

**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

April 4th, 2024

9:40 AM to 9:57 AM

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)  
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)  
Thomas D. Shpetner, Esq. - Appointed Member (Business)  
Matthew Smith - New York Police Department (NYPD)  
Douglas Swan - Appointed Member (Air)  
Lisa Urban, Esq. - Appointed Member  
Jarrod Whittington - Appointed Member (Noise)

ALSO PRESENT:

Rachel Amar - OATH  
Sola Best, Esq. - Assistant General Counsel, OATH  
Cindy Chen - Analyst, Office of Management and Budget  
(OMB)  
Brian Connell  
Kelly Corso, Esq. - Assistant Commissioner/Hearings  
Division  
Adjudications, OATH  
Amber Gonzalez, Esq. - Hearing Officer, OATH  
Diana Haines, Esq. - Assistant General Counsel, OATH  
Madeline Halimi, Esq. - Assistant General Counsel, OATH  
Peter Schulman, Esq. - Deputy Commissioner/Appeals  
Division, OATH  
Frances Shine - Secretary to the Board, OATH  
Amy Slifka, Esq. - Deputy Commissioner/Hearings Division,  
OATH  
Olga Statz, Esq. - Deputy Commissioner/General Counsel,  
OATH

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

2 COMMISSIONER ASIM REHMAN: Morning, everyone. I'd  
3 like to call our April 4th, 2024, ECB meeting to order.  
4 Thank you to our support team for helping us get set up  
5 today. Let me request our GC team to conduct the roll call  
6 so we can go verify quorum.

7 MS. MADELINE HALIMI: Good morning everybody.  
8 Commissioner Rehman?

9 COMMISSIONER ASIM REHMAN: Present.

10 MS. MADELINE HALIMI: Shamonda Graham?

11 MS. SHAMONDA GRAHAM: Present.

12 MS. MADELINE HALIMI: Joseph Gregory?

13 MR. JOSEPH GREGORY: Here.

14 MS. MADELINE HALIMI: Elizabeth Knauer?  
15 Madelynn Liguori?

16

17 MS. MADELYNN LIGUORI: Present.

18 MS. MADELINE HALIMI: Russell Pecunies?

19 MR. RUSSELL PECUNIES: Present.

20 MS. MADELINE HALIMI: Harminderpal Rana?

21 MR. HARMINDERPAL RANA: Present.

22 MS. MADELINE HALIMI: Matthew Schneid?

23 MR. MATTHEW SCHNEID: Present.

24 MS. MADELINE HALIMI: Thomas Shpetner?

25 MR. THOMAS SHPETNER: Present.

MS. MADELINE HALIMI: Matthew Smith?  
Accurate Communication Inc.

85 Broad Street, New York, New York 10004

1 MR. MATTHEW SMITH: Here.

2 MS. MADELINE HALIMI: Douglas Swan?

3 MR. DOUGLAS SWAN: Present.

4 MS. MADELINE HALIMI: Jarrod Whittington? Lisa  
5 Urban? MS. LISA URBAN: Present.

6 MS. MADELINE HALIMI: We have quorum, 10 out of  
7 13. COMMISSIONER ASIM REHMAN: Right, and we've  
8 been joined by Joseph Gregory.

9 MS. MADELINE HALIMI: 11 out of 13.

10 MS. OLGA STATZ: Before we start, I thought I'd  
11 just introduce everybody to Madeline. She's replacing  
12 David, who we miss terribly. He went off to greater  
13 things at the open DA's office, but we welcome Madeline,  
14 and we're excited to have her.

15 COMMISSIONER ASIM REHMAN: Maybe not greater  
things.

16 MR. THOMAS SHPETNER: You are right. Thanks.

17 COMMISSIONER ASIM REHMAN: We wish David very  
18 well [inaudible 00:01:22]. Okay. Good to see everyone.  
19 Let's get started. First start of the business of December  
20 7, 2023, minutes. I see a copy; I hope that you had an  
21 opportunity to review it. I'd like to ask for a motion to  
22 adopt the minutes. I see a motion from Tom Shpetner and a  
23 second from Harminderpal. Can we do a vote, please?

24 MS. MADELINE HALIMI: Are there any objections to  
25 the  
motion adopting the minutes of the December 7, 2023,

1 meeting? Seeing none, hearing none, the motion is approved  
2 unanimously.

3 COMMISSIONER ASIM REHMAN: All right, we'll next  
4 turn it over to Russell Pecunies from DEP for a  
5 presentation and request regarding an order to cease and  
6 desist. Russell?

7 MR. RUSSELL PECUNIES: All right. Thank you. Good  
8 morning. We're happy to have a request to put before the  
9 board this month, so we have a meeting. In any case, the  
10 request pertains to a Melrose Building Materials Corp at  
11 the 411 East 163rd street in the Bronx. This is a concrete  
12 processing facility. It has been the subject of complaints  
13 that go back a while pertaining to dust emissions,  
14 specifically from two large cement silos that they have on  
15 the property. They are required to have a certificate of  
16 operation from DEP for this type of facility because of  
17 the potential dust emissions. The certificate of  
18 operation, looking at one of the summonses, this is one of  
19 the dust ones.

20 MR. THOMAS SHPETNER: I think it's the last one.

21 MR. RUSSELL PECUNIES: 46 and so on. Yes, okay.  
22 Specifically, the certificate of operation is for two  
23 hopper conveyor belt mixer and admixture supply systems.  
24 The certificate of operation is basically for the whole  
25 system that moves the cement to become mixed and then they

1 load it into the trucks. As I said, there have been a  
2 number of complaints going back for a while about the dust  
3 emissions. This is an industrial area. However, there is a  
4 community garden, a dog park, and a soccer field across  
5 the street that are apparently plagued by dust and that  
6 have caused the complaints to be made to us.

7 Their most recent violations were based on  
8 inspections in November. They had a hearing date on  
9 January 24th, and they defaulted on both the violation for  
10 the certificate of operation and the violation for the  
11 excessive dust. Since the season for outdoor activities is  
12 going to be upon us, we wanted to get this in front of  
13 this meeting so that hopefully we can get them into a  
14 hearing and get this problem fixed before the season for  
15 the garden and the soccer field and everything goes into  
16 the full swing.

17 COMMISSIONER ASIM REHMAN: Thank you, Russ. Any  
18 questions for DEP?

19 MR. MATTHEW SCHNEID: Yes. Did they just not  
20 respond to this one violation? There's two violations, I  
21 think, that were sent out to us. Did they respond to  
22 either of them?

23 MR. RUSSELL PECUNIES: Yes, they've gotten four  
24 summonses.

25 MR. MATTHEW SCHNEID: Four summons. Okay.

1 MR. RUSSELL PECUNIES: Two for the certificate of  
2 operation and two for the dust. They rescheduled one of  
3 them, one out of the four, to July 3rd. The hearing on  
4 that won't take place until, obviously at least July.  
5 Since they have three that are still in default, we did,  
6 again, want to move on this because of the nature of the  
7 affected, locations and that they're about to come into  
8 their busy season. We wanted to try and get a response out  
9 of them on this as soon as possible.

10 MR. MATTHEW SCHNEID: The summons were all  
11 coming on the same date though?

12 MR. RUSSELL PECUNIES: The summons were issued a  
13 week apart, but the return date on them-- Well, actually  
14 the one that's rescheduled was one that had a hearing date  
15 back in September.

16 MR. MATTHEW SCHNEID: The only reason I'm asking  
17 is typically I feel like we see multiple over like  
18 several possibly years before we get a cease and desist  
19 [crosstalk].

20 MR. RUSSELL PECUNIES: Yes, again, well, the  
21 reason that we do normally-- If it was just for the dust,  
22 we would have gone back and tried to issue a third summons  
23 before we brought the cease and desist order. Because we  
24 usually try and have three before we ask the board for a  
25 cease and desist order. Because the violation here is not

1 just for the dust, but for the certificate of operation,  
2 it's not something that we need to issue to them over and  
3 over again. They don't have the certificate. Really two,  
4 we feel like is enough. Again, because of the scheduling  
5 issue with the time of year, we didn't want to wait until  
6 the June meeting to bring this request. We wanted to try  
7 and bring it.

8 MR. MATTHEW SCHNEID: What's involved to get a  
9 certificate of operation?

10 MR. RUSSELL PECUNIES: Certificate of operation,  
11 they require an engineer, and they have to submit, they  
12 will have to submit plans for this that have to be  
13 reviewed and approved at DEP and it has to be inspected.  
14 Getting a valid certificate of operation will fix the dust  
15 problem.

16 MR. MATTHEW SCHNEID: Right. When they have the  
17 meeting with you, are they going to have time to fix it  
18 before their business is shut down?

19 MR. RUSSELL PECUNIES: They will. If the cease  
20 and desist is issued, they will have opportunities as  
21 determined by the hearing officer to get this into  
22 compliance based on whatever schedule the hearing officer  
23 decides is appropriate.

24 MR. MATTHEW SCHNEID: Okay.

25 MS. SHAMONDA GRAHAM: I have a question.



1 MR. RUSSELL PECUNIES: Yes.

2 MS. SHAMONDA GRAHAM: Shamonda Graham,  
3 Department of Buildings. Were all of these summonses  
4 served at the same time? The reason I'm asking the  
5 question is because I find it very interesting that they  
6 defaulted on a few, but then they rescheduled the one.  
7 They defaulted on the dust; they defaulted on even the  
8 one for the certificate of operation.

9 MR. RUSSELL PECUNIES: The first two, the ones  
10 that were issued in July would have been served together.  
11 Those had one for the certificate of operation and one for  
12 the dust. They would set a hearing date in September. They  
13 defaulted on both of them. They've now rescheduled the one  
14 for the COO, but not the one for the dust, which is still  
15 in default. Then we went back in November and issued  
16 another set which both had a return date of January 24th  
17 and those are both still in default. Since this is a  
18 corporation, these would have been served in Albany with a  
19 backup copy by mail.

20 MS. SHAMONDA GRAHAM: Okay, thank you.

21 COMMISSIONER ASIM REHMAN: I can clarify Russ. I  
22 think, and you're the expert not me, the first two  
23 summonses that were returnable in September, it looks like  
24 those were defaulted. The second two were defaulted. Then  
25 they move to reopen just one of those second events once.

1 MR. RUSSELL PECUNIES: Correct.

2 COMMISSIONER ASIM REHMAN: Okay. Yes, Lisa.

3 MS. LISA URBAN: Lisa Urban. Did they have a  
4 certificate of operation previously or they've been  
5 working without having a certificate, like without?

6 MR. RUSSELL PECUNIES: They would have had one  
7 previously because they wouldn't have been allowed to  
8 operate this in the first place without one.

9 MS. LISA URBAN: I think that that would be an  
10 integral part.

11 MR. RUSSELL PECUNIES: I'm just looking, because  
12 sometimes it says on the summons if there's-- No, it just  
13 describes the equipment. Yes, I mean, in order to use this  
14 in the first place they would had needed one at some  
15 point.

16 MS. LISA URBAN: I guess we can assume that it  
17 either lapsed or whatever, expired?

18 MR. RUSSELL PECUNIES: Yes.

19 MS. LISA URBAN: Then the other question I have  
20 is, and this may be getting ahead a little bit, but Bill,  
21 as part of the remedy, would there be a mitigation plan  
22 that they would have to present? I don't know if that's  
23 really relevant for our discussion, but I'm just curious  
24 in terms of the remedy that would come out of a cease and  
25 desist order.

1 MR. RUSSELL PECUNIES: Yes, they would need to  
2 retain an engineer to comply with us. If they had a COO in  
3 the past it's expired and it would be canceled at this  
4 point. They would need to retain an engineer to submit the  
5 application. The application would for a facility of this  
6 type be to include the dust mitigation measures that  
7 facilities like this normally have. They obviously must  
8 have had the required mitigation in place at one time, and  
9 maybe it's just stopped working, or it's just they have  
10 kept it up, and so now it's just emitting the dust.

11 MS. LISA URBAN: Thank you.

12 COMMISSIONER ASIM REHMAN: I had questions  
13 similar to Matt and Shamonda's about the number of  
14 summonses so far, because it almost seems, you had said  
15 Russ two, but almost seems like one and a half. Like  
16 there was one that was issued and defaulted on, and no  
17 action was taken, and the other where we're in the  
18 process of. We're midway through the second one because  
19 they asked for a hearing.

20 I see that the cease and desist is on the  
21 certificate, not on the dust. With the certificate one,  
22 they defaulted once and we're midway through on the  
23 second. I'm wondering if it is too early to ask for the  
24 cease and desist. It's not like they have totally  
25 disappeared and ignored. They defaulted, but someone on  
their end requested that there be a new date, so they are

1 asking to be heard.

2 MR. RUSSELL PECUNIES: Again, I don't think I can  
3 respond to that, because again, we wanted to try and get  
4 this before this meeting, because the next meeting is not  
5 for two more months. The receiving places that are  
6 affected by this are, again, it's a community garden, it's  
7 a soccer field, and a dog park that are directly across  
8 the street from this and that's why we've been getting the  
9 311s, it's not residential. It's because of these  
10 recreational facilities across the street and it'd be  
11 another two months before we really get you know.

12 COMMISSIONER ASIM REHMAN: With the C&D, there'd  
13 be the hearing, so they'd still have the opportunity  
14 [crosstalk]

15 MR. RUSSELL PECUNIES: They will have the  
16 opportunity to appear at a hearing and respond to this.

17 COMMISSIONER ASIM REHMAN: It effectively  
18 accelerates the hearing.

19 MR. RUSSELL PECUNIES: That's the hope.

20 COMMISSIONER ASIM REHMAN: Okay. All right. Okay.  
21 Any other questions? Let's move to a motion to approve the  
22 request for a cease and desist order by DEP for respondent  
23 Melrose Building Materials Corp. Is there a motion?

24 MS. MADELYNN LIGUORI: Motion?

25 COMMISSIONER ASIM REHMAN: A motion from

1 Madelynn. Is there a second? A second From Matt. Okay. Can  
2 we please move to a vote?

3 MS. MADELINE HALIMI: Are there any objections  
4 to the motion approving the cease desist order by DEP for  
5 Melrose Building Corp? Seeing none, hearing none, the  
6 motion is approved unanimously.

7 MR. RUSSELL PECUNIES: I expect to have a bunch  
8 of these for the next meeting so. COMMISSIONER ASIM  
9 REHMAN: Thank you very much Russ. Is there a motion for  
10 us to move into executive session? I see a motion from  
11 Joseph and a second from Thomas.

12 MS. MADELINE HALIMI: Are there any objections  
13 for the motion to go into executive session? Seeing none,  
14 hearing none, the motion is approved unanimously.

15 COMMISSIONER ASIM REHMAN: Thank you. Peter can  
16 you--

17

18 COMMISSIONER ASIM REHMAN: All right. Are there  
19 any other questions or any other business not covered.  
20 Okay, let's pick a date for our next meeting. We'd like to  
21 suggest either June 6th or June 13th. Anyone have any  
22 concerns or [unintelligible 00:15:39]

23 MR. RUSSEL PECUNIES: I cannot do June 6th. I  
24 prefer the 13th.

25 COMMISSIONER ASIM REHMAN: All right.

1 MS. OLGA STATZ: You missed the party.

2 MR. JARROD WHITTINGTON: Sorry, I was stuck on  
3 the four train. [chuckles]

4 COMMISSIONER ASIM REHMAN: It's okay. That's  
5 okay. If you we go with June 13th?

6 MR. MATTHEW SCHNEID: Let me just check.

7 COMMISSIONER ASIM REHMAN: All right. Anyone else  
8 need to check? Okay, let's have our next meeting at the  
9 same time June 13th, same location. With that, I'll take a  
10 motion to adjourn the meeting. Motion from Matt, second  
11 from Madelynn. All right. Thank you very much for  
12 [inaudible 00:16:26]. You're adjourned and meeting next  
13 hopefully will be-- Oh, I'm sorry, we need a vote to  
14 adjourn.

15 MS. MADELINE HALIMI: Yes.

16 COMMISSIONER ASIM REHMAN: I am adjourning my  
17 authority appropriately [unintelligible 00:16:40] .

18 MS. MADELINE HALIMI: Are there any objections to  
19 the  
20 motion to adjourn the meeting. Seeing none, hearing none,  
21 the motion is approved unanimously.

22 COMMISSIONER ASIM REHMAN: Now we are adjourned.  
See you all.


(The board meeting concluded at 9:57 a.m.)

**Reviewed and corrected by OATH General  
Counsel Office January 4, 2024.**

## CERTIFICATE OF ACCURACY

I, Gladys Gist, certify that the foregoing transcript of Board Meeting on April 4, 2024 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

**Certified By:**

  
Gladys Gist (April 9, 2024 2:45 EST)

**Date:** April 9, 2024

I, Ayesha Sikder, conducted a quality control review of the certified foregoing transcript.

**Reviewed By:**

  
Ayesha Sikder (April 9, 2024 2:55 EST)

**Date:** April 9, 2024

**Accurate Communication Inc.  
85 Broad Street,  
New York, NY 10004**

**Accurate Communication Inc  
85 Broad Street, New York, New York 10004**