

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

BOARD MEETING

VIA VIDEO CONFERENCE

100 Church Street, New York, New York

April 7, 2022

9:34 a.m. to 10:37 a.m.

April 7, 2022

MEMBERS PRESENT:

Olga Statz, Esq. - Designee for John Castelli, Esq.,
Acting 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)
Jorge Martinez, Esq. - Department of Health & Mental
Hygiene (DOHMH)
Russell Pecunies, Esq. - Department of Environmental
Protection (DEP)
Matthew Schneid, Esq. - Appointed Member (Real Estate)
Thomas Shpetner, Esq. - Appointed Member (Business)
Matthew Smith, Esq. - New York City Police Department
(NYPD)
Jarrod Whittington - Appointed Member (Noise)

ALSO PRESENT:

Rachel Amar - Special Assistant to Commissioner (OATH)
John Castelli, Esq. - Acting Commissioner/Deputy
Commissioner for Legislative Affairs, OATH
Kelly Corso, Esq. - Assistant Commissioner for Hearings
Division Adjudications, OATH
Brian Gatens - Member of Public
Svetlana Iosilevich, Esq. - Executive Agency Counsel,
Business Integrity Commission (BIC)
Catherine Jakubik, Esq. - Assistant General Counsel, OATH
Timothy Jones, Esq. - Senior Counsel, OATH
Richard J. LaPlant - Office of Management and Budget (OMB)
Maria Marchiano, Esq. - Deputy Commissioner/Chief Clerk,
OATH
Frank Ng, Esq. - Deputy General Counsel, OATH
Asim Rehman, Esq. - Commissioner/Chief Administrative Law
Judge, OATH, Chair/Executive Director, OATH ECB
Peter Schulman, Esq. - Assistant Commissioner for Appeals,
OATH
Frances Shine - Secretary to the Board, OATH
Amy Slifka, Esq. - Deputy Commissioner/Hearings Division,
OATH
Samuel Solomon, Esq. - Chief of Staff/Special Counsel,
OATH

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Thomas Southwick, Esq. - Supervising Attorney for Appeals,
OATH
Joy A. Thompson, Esq. - Assistant General Counsel, OATH

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2 (The board meeting commenced at 9:34
3 a.m.)

4 OLGA STATZ, ESQ., DESIGNEE FOR JOHN
5 CASTELLI, ESQ., ACTING COMMISSIONER/CHIEF
6 ADMINISTRATIVE LAW JUDGE, OATH, CHAIR/EXECUTIVE
7 DIRECTOR, OATH: Good morning, everybody. You
8 all know me. I'm Olga Statz. And, today, I'm
9 joined by two special guests. We have our soon-
10 to-be Commissioner, Asim Rehman, and our Acting
11 Commissioner, John Castelli. I'm going to turn
12 it over to John and he can say a few words about
13 our new Commissioner.

14 JOHN CASTELLI, ESQ., ACTING
15 COMMISSIONER/DEPUTY COMMISSIONER FOR LEGISLATIVE
16 AFFAIRS, OATH: Hi. Can everyone hear me?
17 Great. I didn't mute, I'm not speaking muted.
18 Good. Thank you, Olga.

19 This is really a special day. Fifty-
20 four years. The Environmental Control Board has
21 been going for 54 years. And there are special
22 days, and this is one of them. And I am honored
23 and privileged to introduce our newest, our new
24 Commissioner, Asim Rehman. I am excited. We are

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2 all, we are all excited about Commissioner
3 Rehman's joining us and, and looking forward to
4 his leadership. I know it'll be outstanding.

5 I've, I know, and I look forward to, all
6 of us look forward to working, serving, working,
7 serving our, our City, working under the
8 Commissioner's leadership. And I could, I'm not
9 going to get into all of the wonderful things I
10 could say about the Commissioner, because the
11 Board, some of you would quit with the amount of
12 time it would take for me to go through it. So,
13 but I'm not going to do that, and I could. If
14 anybody wants to reach out to me, we could, we
15 could schedule a, a three-hour seminar to talk
16 about all the achievements and accomplishments in
17 his career and lifetime.

18 So, without further ado, I want to
19 introduce Commissioner Rehman. Commissioner
20 Rehman?

21 ASIM REHMAN, ESQ., COMMISSIONER/CHIEF
22 ADMINISTRATIVE LAW JUDGE, OATH, CHAIR/EXECUTIVE
23 DIRECTOR, OATH ECB: Thank you, everyone. John,
24 thank you. That's very generous of you. I do

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2 appreciate it.

3 Good morning, everyone. Asim Rehman,
4 the incoming Commissioner. And thank you for
5 allowing me to spend time on your agenda to say
6 good morning and to welcome you and to thank you
7 for the important work that the Board does. This
8 is a vital organ in City government and it's an
9 important part of the work we do to make sure
10 that we have fairness in our processes and that
11 we enhance the public's trust in the important
12 work that City government does.

13 So I am still in learning mode on a lot
14 of these things and am happy that I can be here
15 and, and listen in before I start officially.
16 I'll be joining OATH next week. But, again, just
17 wanted to, to be here to listen, to learn, to, to
18 see you all in action and to thank you all for
19 the work that you do. I will turn it back to
20 today's Chair, but thank you again. It's a
21 pleasure to meet you all.

22 MS. STATZ: Thank you so much,
23 Commissioner. Again, good morning, everybody.
24 I'm going to ask Joy to do the roll call, please.

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2 JOY A. THOMPSON, ESQ., ASSISTANT GENERAL
3 COUNSEL, OATH: Good morning. I am going to
4 start with Olga Statz as the designee for the
5 Acting Commissioner, John Castelli.

6 MS. STATZ: Present.

7 MS. THOMPSON: Shamonda Graham?

8 SHAMONDA GRAHAM, DEPARTMENT OF
9 BUILDINGS: I'm here.

10 MS. THOMPSON: Joseph Gregory?

11 JOSEPH GREGORY, ESQ., NEW YORK CITY FIRE
12 DEPARTMENT: Present.

13 MS. THOMPSON: Elizabeth Knauer?

14 ELIZABETH KNAUER, ESQ., APPOINTED MEMBER
15 (WATER): Present.

16 MS. THOMPSON: Madelynn Liguori?

17 MADELYNN LIGUORI, ESQ., DEPARTMENT OF
18 SANITATION (DSNY): Present.

19 MS. THOMPSON: Jorge Martinez?

20 JORGE MARTINEZ, ESQ. - DEPARTMENT OF
21 HEALTH & MENTAL HYGIENE (DOHMH): I'm here.

22 MS. THOMPSON: Russell Pecunies?

23 RUSSELL PECUNIES, ESQ., DEPARTMENT OF
24 ENVIRONMENTAL PROTECTION: Here.

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2 MS. THOMPSON: Matthew Schneid?

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

5 MS. THOMPSON: Thomas Shpetner?

6 THOMAS SHPETNER, ESQ., APPOINTED MEMBER
7 (BUSINESS): Sorry. Present.

8 MS. THOMPSON: Matthew Smith?

9 MATTHEW SMITH, ESQ., NEW YORK CITY
10 POLICE DEPARTMENT (NYPD): Present.

11 MS. THOMPSON: Douglas Swann? And
12 Jarrod Whittington?

13 JARROD WHITTINGTON, APPOINTED MEMBER
14 (NOISE): Present.

15 MS. THOMPSON: Okay, we have a quorum
16 with 11 of our members.

17 MS. STATZ: Thank you so much, Joy. The
18 first thing I'd like to do is to ask for a motion
19 to adopt the minutes, please. Thank you. So I
20 see a motion from Matt, seconded by Elizabeth.
21 Is, does anyone have any corrections or additions
22 for the minutes? Can you take a vote on the
23 minutes, please, Joy?

24 MS. THOMPSON: Sure. At this time, I'm

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2 going to ask if anyone has any objections to the
3 adoption or the approval of the minutes from the
4 February 10, 2022 ECB Board Meeting. Any
5 abstentions? Okay. The minutes have been
6 approved.

7 MS. STATZ: Thank you very much. So
8 the, the first substantive item on the agenda is
9 the adoption of our amendments to our appeals and
10 representation rules.

11 You, the, the documents were, so were
12 distributed earlier and you've had all a chance
13 to review them. And you'll see that these
14 amendments are nothing radically different from
15 what we've had before. They were all amendments
16 to streamline our processes and to adopt certain
17 practices and to codify certain practices that we
18 found have worked very well for us during this
19 period of time and worked very well with us as
20 we've taken on the, the remote work, the remote
21 hearings section of what we're doing. So I, I
22 present these to you and I'm, I'm interested in
23 ha-, knowing if you guys have any questions or if
24 there's any clarification I can, I can bring. I

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2 don't hear any questions, so --

3 MS. GRAHAM: Olga?

4 MS. KNAUER: Sorry.

5 MS. STATZ: Yes?

6 MS. KNAUER: I, I did have a question,
7 Olga.

8 MS. STATZ: Yes.

9 MS. KNAUER: This is Elizabeth Knauer,
10 Appointed Member. There were, there's a few
11 places in the proposed rule that reference, I, I
12 guess forms or means that will be identified by
13 OATH for certain submissions to be made. And I
14 just, I, I'm just wondering, logistically, how
15 will, how will those, those processes be
16 communicated to the community that's likely to be
17 affected by them?

18 MS. STATZ: A lot of the forms, or most
19 of the forms, are going to be on our website. A
20 lot of this also is done by e-mail. And those,
21 the, the contact information and the forms are on
22 the website. And when people call or contact the
23 office, also provisions are made for them, as
24 well.

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2 MS. KNAUER: Okay, thank you.

3 MS. STATZ: You're welcome.

4 MS. GRAHAM: Hey, Olga. Shamonda
5 Graham, Department of Buildings.

6 MS. STATZ: Shamonda.

7 MS. GRAHAM: In looking through the, the
8 rules, I see that they are very much similar to
9 what we have, and some of it is stuff that we
10 already have. The one thing that stands out to
11 me, as an enforcement agency, is it looks like
12 you guys have some control over whether the high
13 volume reps would be able to add cases on, once
14 they've provided you guys the list. So I'd just
15 like confirmation that once you guys have the
16 list of cases that they intend to do, they are no
17 longer going to be able to, last minute, add
18 cases.

19 MS. STATZ: That's --

20 MS. GRAHAM: Of course, giving you guys
21 discretion to make a decision.

22 MS. STATZ: So, so you said it exactly
23 right. So, at the -- ultimately, we would have
24 that discretion, but in extreme circumstances.

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2 The way we drafted these rules is to set down
3 very clearly the, the, the number limitation and
4 to make sure that there are no last minute
5 changes, because it creates havoc at Clerks, at
6 Clerks and at Hearings. The only last minute
7 action that a, that a, an attorney or a high
8 volume rep can take is to withdraw cases. That's
9 the only thing that they can do completely in
10 their discretion. But if they want to add cases
11 or if they want to shift things around, it's,
12 they would have to seek the special permission
13 from, from OATH leadership. Otherwise, things
14 are not going to go forward.

15 MS. GRAHAM: So I'll just, I'll just say
16 that I truly, truly appreciate that, because
17 that, it creates havoc for you guys, also for the
18 agencies, but it is very convenient for the high
19 volume rep.

20 MS. STATZ: Oh, yes.

21 MS. GRAHAM: You know, especially,
22 especially if they're doing it at the last
23 minute, towards the end of the day. So I just
24 really want to thank you guys, because the rules,

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2 as crafted, you know, provided that they're
3 imposed, they're, they are definitely going to
4 make things much smoother and much better. Thank
5 you all.

6 MS. STATZ: You're welcome. Thank you.
7 Hi.

8 MR. SCHNEID: Hi. One of the parts of
9 the rules say the, the representation needs an
10 original signed authorization.

11 MS. STATZ: Yes.

12 MR. SCHNEID: And I'm concerned that
13 practically, the way the world works, it's not
14 going to be like an original inked signature, and
15 maybe by PDF or otherwise, having it
16 electronically. So I want to kind of understand,
17 you know, the rationale for that part of it.

18 MS. STATZ: The rationale for that part
19 of it is, is something, is, is, unfortunately,
20 the, the high number of situations we have where
21 representatives who are not authorized to
22 represent particular respondents actually go in
23 and make representations on the record and
24 actually rep-, put in, adjudicate a case. And

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2 then the, the respondent finds out about it
3 afterward. And our obligation is to redo that
4 hearing.

5 And it's, it's very odd. It's, and this
6 is something that surprised me when I first
7 started working here, as well, because I was
8 wondering, why would you do that? You're not
9 guaranteed to be paid. But, obviously,
10 obviously, some money is being made somewhere,
11 because it happens with such frequency.

12 MR. SCHNEID: Well, maybe I can ask
13 another way. I'm totally fine with getting the
14 authorization. I think it's reasonable. It's
15 just, it says you need an original copy of the
16 signed authorization as opposed to a PDF copy,
17 which I think is just not necessarily practical
18 in today's age in, in, especially taken in the
19 light that we're doing this all electronically.

20 MS. STATZ: Well, I think that
21 electronic signatures, when they're full
22 electronic signatures, are something that the
23 Clerk's Office and the Hearings Department, the
24 Hearings Division, would perhaps consider.

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2 However, if it's just a scanned copy, that would
3 be problematic. I mean, I'm just speaking right
4 now, just in general. I think that would be --
5 because that's one of the problems that we had.
6 Scanned copies, just photocopies, they, they
7 often were doctored, et cetera. So it would have
8 to be, we would, it would have to be some actual
9 method, authenticated signature on the PDF. I
10 think that our Clerk's Office in Hearings would
11 probably accept something like that. But a
12 simple scan is, given our experience with this,
13 it wouldn't be sufficient.

14 MR. SCHNEID: I, I'm just concerned
15 that, practically, most people just, they don't
16 get originals. Like I, I signed, literally,
17 unrelated to this, but I could do a \$200 million
18 sale of a building in my day-to-day life and
19 there's no original of a signature. Like if the
20 lawyer is going to commit fraud by doctoring the
21 signature, I mean, that's fraud, right?

22 MS. STATZ: However, however, even in
23 that -- I'm sorry to interrupt you, Matthew.

24 MR. SCHNEID: Okay.

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2 MS. STATZ: However, even in that, those
3 signatures are not just ink signatures scanned
4 through. Those are -- when I, when I sign
5 things, when I have to sign documents on behalf
6 of OATH, I sign them electronically, as well.
7 But that's an entire process. I have a password.
8 All this other stuff happens. So I'm, I'm
9 surmising that both Clerks and Hearings, when
10 they, when they're confronted with documents of
11 that caliber, they're, they will be considered as
12 original signatures. What we just want to make
13 sure is that we don't have just photocopies or
14 scans.

15 MR. SCHNEID: Right. Well, I'm --

16 MS. KNAUER: I'm not really
17 understanding, I'm not really understanding the
18 difference in terms of the capacity for fraud. I
19 mean, if, if the issue is -- because I think, I
20 think Matt's raising a really good point in
21 terms of the way [unintelligible] [09:46:21]
22 [00:12:21] on a practical level, particularly for
23 something like, like something, an OATH
24 appearance where it's not like, in most cases,

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2 not a huge, like, financial risk. So people
3 might, you know, retain a representative kind of
4 late in the game to appear for them. I, I'm
5 just, and so maybe it's sort of done informally,
6 being a PDF over e-mail to get the authorization.
7 But what is, what is the fundamental larger
8 capacity for fraud between a scanned signature,
9 that still can be compared or shown to the
10 respondent to determine if it's their, you know,
11 compared to their actual signature versus an
12 original signature which the representative has,
13 but which they are providing to OATH, generally
14 speaking, through electronic means anyway?
15 Because they're not, in general, appearing in
16 person. So I'm just, I'm just wondering, like
17 what, what, what is the additional security that
18 the ink signature provides in comparison to a
19 scanned PDF that the respondent sends to the
20 representative?

21 MS. STATZ: Well, as you saw from the
22 rules, the rep is supposed to maintain that
23 signed, that signed document with their own
24 records and only present it to us when we require

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2 it. So, in that, in that case, when we have a
3 doubt about whether the representative was
4 actually authorized, that's, that's, that ink
5 signature is the only thing that's going to help
6 us.

7 We've had so many instances where
8 documents have been doctored. Signatures from
9 one document are lifted and put onto another
10 document and then scanned through. And then the,
11 the, the respondent says, yeah, this is my
12 signature, but I never signed this paper. And
13 then it's discovered later that some machinations
14 were, were engaged in to, to, to shift
15 signatures.

16 We have forged documents, unfortunately,
17 pretty regularly, and this is just one form that
18 these things take.

19 MS. KNAUER: Okay. Well, that, that,
20 that actually answers my question. Thank you.

21 MS. STATZ: You're welcome.

22 MS. GRAHAM: Sorry, Olga. This is
23 Shamonda. I have --

24 MS. STATZ: Hi, Shamonda.

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2 MS. GRAHAM: -- one other question.

3 MS. STATZ: Sure.

4 MS. GRAHAM: And this is actually about
5 an old rule, but it, it sort of is jumping off
6 the page at me. There is a section that talks
7 about when there are 25 cases or more --

8 MS. STATZ: Mm-hmm.

9 MS. GRAHAM: -- and that the
10 representative or the legal firm is expected to
11 send an additional party.

12 MS. STATZ: Yes.

13 MS. GRAHAM: I'd just like to ensure,
14 for the Petitioner, it is a little bit different,
15 for the enforcement agencies. And that's really
16 because we never know how many people will show
17 up versus how many people will not. So I just
18 want to ensure that this rule is really more
19 geared towards the, the respondent who has the
20 ability and who knows how many cases they're
21 going to handle, opposed to us where we have 800
22 or 900 cases scheduled, we certainly don't have
23 an attorney, you know, to divide that by 25 and
24 have an attorney for each one. So --

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2 MS. STATZ: Oh, this is entirely,
3 Shamonda, this is entirely for the, for the reps
4 and the attorneys.

5 MS. GRAHAM: Okay.

6 MS. STATZ: Yeah, no.

7 MS. GRAHAM: Thank you so much. Much
8 appreciated.

9 MR. SCHNEID: Sorry. Sorry, Olga. Can
10 we go back to this point about the, the original
11 versus electronic signature?

12 MS. STATZ: Sure.

13 MR. SCHNEID: I believe, if there is a
14 method of electronic signature we will accept, I
15 think it's important to specify that because,
16 irrespective of what we're saying right now, it
17 seems highly likely that the vast majority of
18 signatures are going to be via PDF, because
19 that's frankly just how the world works. And I
20 just don't think it's realistic to expect that
21 most people are going to get an original
22 signature. So if there is a method of acceptable
23 electronic means, I think we should make that
24 clear about how that would work, whether it's a

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2 DocuSign or some other more formalized electronic
3 signature that would be acceptable.

4 MS. STATZ: I think that's something
5 that I don't think would be too much of a lift
6 with the Law Department. I don't think we would
7 specify a DocuSign, because that's --

8 MR. SCHNEID: I'm, I'm not saying
9 specifically DocuSign, but whatever it is that
10 the, that would be an acceptable form of
11 electronic signature, because I just don't think
12 it's practical to these people, oh, they're
13 coming in the morning. They're not going to go
14 in person to sign this document when they find a
15 respondent. Especially if they have a smaller
16 case. Some of these fines are \$100.00. You're
17 not going to take your morning to go to someone's
18 office at the last minute to sign something. So
19 I just wanted --

20 AMY SLIFKA, ESQ., DEPUTY COMMISSIONER/
21 HEARINGS DIVISION, OATH: I think, I think that
22 my -- I'm sorry. This is Amy Slifka. And I
23 think maybe there's some confusion. I think the
24 intent was to have a signature on the NOA that

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2 wasn't electronic when the respon-, when the
3 party appears in person. So, you know --

4 MS. KNAUER: Well, I think it only has
5 to be presented when it's in person, but the, but
6 I think what Olga was saying is it still has to
7 exist and be maintained by the rep, even when
8 they're appearing electronically. So I agree, I
9 definitely agree with Matt, that if there is an
10 acceptable form of, of electronic signature that,
11 you know, and however it can be characterized in
12 the rule, that that, it should be. Because, as,
13 as it reads right now, that doesn't really seem
14 to accommodate it.

15 MS. STATZ: However, one, one thing is
16 that electronic signatures are considered
17 original signatures. So we'll, we would have to
18 see if, if even we need that additional word. We
19 can think about it a little, we can think about
20 it a little more and discuss it with the Law
21 Department, perhaps.

22 MR. SCHNEID: Mm-hmm.

23 MS. STATZ: But my understanding from
24 litigation that I've engaged in is that

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2 electronic sig- signatures are considered
3 original signatures, for all intents and
4 purposes. So let's see if there's some-, if
5 there's an extra word or something that we have
6 to put, or if the Law Department says that this
7 language is sufficient to cover us legally,
8 we'll, we'll, we'll go from there. Does that
9 work for you guys?

10 MR. SCHNEID: Sure.

11 MS. GRAHAM: Olga?

12 MS. KNAUER: Yes. And, presumably, it
13 would be, it could be explained in greater detail
14 on the website, even if, if the rule is not
15 specific to that.

16 MS. STATZ: Yeah, I, I think that that's
17 something, because I know from litigation that
18 we've done, that, that it's no longer a
19 legitimate argument to say that an electronic
20 signature is not an original signature. It is
21 now considered, for all intents and purposes, an
22 original signature. But I, I like the website
23 idea. So let's, so if -- with that
24 understanding, that we'll just reconsult with the

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2 Law Department and definitely have something on
3 the website. Is this something that, that the
4 Board would be willing to, to accept, these
5 rules?

6 MS. GRAHAM: Olga?

7 MS. STATZ: Yeah.

8 MS. GRAHAM: I'm sorry to interrupt, but
9 this is Shamonda Graham. Just one suggestion
10 that might make this very, very easy and make
11 everyone comfortable. I think maybe just a one
12 line or a few words that says that the signature
13 has to be consistent or compliant or pursuant to
14 the Electronic Signature and Records Act would
15 probably do the trick, because that's the act
16 that basically says the electronic signature has
17 to be deemed the sig-, you know, has to be
18 accepted as an original signature. So, so long
19 as the signature is consistent with ESRA, then it
20 would really be okay, and that's not that many
21 words and it makes it very clear, and it actually
22 embodies a full body of rules about electronic
23 signatures just simply by saying consistent with
24 ESRA. So that might make sense. But, you know.

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2 MS. STATZ: I, I think that's a very
3 good idea, but that's something that I will have
4 to con-, to consult with both Clerks and Hearings
5 about in terms of what the, what, what actually
6 happens there. But I think it's a very good
7 idea.

8 I wouldn't want, I, I, I wouldn't want
9 to create a situation where we're letting in a, a
10 lot of things that we don't have the resources to
11 review. Right. So we, I, I think -- what do you
12 think, Amy and, and Maria?

13 MS. SLIFKA: Yes, I, I'm okay. I mean,
14 for my part, I'm okay with working some way to
15 allow for some type of electronic signature. I
16 kind of agree, this is a new world and other
17 agencies, other parts are accepting it. So I'm
18 fine with it. Maria, I, I don't know where you
19 stand on that. You're on mute, Maria.

20 MARIA MARCHIANO, ESQ., DEPUTY
21 COMMISSIONER/CHIEF CLERK, OATH: I, I apologize.
22 I, I missed the last part of that. I'm sorry.

23 MS. SLIFKA: And whether you would be
24 willing to allow for some sort of electronic

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2 signature.

3 MS. MARCHIANO: If it can be verifiable.
4 And I actually agree with whoever made the
5 suggestion that we can, we don't have to put it
6 in the rules. We can just define it on our
7 website. And the electronic, it would have to be
8 something that's verifiable, honestly, because I
9 deal with this at least once a day, of people who
10 claim that there is unauthorized representation.
11 And sometimes they claim unauthorized
12 representation after they got the decision and
13 they lost. So, so I am, I, I do want to make
14 sure that, as long as it's verifiable, we'll be
15 okay with that. And, but I don't really think, I
16 think, to your point about it being an original
17 signature, includes those verifiable PDFs.

18 MS. STATZ: I, I have a suggestion.
19 Also, maybe we can talk about that in the
20 statement of basis and purpose.

21 MS. MARCHIANO: Oh, that's good. Yeah.

22 MS. STATZ: Keep that, keep, keep the
23 word original, because original is a big basket,
24 so that we don't have to be messing around with

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2 the rule at this stage. And then, in the
3 statement of basis and purposes, and in the
4 website, we say ESRA, electronic signatures are
5 deemed original, et cetera. Would that, would
6 that work? When we can make it very plain that
7 a, a signature permit- permissible under ESRA
8 shall be deemed an original signature for
9 purposes of Rule section blah, blah, blah. Does
10 that work?

11 [CROSSTALK] [09:56:17] [00:22:17]

12 MS. MARCHIANO: I think that would work.

13 MS. GRAHAM: I love it.

14 MS. SLIFKA: That, that works for
15 Adjudications.

16 MS. MARCHIANO: It works for us, too.

17 MS. STATZ: Okay. So we'll do that.
18 We'll do that. I'll, I'll change the statement
19 of basis and purpose, and then, but with that
20 change and the website, are we good with this
21 rule?

22 MS. KNAUER: Yes.

23 MS. STATZ: Thank you. So, Joy, can you
24 please get a sense of the vote, please, on this?

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2 MS. THOMPSON: Yes. We do need a
3 motion, please.

4 MS. STATZ: Oh, yes, I'm sorry. Yes.
5 So I, does anyone have, can anyone make a motion?

6 MS. GRAHAM: I'll motion.

7 MS. STATZ: Thank you.

8 MS. GRAHAM: Shamonda Graham. I motion.

9 MS. STATZ: And Madelynn, second.

10 MS. THOMPSON: Thank you so much. At
11 this time, I'd like to ask if there are any
12 objections to approving the representation and
13 appearances rules, as amended, with the amended
14 statement of basis and purpose? Okay, thank you
15 so much. The motion passes.

16 MS. STATZ: Thank you so much. Okay.
17 And we have, the next, next up is another
18 proposed rule, a more thorough going amendment of
19 OATH's representative misconduct provision. And
20 I just want -- so, and this, this rule basically
21 is the result of an analysis, of analysis that we
22 did of litigation cases that we've had on this
23 area, in this area, in federal court, in state
24 court, et cetera. And so we put everything

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2 together to craft this particular rule so that we
3 would be consistent with the requirements of the
4 law with respect to due process, et cetera, et
5 cetera. I'm happy to answer any questions anyone
6 might have. Any questions? No questions, it
7 seems.

8 So can I have a motion, please, to
9 approve? Oh, thank you. Motion by Joe, second
10 by Madelynn. Joy?

11 MS. THOMPSON: And you said that the
12 motion was made by Joseph Gregory?

13 MS. STATZ: Yes, and seconded by
14 Madelynn.

15 MS. THOMPSON: Okay. At this time, I'm
16 going to ask whether there are any objections to
17 the approval of the proposed rule governing the
18 conduct of registered representatives and parties
19 before OATH's Hearings Division. Are there any
20 objections? Okay. At this point, that rule is
21 approved. The proposed rule is approved.

22 MS. STATZ: Thank you very much,
23 everybody. Next up on our agenda is Russ
24 Pecunies from DEP, who is going to present the

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2 cease and desist orders. Russ?

3 MR. PECUNIES: Alright. Thank you very
4 much. Good morning, everyone. My name is
5 Russell Pecunies and I am in the Bureau of Legal
6 Affairs at the Department of Environmental
7 Protection.

8 For this month's meeting, DEP is
9 requesting that the Board approve a cease and
10 desist order in the Matter of Zhong Corporate
11 Group, Incorporated, which does business as the
12 restaurant KyuRamen, and is located at 210 E.
13 14th Street in Manhattan.

14 This business was initially cited by DEP
15 for a violation of section 24-227 of the
16 Administrative Code for excessive noise from its
17 kitchen exhaust on March 23rd of last year. The
18 respondent stipulated to that violation on May
19 12th of last year. And that stipulation included
20 an order to come into compliance forthwith.

21 Another summons was then issued on June
22 17th of last year, and the respondent was found
23 in violation after a hearing that was held on
24 September 13th of last year. The judge's order

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2 again included an order to come into compliance
3 immediately.

4 A third summons was then issued on
5 October 21st of last year. And after going into
6 default, the respondent has now rescheduled that
7 summons for May 2nd. And, most recently on
8 February 22nd of this year, the respondent was
9 again observed to be in violation for excessive
10 noise from the kitchen exhaust. And the hearing
11 date on that summons is April 25th.

12 Because of the repeated summonses that
13 have been issued for excessive noise from the
14 kitchen exhaust at this location and the
15 continuing failure over the period, over a period
16 of almost a year of the respondent to come into
17 compliance with the Noise Code, the Department is
18 requesting that the Board issue an order to cease
19 and desist.

20 MS. STATZ: Are there any questions?
21 Anyone have a motion to approve? Elizabeth, and
22 seconded by Jarrod.

23 MS. THOMPSON: That's seconded by,
24 please?

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2 MS. STATZ: Jarrod Whittington.

3 MS. THOMPSON: Thank you. Would you
4 like -- I can go ahead. And since this motion is
5 on the floor, we have a motion, a request to, for
6 a cease and desist order against Zhong Corporate
7 Group, Incorporated. Are there any objections to
8 this motion? The motion passes.

9 MS. STATZ: Thank you very much,
10 everyone.

11 MR. PECUNIES: Alright. Thank you,
12 everyone.

13 MS. STATZ: Thank you. Do I have a
14 motion to go into Executive Session? Matt,
15 seconded by Joe.

16 MS. THOMPSON: Okay. Are there any
17 objections to us going into Executive Session at
18 this time? Okay.

19 [OFF THE RECORD]

20 [ON THE RECORD]

21 MS. STATZ: So, is everybody back in
22 who's supposed to be in Public?

23 PETER SCHULMAN, ESQ. - ASSISTANT

24 COMMISSIONER FOR APPEALS, OATH: Yes.

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2 MS. STATZ: Okay. So, thank you very
3 much, everyone, for your participation in the
4 Executive Session. I would like to -- does
5 anyone have any additional questions with respect
6 to the full, full Board appeal? Or are we ready
7 to just make a motion to, to take a vote on that?
8 I don't see that anyone has any questions on
9 that, and I'd like a motion, please, so that we
10 can make a determination with respect to the, to
11 the full Board appeal.

12 MR. SHPETNER: Motion.

13 MS. STATZ: Tom Shpetner, motion, and
14 seconded by? Madelynn.

15 MS. THOMPSON: Okay. At this time, I'm
16 going to do a roll call. We're going to vote.
17 The motion, I believe, is whether to find the
18 general contractor in violation or to dismiss a-
19 against a contract- contractor. Olga Statz?

20 MS. STATZ: Dismiss.

21 MS. THOMPSON: Shamonda Graham is
22 abstaining because this comes, the case comes
23 from her agency. Joseph Gregory?

24 MR. GREGORY: In violation.

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2 MS. THOMPSON: Thank you. Elizabeth
3 Knauer?

4 MS. KNAUER: In violation.

5 MS. THOMPSON: Madelynn Liguori?

6 MS. LIGUORI: In violation?

7 MS. THOMPSON: Jorge Martinez?

8 MR. MARTINEZ: In violation.

9 MS. THOMPSON: Russell Pecunies?

10 MR. PECUNIES: In violation.

11 MS. THOMPSON: Matthew Schneid?

12 MR. SCHNEID: Dismiss.

13 MS. THOMPSON: Thomas Shpetner?

14 MR. SHPETNER: Dismiss.

15 MS. THOMPSON: Matthew Smith?

16 MR. SMITH: In violation.

17 MS. THOMPSON: And Jarrod Whittington?

18 MR. WHITTINGTON: Dismiss.

19 MS. THOMPSON: So it is six in favor of
20 violation, four in favor of dismissal. Falls
21 short of the seven required votes to make a
22 determination.

23 MS. STATZ: Therefore, as required in
24 the regs and in the law, the Hearings decision

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2 stands. And we will so inform the, the litigants
3 by letter.

4 Are there any additional questions or
5 concerns about that? Thank you very much.

6 So we're going to turn to the part of
7 our, of our meeting now where we select a date
8 for the next Board meeting. The, the suggested
9 date is June 9th. Does that work for everybody?

10 MR. MARTINEZ: Yes.

11 MR. SCHNEID: I, I happen to be out of
12 town that week. But if, if I'm the only one,
13 then you can proceed and I'll have to miss the
14 meeting.

15 MS. STATZ: Okay. Anybody else? Is --

16 MS. GRAHAM: Give me one moment, guys.
17 I'm checking my calendar.

18 MS. STATZ: Okay.

19 MS. LIGUORI: I may also be out of the
20 office that day.

21 MS. STATZ: Is that you, Madelynn?

22 MS. LIGUORI: Yes.

23 MS. STATZ: Okay.

24 MS. GRAHAM: I'm good.

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2 MS. STATZ: You're good. So we have --
3 and everybody else is good? So that's
4 potentially two. So should we look for another
5 date where everybody can be there, if we're, if
6 we're down two people? The other dates are June
7 2nd and June 16th. Is there one of those dates
8 where everybody pretty much thinks they can be,
9 they're going to be around?

10 MR. WHITTINGTON: I could not, I could
11 not do June 16th.

12 MS. STATZ: You can't, you cannot do
13 June 16th?

14 MR. WHITTINGTON: Cannot. I can do the,
15 I can do the other two dates, but not the 16th.

16 MS. STATZ: Okay. How about the 2nd?
17 Is everybody good on the 2nd?

18 MR. SMITH: I can't do June 2nd.

19 MS. STATZ: Okay. So let's, let's have
20 the next Board meeting on June 2nd. Is that, is
21 that, does that work for you? No, Matt?

22 MS. THOMPSON: I think Matt Smith said
23 no to June 2nd. So there's two --

24 [CROSSTALK] [10:35:54] [00:33:54]

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2 MS. THOMPSON: -- out on June 2nd.

3 MS. STATZ: So, wait a minute. How many
4 people would be out on June 2nd? Matt.

5 MS. THOMPSON: And --

6 MS. STATZ: Who else?

7 MS. THOMPSON: Jarrod.

8 MS. STATZ: No, Jarrod can do June 2nd.

9 MR. WHITTINGTON: No, I'm, I'm available
10 June 2nd.

11 MS. THOMPSON: Okay.

12 MS. STATZ: He's not available June
13 16th, so --

14 MS. THOMPSON: Okay.

15 MS. STATZ: So, at this point, since
16 it's, we're trying not to have more than one
17 person who can't make it, is that, does that work
18 for you, Matt? Can we, would that be okay if we
19 proceed on June 2nd? Because you would be the
20 only one out. Is that okay? You're good? So,
21 can you, if you could send someone else in for
22 you, Matt, that would be great. Thank you.

23 So let's do, let's, let's say June 2nd.

24 Do I have a motion? Matt moves. Do I have a

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2 second? Elizabeth.

3 MS. THOMPSON: And I'll roll call. Any
4 objections to our next meeting on June 2nd?
5 There being none, our next meeting date is June
6 2, 2022.

7 MS. STATZ: Thank you so much,
8 everybody. It's always so nice to see everyone.
9 Are we done? Or are there any questions? Thanks
10 a lot.

11 MS. KNAUER: I just wanted to extend a
12 welcome to the new Commissioner, the incoming
13 Commissioner.

14 MS. STATZ: Yes.

15 MR. REHMAN: Thank you, Elizabeth.

16 MR. SCHNEID: Same here. Welcome.

17 MS. GRAHAM: Welcome aboard.

18 MR. REHMAN: Thanks, everyone. I
19 appreciate it.

20 MS. GRAHAM: Pun intended.

21 MR. REHMAN: And I learned a lot from
22 today's meeting, so thank you.

23 MR. SHPETNER: Good luck.

24 MS. STATZ: Thank you very much. Bye,

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everybody. Be well.

ALL: Bye.

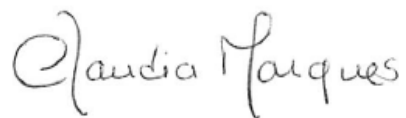
(The board meeting concluded at 10:37
a.m.)

Environmental Control Board, 4/7/2022

CERTIFICATE OF ACCURACY

I, Claudia Marques, certify that the foregoing transcript of Board Meeting of the Environmental Control Board on April 7, 2022, was prepared using the required transcription equipment and is a true and accurate record of the proceeding.

Certified By



Date: April 14, 2022

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