

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

April 3, 2025

09:32 AM to 10:16 AM

MEMBERS PRESENT:

**Asim Rehman, Esq. - Chairperson; Commissioner & Chief
Administrative Law Judge (OATH)**
Shamonda Graham - Department of Buildings (DOB)
Jose Marquez, 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)**
**Harminderpal Rana, Esq. - Department of Health & Mental
Hygiene (DOHMH)**
Matthew Schneid, Esq. - Appointed Member (Real Estate)
**Matthew Smith, Esq. - New York City Police Department
(NYPD)**
Douglas Swann - Appointed Member (Air)
Lisa Urban, Esq. - Appointed Member (General)
Jarrold Whittington - Appointed Member (Noise)

ALSO PRESENT:

Rachel Amar - Senior Advisor to the Commissioner (OATH)
Sola Best, Esq. - Assistant General Counsel (OATH)
Cindy Chen - Office of Management & Budget (OMB)
Kelly Corso, Esq. - Deputy Commissioner, Hearings Division
(OATH)
Leon Dawson, Esq. - Assistant General Counsel (OATH)
Diana Haines, Esq. - Deputy General Counsel (OATH)
Madeline Halimi, Esq. - Parliamentarian; Assistant General
Counsel (OATH)
Ebonette Hudson - Hearing Officer (OATH)
Vivienne Kahng - Supervising Attorney, Appeals (OATH)
Karin McAvoy - Administrative Coordinator (OATH)
Cindy Nesbit, Esq. - Assistant General Counsel (OATH)
Frank Ng, Esq. - General Counsel (OATH)
Laura Quaigraine-Kamaru, Esq. - Assistant General Counsel
(OATH)
Peter Schulman, Esq. - Deputy Commissioner, Appeals (OATH)
Frances Shine - Secretary to the Board (OATH)

James Tomberlin - Appeals Officer (OATH)

1 (The board meeting commenced at 09:32 a.m.)

2 COMMISSIONER ASIM REHMAN: Good morning,
3 everyone. I'd like to call our April 3rd Environmental
4 Control Board meeting to order. I'll ask our
5 parliamentarian to do a roll call to verify quorum.

6 ASSISTANT GENERAL COUNSEL HALIMI: Good morning.
7 Commissioner Asim Rehman?

8 COMMISSIONER ASIM REHMAN: Present.

9 ASSISTANT GENERAL COUNSEL HALIMI: Shamonda
10 Graham?

11 MS. SHAMONDA GRAHAM: Present.

12 ASSISTANT GENERAL COUNSEL HALIMI: Jose Marquez
13 on behalf of Joseph Gregory?

14 MR. JOSE MARQUEZ: Present.

15 ASSISTANT GENERAL COUNSEL HALIMI: Elizabeth
16 Knauer?

17 MS. ELIZABETH KNAUER: Present.

18 ASSISTANT GENERAL COUNSEL HALIMI: Madelynn
19 Liguori?

20 MS. MADELYNN LIGUORI: Present.

21 ASSISTANT GENERAL COUNSEL HALIMI: Russell
22 Pecunies? Harminderpal Rana?

23 MR. HARMINDERPAL RANA: Present.

24 ASSISTANT GENERAL COUNSEL HALIMI: Matthew
25 Schneid?

1 MR. MATTHEW SCHNEID: Present.

2 ASSISTANT GENERAL COUNSEL HALIMI: Matthew Smith?

3 MR. MATTHEW SMITH: Here.

4 ASSISTANT GENERAL COUNSEL HALIMI: Douglas Swann?

5 MR. DOUGLAS SWANN: Present.

6 ASSISTANT GENERAL COUNSEL HALIMI: Lisa Urban?

7 MS. LISA URBAN: Present.

8 ASSISTANT GENERAL COUNSEL HALIMI: Jarrod
9 Whittington?

10 MR. JARROD WHITTINGTON: Present.

11 ASSISTANT GENERAL COUNSEL HALIMI: We currently
12 have quorum 11 out of 12.

13 COMMISSIONER ASIM REHMAN: Thank you. Thank you
14 very much. We will move on to the minutes of the February
15 6th meeting. You've received copies of both the February
16 6th meeting minutes as well as the updated corrected
17 version of the December 5th, 2024, meeting minutes. Are
18 there any corrections or questions regarding the February
19 6th, 2025, minutes? No? Can I ask for a motion and a
20 second to adopt the minutes? I see a motion.

21 MR. HARMINDERPAL RANA: Motion.

22 COMMISSIONER ASIM REHMAN: I see a second.
23 Matthew, do you need a minute? You're still reading?

24 MR. MATTHEW SCHNEID: No, no. I'm just flipping
25 through. [unintelligible 00:01:15]

1 COMMISSIONER ASIM REHMAN: Okay, good.

2 MR. DOUGLAS SWANN: Abstain.

3 COMMISSIONER ASIM REHMAN: We haven't gotten to
4 vote yet. With the motion, we'll call for a vote.

5 ASSISTANT GENERAL COUNSEL HALIMI: Are there any
6 objections to the motion adopting the minutes of the
7 February 6th, 2025, ECB meeting? And here was one
abstention?

8 COMMISSIONER ASIM REHMAN: Any abstentions?

9 MR. DOUGLAS SWANN: Another.

10 COMMISSIONER ASIM REHMAN: One abstention from
11 the fire department, one abstention from Douglas Swann.

12 ASSISTANT GENERAL COUNSEL HALIMI: Seeing no
13 objections and hearing none, the motion is approved.

14 COMMISSIONER ASIM REHMAN: Thank you very much.
15 All right. We'll now turn it over to our general counsel,
16 Frank Ng, to present on the final rule regarding the
17 water penalty schedule.

18 MR. FRANK NG: Thank you. Good morning, Chair.
19 Good morning, Board members. On December 5th, 2024, this
20 Board voted to approve a proposed rule to amend 48 RCNY 3-
21 126, the Water Penalty Schedule. The amendment would
22 revoke the schedule to delegate to the DEP commissioner
23 the Board's authority to establish penalties under AD Code
24 section 24-346b, which pertains to water conservation. On
25 February 12th, 2025, the amendment was published in City

1 Record. On March 20th, a public hearing was held. No
2 comments were received from the public at the hearing or
3 in writing. Today, the final rule, unchanged from the
4 proposed rule, is before this Board for approval.

5 COMMISSIONER ASIM REHMAN: Thank you, Frank. Just
6 for the record, I want to note that we're joined by Russ
7 Pecunies from DEP.

8 MR. RUSSELL PECUNIES: Good morning.

9 COMMISSIONER ASIM REHMAN: Morning. Are there any
10 questions or comments on the final rule?

11 MR. RUSSELL PECUNIES: Is this the Water Penalty
12 Schedule being repealed from your rules?

13 COMMISSIONER ASIM REHMAN: That's correct.

14 MR. RUSSELL PECUNIES: In terms of where our rule
15 is to replace it, we have final approval to publish it
16 from the law department and operations, and to schedule
17 the public hearing. I have not gotten the go-ahead from
18 our commissioner's office to do that yet because there is
19 a new first deputy mayor, and they want to check and make
20 sure the procedures are the same. I haven't gotten
21 permission to actually schedule the public hearing yet,
22 but we do have the preliminary certification to go ahead
23 and publish. It should be any day now.

24 COMMISSIONER ASIM REHMAN: That would be
25 publishing in advance of a notice [unintelligible]

1 00:03:55]

2 MR. RUSSELL PECUNIES: This would be to have the
3 public hearing and then go ahead and finalize after the
4 public hearing.

5 COMMISSIONER ASIM REHMAN: The minimum time
6 between now and then to finalize would be 60 days at best?

7 MR. RUSSELL PECUNIES: We would have to do 30
8 days before the public hearing and then 30 days after the
9 final certification. At least 60 days.

10 COMMISSIONER ASIM REHMAN: From a timing
11 standpoint, because our rule is supposed to go into
12 effect, I believe, simultaneously with the DEP rules, how
13 should we proceed?

14 MR. FRANK NG: That would not be a concern
15 because Section 2 of the proposed rule indicates that this
16 rule takes effect on the same day as a rule promulgated by
17 the Department of Environmental Protection. No matter when
18 they publish a rule, it'll coincide with the effective
19 date.

20 COMMISSIONER ASIM REHMAN: Okay, good. We're not
21 running into a situation where if we repeal it, there's a
22 gap.

23 MR. FRANK NG: Correct.

24 COMMISSIONER ASIM REHMAN: Any other comments or
25 questions on this rule? I know we had a hearty discussion

1 before. I'd like to ask for a motion to vote and a second
2 to vote on the adoption of the rule. We have a motion?
3 Have a motion? A second? Second? Proceed to a vote.

4 ASSISTANT GENERAL COUNSEL HALIMI: Commissioner
5 Asim Rehman?

6 COMMISSIONER ASIM REHMAN: Yes.

7 ASSISTANT GENERAL COUNSEL HALIMI: Shamonda
8 Graham?

9 MS. SHAMONDA GRAHAM: Yes.

10 ASSISTANT GENERAL COUNSEL HALIMI: Jose Marquez
11 on behalf of Joseph Gregory?

12 MR. JOSE MARQUEZ: Yes.

13 ASSISTANT GENERAL COUNSEL HALIMI: Elizabeth
14 Knauer?

15 MS. ELIZABETH KNAUER: Yes.

16 ASSISTANT GENERAL COUNSEL HALIMI: Madelynn
17 Liguori?

18 MS. MADELYNN LIGUORI: Yes.

19 ASSISTANT GENERAL COUNSEL HALIMI: Russell
20 Pecunies?

21 MR. RUSSELL PECUNIES: Yes.

22 ASSISTANT GENERAL COUNSEL HALIMI: Harminderpal
23 Rana?

24 MR. HARMINDERPAL RANA: Yes.

25 ASSISTANT GENERAL COUNSEL HALIMI: Matthew

1 Schneid?

2 MR. MATTHEW SCHNEID: No.

3 ASSISTANT GENERAL COUNSEL HALIMI: Matthew Smith?

4 MR. MATTHEW SMITH: Yes.

5 ASSISTANT GENERAL COUNSEL HALIMI: Douglas Swann?

6 MR. DOUGLAS SWANN: No.

7 ASSISTANT GENERAL COUNSEL HALIMI: Lisa Urban?

8 MS. LISA URBAN: No.

9 ASSISTANT GENERAL COUNSEL HALIMI: Jarrod
10 Whittington?

11 MR. JARROD WHITTINGTON: Yes.

12 ASSISTANT GENERAL COUNSEL HALIMI: We have three
13 noes and nine yeases. The motion passes.

14 COMMISSIONER ASIM REHMAN: Thank you very much,
15 everyone. We'll now turn it over to Russell Pecunies from
16 DEP to introduce two requests for cease and desist orders.

17 MR. RUSSELL PECUNIES: All right, thank you very
18 much. For this meeting, we do have two requests. I'll do
19 the noise-related one first. This pertains to AP Tenants
20 Corp. The premises is 134 Atlantic Avenue in Brooklyn.
21 This situation is actually a referral from Council Member
22 Lincoln Restler's office, who called us about this
23 situation because of a large number of complaints from his
24 constituents, and who then mentioned it again when he
25 chaired the budget meeting recently for our department.

1 This is a HVAC unit, a cooling tower on the roof of the
2 building, which I provided a photo of at the end of the
3 package.

4 There is a medical office on the ground floor
5 and three floors of residential above it. Then the cooling
6 tower in question is on the roof. This cooling tower
7 apparently is only used seasonally. It is only used from
8 about May to about September, October. Although we have
9 had many complaints about it in the past, we have only
10 succeeded in issuing it one violation a year. We issued
11 them a violation in August of 2023, and then we issued
12 them another violation on October 1st of 2024. The concern
13 that we have and that the Council Member's office
14 expressed is that this is going to be starting up again
15 soon when the weather gets warmer. They only use it for
16 three or four months while the weather is warm.

17 Normally, we would wait a situation like this to
18 issue a third violation before we came to the Board to ask
19 for a cease and desist order. In this situation, we're
20 asking for a cease and desist order now, even though there
21 have been only two summonses and the last one wasn't since
22 last October. Because if we wait to issue a third one when
23 it starts up again this summer, then we would not be able
24 to bring the cease and desist request to the Board
25 probably until the August meeting. The cease and desist

1 order would then get issued, and they would be called in
2 for a hearing after they stopped using it again for this
3 year, and they would go through this whole cooling season
4 using the unit in its current noisy condition.

5 We were asked if we could bring this to the
6 Board now to get a cease and desist order issued and a
7 hearing scheduled before they start using it again so that
8 they're required to do something to either fix it if the
9 noise is because it's broken or do whatever else is
10 required to abate the noise situation for this summer.

11 COMMISSIONER ASIM REHMAN: Questions? Yes, Matt?

12 MR. MATTHEW SCHNEID: Can you talk about the two
13 prior violations? It looks like the obligation was to pay
14 a fine, which they did, is that right? Or they had to
15 actually do work?

16 MR. RUSSELL PECUNIES: Anytime you are found in
17 violation of the air code or the noise code, the judge's
18 order incorporates a compliance requirement that's in the
19 penalty schedule. They would have been required as a
20 result of each of these violations to comply.

21 MR. MATTHEW SCHNEID: One more question. I
22 understand the concern about the summer and the
23 violations, but don't we typically usually have a lot more
24 than two violations before we issue a cease and desist
25 order?

1 MR. RUSSELL PECUNIES: As I said, usually we have
2 at least one adjudicated and at least three issued. Again,
3 because of the seasonal nature of the use of this
4 equipment, the past two years we've only been able to get
5 them in violation once each year. Again, the apprehension
6 on the part of the complainants and the council member is
7 that they've done nothing to fix this and that when it
8 starts up again, it's going to be noisy again all summer
9 and we won't be able to get them a violation and then a
10 cease and desist order until sometime in August, by which
11 time it'll be too late to require them to do anything
12 about it for the summer.

13 COMMISSIONER ASIM REHMAN: Elizabeth?

14 MS. ELIZABETH KNAUER: If they come to the cease
15 and desist hearing and they show that they have a report
16 showing that they've done something to fix the noise, then
17 the equipment wouldn't be sealed and they wouldn't be
18 charged with a violation, right?

19 MR. RUSSELL PECUNIES: You guys would then get a
20 pre-sealing report from the ALJ, and that might usually do
21 when cease and desist are resolved.

22 COMMISSIONER ASIM REHMAN: Jarrod?

23 MR. JARROD WHITTINGTON: Is there some sort of
24 rule that sets the three-violation precedent, or is that
25 just traditional?

1 MR. RUSSELL PECUNIES: It's tradition. The
2 hearing officer who used to be in charge of cease and
3 desist orders many years ago, Phyllis Roberts, established
4 a precedent that we should have at least three summonses
5 issued before we asked for a cease and desist order. In
6 the absence of unusual circumstances, we have continued to
7 adhere to that.

8 COMMISSIONER ASIM REHMAN: Other comments?

9 MR. JARROD WHITTINGTON: Another question.

10 COMMISSIONER ASIM REHMAN: Yes, Jarrod?

11 MR. JARROD WHITTINGTON: Is there anything that's
12 preventing the DEP from issuing more than one ticket a
13 year?

14 MR. RUSSELL PECUNIES: No, except that we only
15 have so many inspectors and they only use it for a few
16 months a year, and we have to catch them using it, and the
17 readings have to be-- Not necessarily, but it's just
18 worked out that way.

19 MS. SHAMONDA GRAHAM: Does your agency practice
20 in cases like this to wait for the hearing adjudication? I
21 think that will play a role as well.

22 MR. RUSSELL PECUNIES: In other words, before we
23 could ask for a cease and desist?

24 MS. SHAMONDA GRAHAM: No, before you issue
25 another summons. I'm thinking about the fact that they only

1 operate a certain time of year. Even if you issue one, by
2 the time you wait for the hearing, season is probably
3 over. No matter what you do, you might only be able to
4 [unintelligible 00:13:55]

5 MR. RUSSELL PECUNIES: Yes, that's true.
6 Especially since the one last year wasn't issued until
7 October 1st, the hearing didn't come up until after they
8 had stopped using it for the season.

9 MS. LISA URBAN: They're not using it right now,
10 right?

11 MR. RUSSELL PECUNIES: No.

12 MS. LISA URBAN: How would a cease and desist
13 order work under the circumstances? We're telling them not
14 to use it, but they're actually not going to use it.

15 MR. RUSSELL PECUNIES: Presumably, they'd have to
16 bring somebody in. I don't know if they know why it's
17 noisy or not. It may be broken, it may need to be
18 serviced, or whatever. I don't know. They presumably would
19 have to bring a contractor in and turn it on and take
20 readings and figure out why it's been noisy. Also, if
21 cease and desist order is approved today and the hearing
22 is scheduled maybe a month from now, then at that point we
23 are into May and they're probably getting close to when
24 they're going to start using it anyway.

25 MS. LISA URBAN: I'm just thinking in terms of

1 how those types of systems normally work. I'm not an
2 engineer, just from general knowledge. It's usually turned
3 on at a certain point, but it can't be turned on until, or
4 it's not typically turned on, until the point where it's
5 going to be used.

6 MR. JARROD WHITTINGTON: Yes, they drain
7 [unintelligible 00:15:21]

8 MS. LISA URBAN: Yes, they drain them. Just from
9 a standpoint of functionality, if we issue the cease and
10 desist order today, how long would they have for
11 compliance purposes?

12 MR. RUSSELL PECUNIES: That would be up to the
13 hearing officer.

14 MS. LISA URBAN: The hearing would be around?

15 MR. RUSSELL PECUNIES: Probably in around a
16 month.

17 COMMISSIONER ASIM REHMAN: I think, Lisa, part
18 of, if I understood, your initial question was, a cease
19 and desist is you're doing something, please stop it.
20 Right now, they're not doing it. It's like we issue them
21 on something where we anticipate, we expect it's going to
22 happen, but we don't know.

23 MR. RUSSELL PECUNIES: Again, the circumstances are a
24 little unusual, but if we didn't ask for it at this
25 meeting, then effectively they're getting to use it as is

1 COMMISSIONER ASIM REHMAN: I'd like to just explore
a few scenarios here.

2 Our next meeting would be in June. I understand the timing
3 issues you raise if we don't do it now and we wait for
4 another summons and another summons adjudication and then
5 a cease and desist, by then the season is over. What if at
6 the next meeting the EP came and presented evidence like
7 the affidavits that are here, where it's not a summons,
8 but it's a note from an inspector saying, "The season has
9 started. I can affirm that we took a reading and it's this
10 amount."? Then could the Board proceed with the cease and
11 desist order at that time? It would be without a third
12 summons, but at least it would be with some evidence that
13 if this season has started and in 2025--

14 MR. RUSSELL PECUNIES: If they started using it
15 and we went again and took readings and they were high,
16 they're going to get another summons. It's not just going
17 to be a matter of we're going to report to the Board that
18 they were high, we would issue another summons.

19 COMMISSIONER ASIM REHMAN: What I'm suggesting is
20 that in that instance, we wouldn't need to wait for that
21 summons to be adjudicated.

22 MR. RUSSELL PECUNIES: No, normally we don't wait
23 for all three of the summonses to be adjudicated.
24 Normally, one or two of them are still out at the time
25 that we ask for the cease and desist order, because

1 sometimes summonses can take a long time to get
2 adjudicated.

3 COMMISSIONER ASIM REHMAN: That's right.

4 MR. RUSSELL PECUNIES: If people ask for a
5 reschedule, that reschedule date could be in six months.

6 COMMISSIONER ASIM REHMAN: True.

7 MR. RUSSELL PECUNIES: No, we don't wait for all
8 of them to be adjudicated.

9 COMMISSIONER ASIM REHMAN: I see. Elizabeth?

10 MS. ELIZABETH KNAUER: Yes, I was just going to
11 make that point. I remember a few examples where there had
12 been two that were adjudicated or defaulted and one that
13 was still waiting for the hearing, where we'd issued cease
14 and desist orders. I think the timing issue still remains
15 though, because if we issue a cease and desist order in
16 June, then that hearing wouldn't be until July. It does
17 seem to present the likelihood that they'll be operating
18 the system still in the noisy condition, given that at the
19 past hearings, reading the hearing decision suggests that
20 they showed no intent of doing anything to come into
21 compliance. I'll just put that out there. [chuckles]

22 COMMISSIONER ASIM REHMAN: Lisa?

23 MS. LISA URBAN: How do you issue a cease and
24 desist order to something that they're not doing?

25 MR. HARMINDERPAL RANA: You are telling them to

1 desist from engaging in that activity. It's not just
2 ceasing. It's desisting as well. We're telling them, "You
3 can't use this."

4 MR. JOSE MARQUEZ: Do we know if they haven't
5 done anything? How do we know they're still going to be in
6 violation once they start the equipment? Now that we're in
7 2025, do we know if they've done anything?

8 MR. RUSSELL PECUNIES: The only evidence we have
9 on that is that they didn't fix it in response to the
10 violation we issued in 2023 because they had another one
11 last year. If you look at what happened at the hearings,
12 they basically had a rep appear and say, "No contest."
13 They did not put forward any evidence at either of the
14 hearings on the summonses that they were doing anything.
15 They just said, "We're not admitting this, but we're not
16 really denying it either." We have no evidence really,
17 except that they didn't fix it in response to the 23
18 summons.

19 MS. ELIZABETH KNAUER: Go ahead, Doug.

20 MR. DOUGLAS SWANN: I know you said the tradition
21 is three summonses. Do we have any other instances where
22 there's some special circumstance where it was less than
23 three summons where we did something like this?

24 MR. RUSSELL PECUNIES: Yes. All of the ones that
25 we recently requested for people who are still using

1 Number 4 fuel oil, many of them were based on two
2 summonses.

3 MS. ELIZABETH KNAUER: I just also wanted to make
4 another point about timing that the sooner this gets
5 towards a resolution, the less likely the residents will
6 be in the really hot part of the summer and a sealed
7 condition on the equipment. There's more chance that it
8 gets resolved before it gets really hot and less chance of
9 sealing when it's in August.

10 COMMISSIONER ASIM REHMAN: That's advocating
11 towards doing something sooner than later?

12 MS. ELIZABETH KNAUER: Yes.

13 COMMISSIONER ASIM REHMAN: Shamonda?

14 MS. SHAMONDA GRAHAM: If we issue a cease and
15 desist now, aren't we effectively saying cease and desist
16 the activity that was presented in the first two
17 summonses? We're not necessarily saying, "Stop doing what
18 you're doing right now." We're basing this on the
19 predicate summonses, which means, "Stop doing what you did
20 that caused the issuance of those summonses."

21 That being the case, the special hearing, isn't
22 it designed to give them the opportunity to say, "Hey,
23 here's what we've done to correct this."? That being so, I
24 don't see a reason why we wouldn't compel that quickly
25 before the season starts, especially because that hearing

1 could happen either right at the beginning of the season
2 or before the season. Then at that point we would know
3 whether they're going to comply, and we would see a third
4 summons at some point anyway if they don't.

5 COMMISSIONER ASIM REHMAN: Lisa and Matt?

6 MS. LISA URBAN: I was actually thinking the
7 opposite of that, but your argument actually makes sense,
8 so I have no further comment on it. [chuckles]

9 MR. MATTHEW SCHNEID: It looks like there's a
10 fine that goes along with the cease and desist, is that
11 right?

12 MR. RUSSELL PECUNIES: I'm sorry?

13 MR. MATTHEW SCHNEID: Is there a fine that goes
14 along with the cease and desist?

15 MR. RUSSELL PECUNIES: Yes, they will fine \$440
16 for each one.

17 MR. MATTHEW SCHNEID: No, no, no, for the cease
18 and desist?

19 MR. RUSSELL PECUNIES: Oh. The hearing officer
20 who does the cease and desist hearing can theoretically
21 recommend that an additional fine be imposed as part of
22 their recommendations to the Board. If they have come into
23 compliance, I have never seen the hearing officer
24 recommend an additional.

25 MR. MATTHEW SCHNEID: On the letter you have

1 here, it said \$875 over two days. That's what they would
2 get if they are noncompliant.

3 MR. RUSSELL PECUNIES: Right. That is the hearing
4 officer who holds the hearing on the cease and desist
5 order and recommends that that additional fine be imposed
6 when they make their recommendation to the Board. As I
7 said, if they do the work, whatever it is that's required
8 to come into compliance, and that's the recommendation
9 that's coming to the Board from the hearing officer, I
10 have never seen the hearing officer recommend an
11 additional penalty.

12 MS. LISA URBAN: Just a follow-up. If we issue
13 the cease and desist today, they would then have to make
14 whatever repairs or changes to the equipment and then
15 present that to the hearing officer in order for them to
16 be able to use the equipment?

17 MR. RUSSELL PECUNIES: Correct. The hearing
18 officer has the ability to adjourn it, to give them time
19 if they need to order parts or get a Buildings Department
20 permit or whatever.

21 MS. LISA URBAN: They can't use it in its current
22 condition now?

23 MR. RUSSELL PECUNIES: No, they can continue to
24 use it. The judge can allow them to continue to use it.

25 MS. LISA URBAN: Between that, when we issue the

1 cease and desist, and they have the actual hearing, they
2 can't use the equipment?

3 MR. RUSSELL PECUNIES: No. They can only not use
4 it if we seal it, and we can only seal it if they don't
5 show up for the hearing or if the hearing officer tells
6 us.

7 COMMISSIONER ASIM REHMAN: The hearing is like an
8 order to show cause, meaning that it's not pre-hearing
9 deprivation.

10 MS. ELIZABETH KNAUER: If they do show up for the
11 hearing, it'll come back to us to approve the
12 [unintelligible 00:24:19]

13 MR. RUSSELL PECUNIES: Right. This way, if we get
14 a hearing scheduled in May, then we will know by May
15 whether they show up. If we don't show up, then we can go
16 and seal. If they do show up, then they will inform the
17 judge what they're doing.

18 MS. LISA URBAN: It's not a defense to our
19 issuing the cease and desist order that it wasn't being
20 used at the time that we issued the cease and desist
21 order.

22 COMMISSIONER ASIM REHMAN: That's for the judge
23 to determine.

24 MS. LISA URBAN: Got it.

25 MR. JARROD WHITTINGTON: One last point I would

1 bring up, because we've been talking about the timing of
2 all this. If it's not just an issue of the cooling tower
3 needing a repair, it's actually just loud because of its
4 location, the actual remediation of that could take a long
5 time.

6 COMMISSIONER ASIM REHMAN: Depends on what they
7 have to do.

8 MR. JARROD WHITTINGTON: They need to build a
9 noise barrier wall or something like that. It could take
10 months.

11 MS. ELIZABETH KNAUER: They'd have to get a
12 permit and everything.

13 COMMISSIONER ASIM REHMAN: Shamonda?

14 MS. SHAMONDA GRAHAM: I have one other point. If
15 we don't do something, at least from my perspective, it is
16 very possible that the cost of the summonses is just
17 simply not a deterrent because of the cost of the repairs.
18 It's almost as if you can issue as many summonses as you
19 want. Until we pass this motion, we're going to hear it.
20 The main thing is you'll hear the noise.

21 MS. ELIZABETH KNAUER: To Jarrod's point, even if
22 we waited this year, then it could all happen next year
23 again, too, that they're still in the process of getting a
24 permit to build an enclosure or whatever.

25 COMMISSIONER ASIM REHMAN: Other comments? All

1 right. Let's advance this forward. Can I have a motion to
2 vote on the cease and desist order for 134 Atlantic
3 Avenue? I see a motion. I see a second.

4 ASSISTANT GENERAL COUNSEL HALIMI: Are there any
5 objections to the motion approving the cease and desist
6 order? Seeing none, hearing none, the motion is approved
7 unanimously.

8 COMMISSIONER ASIM REHMAN: Thank you.

9 MR. RUSSELL PECUNIES: Thank you. We will let the
10 council member know as well. On the second one, this is
11 for Meta Hotpot 3 Inc at 18 West 38th Street in Manhattan.
12 This is a restaurant. We did an inspection there in July
13 of 2023 that resulted in a commissioner's order being
14 issued. If you look at the second page of the request in
15 item 1, it goes through a extensive list of grease traps
16 that they were ordered to install both on the main level,
17 I guess, and in the basement. The order required them to
18 comply within 60 days by September of 2023. In October of
19 2023, we did a follow-up inspection and observed that they
20 had not re-installed any of the specified grease traps,
21 and they therefore were issued a summons.

22 During that same inspection, the inspector
23 observed that there was hardened grease in one of their
24 already existing grease traps, indicating that it had not
25 been properly cleaned, so they received a summons for that

1 as well. In December, another summons was issued for not
2 complying with the original commissioner's order to
3 install, and also due to another observation of hardened
4 grease in an existing grease trap, they were issued
5 another summons.

6 Then in July of 2024, after an inspection showed
7 that water flow in the establishment was being affected, a
8 new commissioner's order was issued requiring them to
9 snake out the existing plumbing lines connected to one of
10 the grease traps to snake out the connections to all of
11 the floor drains. Then in September, as they had not
12 complied with either the original commissioner's order or
13 the second one directing them to snake out the
14 connections, they were given another summons.

15 In October of 2024, they were given another
16 summons for not complying with either of the orders. They
17 were also served with a notice to attend a mandatory
18 compliance meeting scheduled for February 19th of this
19 year. They have not appeared at any of the hearings on any
20 of the summonses or for the compliance meeting. Based on
21 the continuing failure to comply with either of the
22 commissioner's orders and their failure to appear for the
23 compliance meeting, DEP is asking that the Board issue an
24 order to cease and desist.

25 COMMISSIONER ASIM REHMAN: Thank you, Russ. Any

1 questions? Can I have a motion to approve? I see a motion.
2 A second? Second?

3 ASSISTANT GENERAL COUNSEL HALIMI: Are there any
4 objections to the motion approving the cease and desist
5 order? Seeing none, hearing none, the motion is approved
6 unanimously.

7 COMMISSIONER ASIM REHMAN: All right. Thank you.
8 All right. May I have a motion and a second to go into
9 executive session? A motion and a second?

10 ASSISTANT GENERAL COUNSEL HALIMI: Any objections
11 to the motion to go into executive session? Seeing none,
12 hearing none, the motion is approved unanimously.

13 COMMISSIONER ASIM REHMAN: We can return to
14 public session. We are back in public session. Are there
15 any other questions or business from any members of the
16 Board? All right. I'd like to look at possible dates for
17 our next meeting. That would be in June. I'd like to
18 propose June 12th or the 26th. The 5th I am not available,
19 and the 19th is a public holiday. Any concerns with either
20 the 12th or the 26th? Yes, Shamonda?

21 MS. SHAMONDA GRAHAM: I don't personally have
22 concerns, but I know the 26th is around graduation time
23 for a lot of folks, so just [unintelligible 00:31:41]

24 COMMISSIONER ASIM REHMAN: That's a fair point.

25 MS. LISA URBAN: We also have our remote session

1 on the 2--

2 COMMISSIONER ASIM REHMAN: Panel?

3 MS. LISA URBAN: Yes, panel.

4 COMMISSIONER ASIM REHMAN: On the 26th?

5 MR. PETER SCHULMAN: We can change it if we
need to.

6 COMMISSIONER ASIM REHMAN: Fine. How about the
7 12th? Is the 12th an available date, folks? The better
8 date?

9 MS. LISA URBAN: Yes.

10 COMMISSIONER ASIM REHMAN: I see a lot of head
11 nods. Okay. All right. We will go with June 12th. All
12 right. Before we close, just a reminder to everyone to
13 please sign the attendance sheet, and I'd like to ask for
14 a motion to adjourn and a second.

15 ASSISTANT GENERAL COUNSEL HALIMI: Are there any
16 objections to the motion to adjourn the meeting? Seeing
17 none, hearing none, the motion is approved unanimously.

18 COMMISSIONER ASIM REHMAN: Okay. Meetings
19 adjourned. See you all in June. Thanks very much,
20 everyone.

(The board meeting concluded at 10:16 a.m.)

**Reviewed and
corrected by OATH
Office of the General
Counsel 4/16/25.**



Certificate of Accuracy

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Dated: **04/09/2025**

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