented it
9 to you, and I'm very happy to answer any
10 questions you might have on it.

11 There are, there are actually three
12 parts to it. There's the resolution itself. The
13 resolution calls for a body of procedures. And
14 so I also drafted the body of procedures, and I
15 also included a copy of the law so that you guys
16 could see what, what this was all about. So I'm
17 happy to answer any questions you might have
18 about it.

19 MR. SCHNEID: Do we know what counts as
20 an extraordinary excuse not to be here?

21 MS. STATZ: Okay. so in the legislation,
22 they gave a few examples. They said disability,
23 they said caregiving, they said illness. So --
24 and then they threw in the, like these broad

1 August 3, 2023

2 basket terms of like exigent circum-, that, that
3 kind of exigent circumstance sort of thing.

4 So I think we can gather that it's, it,
5 it has to be more than I really just don't feel
6 like taking the train. You know, it has to be
7 more than that. It has to be a circumstance that
8 you feel really requires that you are not
9 present. And you also, one of the things to keep
10 in mind is that you can't decide to just do this
11 on the same day. I mean, unless it's, you know,
12 you're in traction or something. You have to ask
13 four days before the meeting for, actually let
14 the, someone from OATH know that you will not be
15 there so that we can then do a public notice to
16 the public, that you will not be there, that
17 you'll be joining from video conference. Because
18 the public has to be apprised of who's there,
19 who's not there.

20 MR. SMITH: I'm sorry. So how would
21 that work if you're sick the day before and --

22 [CROSSTALK] [00:05:01]

23 MS. STATZ: So if you're sick the day
24 before, but the legislation anticipates that. It

1 August 3, 2023

2 says that the, that the Board may reschedule the
3 meeting if they don't have time to, to do the
4 public notice. So we're not required to
5 reschedule the meeting, but you may reschedule
6 the meeting. And the reason they're so flexible
7 about that is that the person who is seeking
8 permission to, to appear by video conference can
9 -- is, is not necessary for a quorum. That's one
10 of the main things of this law, that the only way
11 it's going to work is if that person who is
12 seeking to appear by video conference is not
13 necessary for the quorum. You have to have the,
14 the quorum number in, in a public place for one
15 of the members then to say I can't show up in
16 person.

17 MR. SHPETNER: Just to make sure I
18 understood correctly, not, not -- so, in other
19 words, we have nine people present. Somebody
20 misses a flight. You have a quorum. The, the
21 tenth person is irrelevant, is what you're
22 saying.

23 MS. STATZ: They, they can still
24 participate --

1 August 3, 2023

2 MR. SHPETNER: Okay.

3 MS. STATZ: -- both in the meeting, but
4 they're not necessary for the quorum.

5 MR. SHPETNER: I understand. That's
6 exactly my question. Thank you.

7 MS. STATZ: Yeah.

8 MR. SHPETNER: That's the clarification.

9 MR. REHMAN: The alternative also being
10 (a) reschedule, or (b) if it's, if it's less than
11 four days, they would just not be counted
12 present. Right? Alternatively, you can, you can
13 proceed with the meeting, and they're just not a,
14 a participating member.

15 MS. STATZ: Yeah. Or you -- it doesn't
16 really say that, necessarily, in the law.

17 MR. REHMAN: Yeah.

18 MS. STATZ: So I would, I would, I
19 figure that if we make the, do attempts at
20 publicizing it, we might be able to get away with
21 it, depending on the cir- circumstances.

22 MR. SHPETNER: Look, I think this is a
23 great way to go and I thought this was all pretty
24 well written. But it seems like maybe we need

1 August 3, 2023

2 like a little bit of FAQ or something just, or,
3 or training. I don't know, some bullets. I, is
4 that --

5 MS. STATZ: You know, frankly, if we, if
6 we continue to do what we're doing, --

7 MR. SHPETNER: Yep.

8 MS. STATZ: -- we, there's not much more
9 you need to know.

10 MR. SHPETNER: I don't want to boil the
11 ocean, but I'm just thinking out loud. These are
12 some good questions. It's just, you know.

13 MS. STATZ: Yeah. So these are things -
14 - also, you have my e-mail.

15 MR. SHPETNER: Yeah, yeah.

16 MS. STATZ: So you can always just
17 contact me and say, you know, --

18 MR. SHPETNER: No, I just --

19 MS. STATZ: -- I'm having this
20 situation. What do I do here? Do I count? Do I
21 not count? It's, we can, we can handle. But, in
22 general -- this is in general -- in general, we
23 need a quorum, a physical quorum.

24 MR. SHPETNER: Yeah. I --

1 August 3, 2023

2 MS. STATZ: And a person outside of that
3 who still wants to participate and still wants to
4 vote, but you can't do it publicly, they can,
5 they still have an opportunity to participate.
6 They have to beg off.

7 MR. SHPETNER: I think this is all
8 great. I, I'm sorry, I was supposed to introduce
9 myself. Tom Shpetner, Citizen Member. I should
10 have done that. [Unintelligible] [00:07:31]
11 opening the meeting, right? I was talking about
12 this with Peter, because I was studying the, the
13 legislation and I didn't quite understand it all.
14 And so I reread it, and I think it's a great
15 idea. But I also think having it all on our
16 website, it just makes the meetings even more
17 open, you know, the more journalists can see us
18 or whomever, right? Somebody who --

19 MS. STATZ: Yeah.

20 MR. SHPETNER: -- doesn't live here
21 anymore and moved across the country, but cares
22 about some issues, it's pretty good, I think. So
23 it's more open.

24 MS. STATZ: Yeah.

1 August 3, 2023

2 MS. GRAHAM: Shamonda Graham, Department
3 of Buildings. I have three questions.

4 MS. STATZ: Okay.

5 MS. GRAHAM: The first one, it talks
6 about po- posting on the webpage, and we're using
7 the term ECB all throughout here. Is the posting
8 to the webpage, is that on the OATH webpage? And
9 does it matter that we're using the term ECB?

10 MS. STATZ: Well, no, it doesn't,
11 because ECB, in the charter, ECB is part of OATH.

12 MS. GRAHAM: Okay.

13 MS. STATZ: So, you know, ECB is
14 expected to be on our website, is expected to
15 have its hearings held in, in the OATH Hearings
16 Division, et cetera, so there's no, there's no
17 conflict there.

18 MS. GRAHAM: Okay. I, I mean, I don't
19 have any confusion. I'm just a little bit
20 worried about the public because, when you go to
21 the website, you see OATH everywhere. So I
22 don't, I just don't want anybody to think they're
23 in the wrong place.

24 And, then, the other question I have is

1 August 3, 2023

2 with regard to number 9, if members, if the CPLR
3 authorizes them to participate. It looks like
4 it's saying that once we participate via
5 videoconferencing, that we must then allow the
6 public to do so. So --

7 MS. STATZ: Yeah. Once there's one
8 person who is on video conference, --

9 MS. GRAHAM: Mm-hmm.

10 MS. STATZ: -- the public is allowed to
11 participate, also, on video conference.

12 MS. GRAHAM: So I'm understanding
13 correctly that if everyone shows up in person,
14 then the public may not participate by video
15 conference.

16 MS. STATZ: If everyone is in person,
17 no.

18 MS. GRAHAM: Okay.

19 MS. STATZ: There's, then we're under no
20 obligation to, to have it.

21 MS. GRAHAM: Okay.

22 MR. SHPETNER: Well, just to advance the
23 question, then, why not make ourselves just
24 available pro forma on the web?

1 August 3, 2023

2 MS. STATZ: There's, there's nothing --
3 there's noth-, there's no law stopping us from
4 doing that.

5 MR. SHPETNER: Right, that's my point.
6 Exactly. Why, why shouldn't -- why wouldn't we
7 do that? I think it's a great idea.

8 MS. GRAHAM: It might even be better.
9 Well, that, that's what --

10 MR. REHMAN: Do you mean in a live sense
11 or, or posting the recorded meeting?

12 MR. SHPETNER: Well, I know we do the
13 latter, don't we?

14 MR. REHMAN: Yeah.

15 MR. SHPETNER: But I wouldn't have an
16 issue with the live. It, you know, I, I think
17 it's a good idea. But I, it just would increase
18 access. In a vacuum, I think it's canny. If, if
19 we don't do it, we don't do it. It's fine. The
20 recordings come out. But I --

21 MR. REHMAN: Let's -- it's, it's an,
22 it's an interesting point, Tom. Let's, let's
23 hold on that for a moment, since that's not tied
24 to this, but it's a relevant topic. And let's

1 August 3, 2023

2 continue discussion on the, on the resolution,
3 because there have been some good questions. Did
4 you have other questions, Shamonda?

5 MS. GRAHAM: No, I'm done.

6 MR. REHMAN: Any other questions on the
7 resolution? Okay. So before we move to a vote
8 on it, since it's a related topic, does anyone
9 else have general views on this notion of, right
10 now, we are currently posting the meeting after
11 the meeting online, but doing it as a live
12 broadcast? I don't -- I'm not sure --

13 RACHEL AMAR, SENIOR ADVISOR TO
14 COMMISSIONER, OATH: No, it is.

15 MR. REHMAN: Right now, it's live?

16 [CROSSTALK] [00:10:30]

17 PETER SCHULMAN, ESQ., DEPUTY
18 COMMISSIONER/APPEALS DIVISION, OATH: People can,
19 people can join Webex.

20 MR. REHMAN: Right.

21 MR. SCHULMAN: We publish the Webex
22 invite --

23 MR. REHMAN: Right.

24 MR. SCHULMAN: -- as part of the public

1 August 3, 2023

2 notice.

3 MR. REHMAN: And we have no reason to
4 stop doing that?

5 MR. SCHULMAN: No.

6 MR. REHMAN: Okay.

7 MR. SCHULMAN: No, no.

8 MR. REHMAN: Yeah, there we go. Okay,
9 so --

10 MR. SHPETNER: Alright.

11 MR. REHMAN: -- I would like to request
12 a motion to adopt the resolution regarding the
13 Open Meetings Law. Okay? We have a, a motion
14 from Matt. And a second? Okay, we have a second
15 from Tom. And the vote, please?

16 MR. KIM: Okay. Are there any
17 objections to the motion to adopt a resolution
18 respecting the Open Meetings Law procedures?
19 Hearing none, seeing none, the motion is approved
20 unanimously.

21 MR. REHMAN: Great. Thank you,
22 everyone. Alright. We will now continue with a
23 -- with the General Counsel's Office and a
24 presentation on a resolution respecting storm

1 August 3, 2023

2 water hearings.

3 MS. STATZ: Hi. Once, once again,
4 hello, everybody. We have another resolution for
5 you. This one is, the foundation of this one is,
6 is pure practicality.

7 As you know, the DEP is, is charged with
8 issuing cease and desist orders, and in, in many,
9 many different contexts. And in one particular
10 context, a development/construction con- context,
11 it has to be done very rapidly. And the law
12 actually requires that if DEP issues, issues such
13 an order, ECB is supposed to hear -- and if
14 there's a written application challenging the DEP
15 order, ECB, us, we're supposed to gather within
16 two days and make a determination.

17 On a practical level, I don't, I don't
18 think anyone thinks it's a, it's a practicable
19 idea to have a necessary quorum within two days
20 in a physical location. So, in order to make
21 sure that we submit ourselves or we comply with
22 the law, because the law requires us to do it
23 within two days, this resolution is asking your
24 permission for the Chair, for Commissioner Rehman

1 August 3, 2023

2 to appoint an OATH employee to actually do this
3 hearing within two days. And I'm happy to answer
4 any questions you might have about that.

5 MR. REHMAN: Okay, Elizabeth?

6 MS. KNAUER: Good morning. Elizabeth
7 Knauer, Appointed Member. I, I guess I was just
8 wondering, do you anticipate that this would be,
9 you would be designating a particular person or
10 persons to handle these cases so there's sort of
11 some consistency in how, in how they're
12 adjudicated?

13 MS. STATZ: That, that, that's
14 ultimately going to be up to the Commissioner,
15 but I can't imagine that we would necessarily do
16 that, because the hearing off-, it would probably
17 be a hearing officer.

18 MS. KNAUER: Who would just be sort of
19 in the general pool?

20 MS. STATZ: In the gen-, yeah, exactly.
21 It's the person who's available. And, and Amy's
22 running that at the Hearings Division. So the
23 person who is available, the person with the
24 skill set, the person, you know, some-, perhaps

1 August 3, 2023

2 someone in Peter's [unintelligible] [00:13:27],
3 as well, who can, who has -- who is present and
4 skilled.

5 MR. SHPETNER: Okay. So it's kind of
6 like a magistrate when you have a TRO and --

7 MS. STATZ: Exactly.

8 MR. SHPETNER: -- have someone just take
9 an emergency application --

10 MS. STATZ: Yes, that's --

11 MR. SHPETNER: -- because of its unique
12 time sequence?

13 MS. STATZ: Exactly.

14 MR. REHMAN: That's right, that's --

15 MR. SHPETNER: That's the analogy I
16 needed. That's --

17 [CROSSTALK] [00:13:41]

18 MR. REHMAN: Yeah. And, and -- but,
19 Elizabeth, I, I'd, I'd be interested in hearing
20 more about why you asked that question because,
21 as -- you know, if this resolution passed and it
22 falls on me to designate the individuals within
23 OATH who are going to do this, it would be
24 helpful to know what any concerns are of Board

1 August 3, 2023

2 membership.

3 MS. KNAUER: Well, I just, I think the
4 concern is that -- I mean, I understand that
5 there may be an, an issue that the simplest case,
6 that they just haven't gone through the process,
7 and so there's a yes/no decision to be made. But
8 I, I don't know -- I, I guess the cease and
9 desist orders could also pertain to situations
10 where DEP is alleging that they're not complying
11 with, with their, with their stormwater pollution
12 prevention plan that's approved by the DEP. So
13 it could get really into very technical issues.

14 So, this is a, it is like a highly
15 technical and very complicated area. So I just,
16 I would encourage you to consider some, at least
17 some training for certain hearing officers,
18 maybe, that they could understand this, this
19 particular area of regulation, because it is,
20 it's pretty complex.

21 I, I could see situations where DEP is
22 making assertions that there's non-compliance and
23 issuing a cease and desist order, but where the,
24 where the developer or the builder is, or

1 August 3, 2023

2 contractor is, is in a position where they
3 disagree with that on a technical basis and
4 their, and their project is being stopped
5 immediately. And it's, it can be really, sort of
6 problematic for them to have to sort of present a
7 technical case to somebody who is not well versed
8 in the area.

9 MR. REHMAN: Okay. thank you for that
10 perspective. You know, just to add on what
11 you're saying, because I think you're right,
12 there are elements of the legal standard that
13 talk about whether a, situation presents a
14 danger. And whether a situation presents a
15 danger, it's not a black and white issue. That's
16 something that's going to be very fact specific.
17 So I think it's, it is important to make sure
18 that whoever we determine to be the adjudicators
19 for these matters are aware of the technical
20 issues, are aware of the law around them. We
21 continue to express high confidence in all of our
22 staff attorneys and hearing officers who work on
23 these matters, but it, because it's new, it's
24 something that we definitely be attuned to. So I

1 August 3, 2023

2 appreciate that comment.

3 Yes, Russ?

4 MR. PECUNIES: Yeah. Just to clarify
5 why this came up -- Russell Pecunies with DEP, by
6 the way -- we've been enforcing the stormwater
7 rules for about a year. We come across
8 construction sites that require stormwater
9 permits from DEP that don't have them. What
10 we're doing right now is giving them a summons.
11 But because there is no procedure for them to
12 have the hearing that they're required to be
13 given under the law, we can't issue a stop-work
14 order.

15 So the scenario, the only scenario that
16 I think we would anticipate issuing one of these
17 stop-work orders for is if a covered construction
18 site does not have a stormwater permit from DEP
19 and the grounds that I think I could think of on
20 which they could dispute that would be either
21 yes, we do have one, and you're mistaken, which I
22 think we'd know if we gave them a permit, or we
23 don't need one. And the, the, the --

24 [CROSSTALK] [00:17:30]

1 August 3, 2023

2 MR. PECUNIES: -- criteria for when you
3 need one can be quite involved. It involves how
4 much soil is being disturbed and impervious
5 surfaces and where the sewers are. And so that
6 could be conceivably a grounds where they could
7 dispute the need for the permit.

8 MS. KNAUER: I think that that's a good
9 point, Russ, that it can be very complicated.
10 And I think because the, these regulations are
11 newer, even the con- consultants and contractors
12 are still sort of learning what the requirements
13 are and, and when they're -- and when they apply.
14 So I think that also points to the need for
15 whoever is designated to hear the cases, because
16 it would involve stopping work and not just
17 issuing a violation that could be appealed, that,
18 you know, there should be, there should be some
19 means of training people in, in these.
20 Especially where it's a very discrete issue.
21 It's going to end up being really the, the
22 application of the requirements. So that I don't
23 think it would be a high burden to.

24 MR. PECUNIES: This provision, I think,

1 August 3, 2023

2 has been in the Sewer Code since it was enacted
3 in the 1970s. It's never been used before. And
4 so, when they wrote this 50 years ago, I don't
5 think they really anticipated the current
6 structure of things, and that, that giving people
7 a hearing in two days was really going to be like
8 difficult.

9 MR. REHMAN: Right. And, and, and
10 that's very much why -- again, to return it to
11 why we have this resolution. The resolution is
12 here so that we have the infra- in-
13 infrastructure in place to have those hearings.
14 The law is there. DEP is going to do its
15 enforcement. We do not want to have to call all
16 of you in within two days of getting a
17 notification to make a decision. And it, it
18 seems like it's more practical to have that
19 delegated in a way that we can have that decided
20 by the folks who are, are looking at cases like
21 this and other cases on a regular basis. Other
22 comments?

23 MR. SHPETNER: More of a question, and
24 maybe it's for Russ. But do we have any like

1 August 3, 2023

2 business intelligence or forward looking
3 anticipatory evidence of like how much this is
4 going to happen? I mean, I know you can't
5 predict the weather and you can't predict like
6 the infrastructure of the City changing, and I
7 give you all the caveats in the world. But is
8 this going to happen on the daily or is this
9 going to be like once a quarter, you know?

10 MR. PECUNIES: So far, in the first
11 year, I'd say off the top of my head, we've
12 issued about a, a dozen summonses for not having
13 a permit, maybe 15.

14 MR. SHPETNER: And that was for 2022?

15 MR. PECUNIES: In about the last year,
16 since we started enforcing.

17 MR. SHPETNER: That's good context.
18 Alright. So one or two a month sounds normal to
19 you?

20 MR. PECUNIES: Yeah. And then we don't
21 know, of course, how many people within, within
22 the cases where we've issued summonses for not
23 having the permit, what everybody, I think, has
24 done has gone and gotten the permit and, and

1 August 3, 2023

2 received a mitigated penalty on the summons. I
3 don't remember anyone so far disputing that they
4 needed a permit, but it's certainly conceivable
5 that someone could.

6 MR. REHMAN: And this, this, the dispute
7 would be the scenario in which you might issue a
8 stop-work order, and then that would proceed to
9 me?

10 MR. PECUNIES: Yeah.

11 MR. REHMAN: Okay, got it.

12 MR. PECUNIES: And just again, the
13 Stormwater rules are very technical, very
14 complicated. The manual is like 200 pages long.
15 When we amend it, the City Record needs an extra
16 week to be able to publish it.

17 MR. REHMAN: Okay.

18 MR. PECUNIES: It's, it's very -- it's
19 really granular stuff that's written for
20 engineers and real estate developers and -- so.

21 MR. REHMAN: Okay, good. Thank you.
22 Other comments or questions on the resolution?
23 Yes.

24 MR. SWANN: Doug Swann, Citizen Member.

1 August 3, 2023

2 Just a, another question for Russ. I was just
3 curious as to what was the impetus for DEP to
4 start issuing the summonses, just out of
5 curiosity.

6 MR. PECUNIES: Yeah, I'm sorry?

7 MR. SWANN: What was the impetus for DEP
8 to start issuing these types of summonses?

9 MR. PECUNIES: Just, we got the rules
10 promulgated about a year, a little over a year
11 ago, and then we had to set up an enforcement
12 unit. And, so, you mean what is the impetus for
13 sending an inspector?

14 MR. SWANN: Like this --

15 MR. PECUNIES: And, and will they go to
16 a site?

17 MR. SWANN: I'm, I'm more so talking
18 about the technical ra- rationale for starting to
19 issue these types of summonses.

20 MR. PECUNIES: I'm not --

21 MR. SWANN: And you may not know that.
22 I mean, it's --

23 MR. PECUNIES: I really, yeah. That,
24 that's really -- I'm not sure.

1 August 3, 2023

2 MR. SWANN: Okay.

3 MR. PECUNIES: But, I mean, I think we
4 do respond to complaints, and I think there are
5 also scheduled inspections for construction sites
6 that cause us to, to go out.

7 MR. REHMAN: Any other comments or
8 questions? Okay. I'd like to request a motion
9 to adopt the resolution regarding the Sewer Code
10 and Stormwater rules. Okay, I see a motion from
11 Shamonda. A second? A second from Matt. Thank
12 you. Vote?

13 MR. KIM: Are there any objections to
14 the motion to adopt a resolution respecting
15 stormwater hearings? Seeing none, hearing none,
16 the motion is approved unanimously.

17 MR. REHMAN: Thank you. Okay, we will
18 continue with Russ Pecunies from DEP and move
19 into the discussion of what, what I believe are
20 two cease and desist orders. And we can take
21 them one by one. Go ahead, Russ.

22 MR. PECUNIES: Okay, great. Thank you.
23 So this meeting, DEP is requesting that the Board
24 issue two cease and desist orders. Both of these

August 3, 2023

are under the Noise Code. The first location is 79 Reade Street, which also is known as 97 Chambers Street. The fact that there were three summonses and it was iss-, they were issued for two different addresses is why I attached a printout from the DOB website on the last page of the attachment for this one that shows that 79 Reade Street is also 97 Chambers Street.

This is a Lot Less store, and the building is managed by Brownstone Management Corp. The building has an air conditioning unit on the roof. The original inspection was done on June 1st of 2022, and found that there was excessive noise from the air conditioning unit. They were found in violation on that summons in November of last year.

The second summons was also issued last summer in August, and they were found in violation on that summons in December. Then, there was not another inspection until May of this year, I would imagine because this is an air conditioning unit and they stopped using it for the winter. And they were again found in

1 August 3, 2023

2 violation for excessive noise from this unit in
3 May of this year, that a hearing on that summons
4 is coming up next week.

5 Since they have been adjudicated in
6 violation with regards to this equipment twice
7 and the inspection, the most recent inspection in
8 May found that the equipment is still too noisy,
9 DEP is requesting that a cease and desist order
10 be issued, and that because one of the tickets
11 was issued to the tenant and two were issued to
12 the managing agent, that the order be issued to
13 both.

14 MR. REHMAN: Any questions for Russ?

15 MR. SCHNEID: Yeah, hi. Matt Schneid,
16 Citizen Member, appointed member. Is the
17 solution here that they need to get a new system?
18 Or, or they just need to find whatever solution
19 they have to lower the volume on the air
20 conditioning unit?

21 MR. PECUNIES: In terms of how they
22 would be able to --

23 MR. SCHNEID: Yes, yes.

24 MR. PECUNIES: -- address this? So a,

August 3, 2023

a, an item of noisy equipment like this could be addressed in multiple ways. It could be addressed by replacing it. It could be addressed by fixing it, if it's noisy because it's broken or needs to be maintained. You can reorient the direction of the unit so that it's away from the residential receptors. You could build a little acoustical structure around it. How they would address it is up to them, as long as they come into compliance with the Code.

MR. SCHNEID: And do we have any concern that the first one was to the actual tenant and one was to the managing agent, and it's not all to the same party receiving the complaints/violations?

MR. PECUNIES: I'm not -- you know, normally, these would have all been issued to the same --

MR. SCHNEID: Right.

MR. PECUNIES: -- respondent. The inspector chose, in the first case, to issue it to Lot Less, and in the second case to issue it to the managing agent. And, then, the one this

1 August 3, 2023

2 year was also issued to the managing agent. They
3 would both be considered owners under the Noise
4 Code, because the definition of owner --

5 MR. SCHNEID: Right.

6 MR. PECUNIES: -- is very expansive.
7 And because it's the same piece of equipment and
8 because there are continuing complaints about it,
9 like right up till now, normally, what we may
10 have done was wait until we issued a third
11 summons to the managing agent and then just
12 presented this with three summonses to the same
13 respondent. But because there isn't another
14 meeting for two months and because this is a
15 continuing problem for the people that are
16 complaining about it, we decided to ask for the
17 order, even though it's two different
18 respondents. But it is definitely the same
19 equipment.

20 MR. REHMAN: And so, Russ, would you --
21 there was one prior summons or two? I'm sorry.

22 MR. PECUNIES: So there are, there are
23 two that have been adjudicated, one against each
24 party.

1 August 3, 2023

2 MR. REHMAN: Right.

3 MR. PECUNIES: And then the new one that
4 was issued in May and has a hearing next week is
5 issued to the managing agent.

6 MR. REHMAN: Okay. And so, and I'm, I'm
7 looking now at the second page that both that
8 have been previously adjudicated have been paid.

9 MR. PECUNIES: Correct.

10 MR. REHMAN: So, so we have what appears
11 to be a scenario where the respondent is paying;
12 they're just not addressing the underlying
13 situation?

14 MR. PECUNIES: They're both aware of it,
15 yes.

16 MR. REHMAN: Just to kind of think out
17 loud for a moment, I'm, I'm -- and just, just
18 from my point of view, I'm, I'm in favor of
19 approving the cease and desist, but I'm just
20 thinking through what does it mean that there's a
21 hearing next week? And is there anything about
22 this that suggests, you know, should it be
23 approval pending the outcome of next week's
24 hearing? But it also appears that, well, if they

1 August 3, 2023

2 are found in violation, they may just pay again.
3 That's not going to solve the problem, the, the
4 next hearing.

5 Unless, if others have different views
6 on that, as to should anything about today's
7 cease and desist be somehow related to the fact
8 that the next hearing is only a matter of days
9 away. Elizabeth?

10 MS. KNAUER: Yes, Elizabeth Knauer,
11 Appointed Member. I, I don't think that they
12 should be tied together, because, you know,
13 anything could happen at a hearing.

14 MR. REHMAN: Mm-hmm.

15 MS. KNAUER: There could be a service
16 issue, et cetera. So I wouldn't, I wouldn't tie
17 the determination of whether to, to issue the
18 cease and desist to the outcome of the hearing.

19 Also, as you said, they might just pay
20 it, or there could be, you know, various outcomes
21 based on the hearing officer.

22 I, I did have a question as to -- I, I
23 guess they were all paid, but that doesn't
24 necessarily mean none of them were appealed.

1 August 3, 2023

2 Were there any appeals filed in any of these?

3 MR. PECUNIES: No, these were both
4 adjudicated last year. So any -- the time would
5 have long since passed for them to appeal either
6 of them.

7 MR. REHMAN: Okay, Tom?

8 MR. SHPETNER: I had the same point.

9 MR. REHMAN: Okay.

10 MR. SHPETNER: I think these are
11 [unintelligible] [00:29:51] that could -- they
12 need to be kept administra-, it's a great
13 question. But when you kind of deconstruct, the
14 hearings can be delayed ad infinitum, let alone,
15 I think because the, you know, I had the same --

16 MR. REHMAN: Right, right.

17 MR. SHPETNER: It's a great question
18 because there's an obvious linkage, but I think
19 they need administrative separation.

20 MR. REHMAN: Right, yeah. I mean, one
21 of the motivations behind the question is because
22 we're talking about, you know, these are large
23 stores. People use them. And to shut down, to
24 say cease and desist is effect- effectively

1 August 3, 2023

2 shutting down the store, because the air
3 conditioning won't be present in the store, and I
4 want to make sure that, that we take that into
5 account.

6 Okay, that was the only other question I
7 had. Yes?

8 MR. GREGORY: Joseph Gregory, Fire
9 Department. How, how much are the penalties?
10 Because it sounds like the cost of, of just
11 paying the penalty outweighs whatever fix they
12 have to do for the air conditioning unit. So
13 this might be just the cost of doing business.

14 MR. PECUNIES: I believe that the first
15 offense penalty for 227 is either \$220.00 or
16 \$440.00.

17 MR. GREGORY: Yeah, so it's probably
18 more expensive for them to --

19 MR. SHPETNER: Well, yeah. A \$30,000.00
20 air conditioner --

21 [CROSSTALK] [00:30:58]

22 MR. SHPETNER: -- You've got, you've got
23 to, I mean, I -- this is kind of, you know,
24 you've got to [unintelligible] [00:31:03].

1 August 3, 2023

2 MR. REHMAN: Yeah, I understand.

3 Shamonda, did you have something?

4 MS. GRAHAM: I was just going to say, I
5 don't really have concerns about them
6 unnecessarily shutting down, because I do think
7 that the penalty is playing a huge role.

8 MR. REHMAN: Yeah.

9 MS. GRAHAM: Whenever the penalty is not
10 larger than the cost of just, the cost of doing
11 business, they will just pay it and continue to
12 pay it. And even, even if -- and then, even if
13 they have the hearing next week, just, we have
14 two previous hearings, or is it -- no, two
15 previous hearings with findings in violation, and
16 I think that's enough to support a cease and
17 desist.

18 MR. REHMAN: Right. And, and it's --
19 Matt raised that good question, if it's two
20 hearings, but it's with different parties. But
21 at least they've each had one shot.

22 MS. GRAHAM: Exactly.

23 MR. REHMAN: So, okay. Any other
24 questions on this one? Good. I'd like to

1 August 3, 2023

2 request a motion and a second for this cease and
3 desist regarding 79 Reade Street/97 Chambers
4 Street. And I see a motion from Elizabeth and a
5 second from Tom. And could we do a vote, please?

6 MR. KIM: Yeah. Are there any
7 objections to approving the cease and desist
8 order? Seeing none, hearing none, the motion is
9 approved unanimously.

10 MR. REHMAN: Thank you. Russ, let's
11 move onto respondent, Anita Forever.

12 MR. PECUNIES: Yep. Alright, so the
13 second request pertains to 195 Dekalb Avenue in
14 Brooklyn. The corporate respondent is Anita
15 Forever, LLC. the name of the establishment in
16 question is the Saraghina Caffé. I don't know if
17 anyone is familiar. And --

18 MR. REHMAN: Yes, Elizbeth is familiar.

19 MR. PECUNIES: Elizabeth is? Okay. And
20 we have issued four summonses at this location
21 for noise from the kitchen exhaust and from a
22 refrigeration unit, both of which are located on
23 the roof.

24 The first summons was issued in June of

1 August 3, 2023

2 last year, which they stipulated to and paid in
3 August. The second one, in September of last
4 year, they stipulated to and paid in November.
5 Then, they were issued a third summons in March
6 of this year, which they stipulated and paid in
7 May. And they were just issued a fourth summons
8 last week.

9 So again, on this one, because of the
10 repeated violations and the continuing failure of
11 the respondent to bring the equipment into
12 compliance, DEP is asking that the Board issue a
13 cease and desist order.

14 MR. REHMAN: Thank you, Russ. Any
15 questions? Any concerns? Okay. I'd ask for a
16 motion to issue the cease -- to, to approve the
17 request for a cease and desist order regarding
18 195 Dekalb Avenue. Madelynn, thank you. A
19 second? Shamonda? Okay. Do a vote, please.

20 MR. KIM: Are there any objections to
21 approving the cease and desist order? Hearing
22 none, seeing none, the motion is approved
23 unanimously.

24 MR. REHMAN: Alright, thank you,

August 3, 2023

everyone.

MR. PECUNIES: Alright, thank you.

MR. REHMAN: I just want to take a moment to note that in our meeting, at our last meeting, as reflected in the minutes, when we were looking at some cease and desist orders, we requested that the DEP update its, the affirmation documents to make clear that the issue is a continuing issue through the date of the signature. I've seen in the last two that you've added that. So thank you, Russ, for your team for doing that.

MR. PECUNIES: Yeah, yeah.

MR. REHMAN: It's helpful for our evaluation to see that these are ongoing violations. So, once again, thanks to your team for making that change so promptly.

Okay, moving on. We are now ready to go into executive session. Could I have a motion to move into executive session? Tom. A second? Matt, thank you. Vote?

MR. KIM: Are there any objections to the Board's going into executive -- executive

1 August 3, 2023

2 session at this time? Seeing none, hearing none,
3 now we can enter executive session.

4 MR. REHMAN: Okay. So we have some
5 logistical cha- changes that we need to make.
6 Peter, if you could help us get into executive
7 session?

8 MR. SCHULMAN: Yes, thank you.

9 MS. STATZ: We have to stop recording.

10 MR. SCHULMAN: Yes. Amber, if you want
11 to pause the recording?

12 AMBER GONZALEZ, ESQ., HEARING OFFICER,
13 OATH: Sure. Give me one second, please.

14 MR. SCHULMAN: Thank you. And Lisa
15 Urban needs to be moved to the lobby.

16 MR. REHMAN: Thank you.

17 MR. SHPETNER: So did we just throw out
18 all of our interns or something?

19 [CROSSTALK] [00:35:41]

20 MR. REHMAN: Thank you.

21 [OFF THE RECORD]

22 [ON THE RECORD]

23 MR. SCHULMAN: Okay. Were they still in
24 the waiting room, or they left?

1 August 3, 2023

2 MS. GONZALEZ: No one is in the waiting
3 room.

4 MR. REHMAN: Thank you, Amber. Okay, we
5 are returning the public session, and just giving
6 a moment for some of our in-person guests to get
7 seated. Why don't we do a full presentation?

8 Okay, thank you, everyone. We're
9 resuming our public session. We have a case
10 before the Board. It's Dietmar Detering v.
11 Jackson Hole, Appeal No. 2300403. And we are
12 going to, I'm going to ask for a motion to take a
13 vote on this case. I see a motion from Tom. I
14 see a second from Madelynn.

15 And the, the question on the table is,
16 are we voting to affirm the hearing officer, and
17 that is dismiss the summons? And should we take
18 a roll?

19 MR. KIM: Okay, let me call roll, let me
20 call the Board Member's name, and please let me
21 know whether you are affirming the hearing
22 officer's determination. Commissioner Asim
23 Rehman?

24 MR. REHMAN: Yes, affirming it.

August 3, 2023

MR. KIM: Shamonda Graham?

MS. GRAHAM: Affirming.

MR. KIM: Joseph Gregory?

MR. GREGORY: Affirming.

MR. KIM: And Elizabeth Knauer?

MS. KNAUER: Affirming.

MR. KIM: Then, Madelynn Liguori?

MS. LIGUORI: Affirming.

MR. KIM: Matthew Schneid?

MR. SCHNEID: Affirming.

MR. KIM: Russell Pecunies?

MR. PECUNIES: Abstain.

MR. KIM: Thomas Shpetner?

MR. SHPETNER: Affirming.

MR. KIM: Matthew Smith?

MR. SMITH: Affirming.

MR. KIM: Douglas Swann?

MR. SWANN: Affirming.

MR. REHMAN: Thank you very much. It
looks like our numbers have us past our required
numbers to carry. Am I correct?

MR. KIM: Yes.

MR. REHMAN: Okay, good. Thank you very

August 3, 2023

much. And, and just for the record, part of the discussion that the Board had involved making some adjustments to the draft that we reviewed. We are requesting that the OATH Appeals Division adjust the draft that affirms the hearing officer and dismisses the summons to add further discussion regarding the fact that, in this particular case, the noise was in a private clo-, a private space that was owned by the restaurant and that had its own seating area, outdoor seating area for its restaurant patrons, as well as the decision including a longer discussion regarding the inference of whether or not this is commercial or business advertising noise.

Okay. Moving on, let me just -- I believe we've reached the end of our agenda, but for picking our, our next date. Does any Board Member have any off-agenda items or additional matters that they'd like to raise? Okay.

Let's discuss our next Board meeting date. Possible dates that we have put out are October 5th and October 12th. Does anyone have any scheduling comments on October 5th or October

1 August 3, 2023

2 12th?

3 MR. SCHNEID: Yeah. Oc- October 12th,
4 it's my preference to have this meeting on
5 October 12th, I think.

6 MR. REHMAN: Anyone else have any
7 particular objection to October 12th?

8 [Unintelligible] [00:39:33] Okay, I'm not hearing
9 any objections. So let's have the next meeting,
10 which will be in person here at 100 Church
11 Street, on October 12th.

12 Alright, a motion to adjourn the
13 meeting? Anyone? Madelynn. Second? Matthew.
14 Alright. And we are adjourned. Thank you very
15 much, everyone. I appreciate your time today.

16 MR. PECUNIES: Thank you.

17 MS. KNAUER: Thank you.

18 (The board meeting concluded at 11:59
19 a.m.)
20

Environmental Control Board, 8/3/2023

CERTIFICATE OF ACCURACY

I, Claudia Marques, certify that the foregoing transcript of Board Meeting of the Environmental Control Board on August 3, 2023, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

A handwritten signature in cursive script that reads "Claudia Marques".

Date: September 1, 2023

GENEVAWORLDWIDE, INC.

256 West 38th Street - 10th Floor

New York, NY 10018

Reviewed and corrected by OATH General Counsel

Office September 15, 2023.