

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

BOARD MEETING

Training Room 143, 12th Floor
100 Church Street, New York, New York

February 26, 2015

9:31 a.m. to 10:23 a.m.

February 26, 2015

MEMBERS PRESENT:

Lt. Dan Albano, Esq. - Police Department
Robert Carver, Esq.- Citizen Member
Fidel F. Del Valle, Esq. - Chair, OATH
Joseph Gregory, Esq. - Fire Department
Renaldo Hylton - Executive Director, Department of
Buildings
Emily S. Lally- Citizen Member
Madelynn Liguori, Esq. - Department of Sanitation
Jorge Martinez, Esq. - Department of Health and Mental
Hygiene
**Russell Pecunies, Esq. - Department of Environmental
Protection**
Thomas D. Shpetner - Citizen Member
Douglas Swann - Citizen Member

ALSO PRESENT:

James Armstrong - Law School Fellow, OATH
**Kelly Corso, Esq. - Assistant Director of Adjudications,
ECB**
Helanie Balsam, Esq. - Deputy General Counsel, OATH
Denis Brogan - Assistant General Counsel, OATH
John Burns - First Deputy Commissioner, OATH
John Castelli - Assistant Commissioner for Legislative
Affairs, OATH
Laura Carraher - Staff Attorney, Appeals, OATH/ECB
Arisleyda Fernandez - Facilities Assistant, OATH/ECB
Fana Garrick - Public Affairs Assistant, OATH/ECB
David Goldin, Esq. - Administrative Justice Coordinator
Diana Haines - Assistant General Counsel, OATH/GC
Vivienne Kahng - Staff Attorney, Appeals, OATH/ECB
Peggy Kuo - Deputy Commissioner and General Counsel, OATH
Mark H. Leeds, Esq. - Special Senior Counsel, ECB
Jim Macron, Esq. - Counsel to the Board, ECB
Maria Marchiano - Senior Counsel/Assistant Commissioner,
OATH
Denise Ortega - IT Support, OATH
Peter Schulman, Esq. - Deputy Supervising Attorney,
Appeals, ECB
Frances Shine - Secretary to the Board, ECB
Amy Slifka Esq. - Deputy Commissioner/ Executive Director,
ECB
Thomas Southwick, Esq. - Supervising Attorney, Appeals,
ECB
Paul Westrick - City Council

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2 (The board meeting commenced at 9:31
3 A.M.)

4 MR. FIDEL F. DEL VALLE, Esq. - CHAIR,
5 OATH: Good morning everyone.

6 UNIDENTIFIED MALE 1: Good morning.

7 UNIDENTIFIED MALE 2: Good morning.

8 CHAIRMAN DEL VALLE: This is a meeting
9 of the Environmental Control Board. We are now
10 calling it to order. Is -- has everyone seen the
11 minutes of the last meeting?

12 UNIDENTIFIED MALE 3: Yes.

13 CHAIR: Any comments or corrections? Is
14 there a motion to accept them? I think that's
15 unanimous. They're accepted. I would like to
16 ask James Armstrong to do a presentation on
17 proposed rules to amend ECB's building penalty
18 schedule, Buildings Department.

19 MR. JAMES ARMSTRONG -LAW SCHOOL FELLOW,
20 OATH: Good morning, ladies and gentleman of the
21 board. My name is James Armstrong. I'm a Law
22 Fellow with the General Counsel's Office.

23 Today I begin by presenting ECB's
24 proposed rule to amend its building's penalty

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2 schedule. This proposal is in response to the
3 Department of Building's proposal from last
4 month. Today ECB proposes a rule to modify its
5 building's penalty schedule in order to
6 adequately enforce existing laws and rules and to
7 reflect the changes brought about by Local Law
8 141, which went into effect on December 31, 2014.

9 Local Law 141 amended many sections of
10 laws, many codes, and it made several such
11 amendments. It amended existing requirements,
12 added new requirements and renumbered existing
13 sections of the affected codes.

14 ECB also seeks to amend its building
15 penalty schedule in order to reflect efforts by
16 the Department of Buildings to update existing
17 violations in the Department of Building rules by
18 amending the sections of laws in violation
19 descriptions.

20 Today's proposal has been certified by
21 both the New York City Law Department and the
22 Mayor's Office of Operations. Are there any
23 questions?

24 CHAIRMAN DEL VALLE: Any questions? Is

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2 there a motion? I think since everyone raised
3 their hand, except Emily Lelly [phonetic].

4 MS. LALLY: Lally.

5 CHAIRMAN DEL VALLE: Sorry.

6 MS. LALLY: It's okay.

7 CHAIRMAN DEL VALLE: There's a cup of
8 coffee in front of your name.

9 THOMAS SHPETNER: That's her real name.

10 CHAIRMAN: With one negative vote, it is
11 passed.

12 MS. PEGGY KUO, DEPUTY COMMISSIONER AND
13 GENERAL COUNSEL, OATH: It's an abstention. It's
14 an abstention.

15 MR. RENALDO HYLTON, EXECUTIVE DIRECTOR,
16 DEPARTMENT OF BUILDINGS: I don't need to
17 abstain, I vote. I vote.

18 CHAIRMAN DEL VALLE: Okay. I believe
19 there's another one.

20 MR. ARMSTRONG: Yes, that's correct,
21 sir. Alright. Next, I will present ECB's
22 proposed rule to amend its sanitation penalty
23 schedule. Today's proposal is in response to two
24 Department of Sanitation proposals from last

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2 month. And accordingly today's proposal will
3 have two parts. Therefore, I will go through the
4 first part and see if there are any questions at
5 that point. Then I will continue with the second
6 part.

7 So, first, ECB proposes to amend its
8 sanitation penalty schedule to create penalties
9 for violations of local Law 67 of 2014. Local
10 Law 67 has already been enacted. It will become
11 effected -- effective March 14, 2015. Local Law
12 67 relates to the regulation of publicly
13 accessible collection bins. Publicly accessible
14 collection bins may not be placed on city
15 property, on property maintained by the city, or
16 on public sidewalks or roadways. However, such
17 bins may be placed lawfully on private property
18 where the bin owner receives a written permission
19 of the property owner and the bin owner will list
20 his or her name, address and telephone number on
21 the side of the bin. When Local Law 67 takes
22 effect, once again on March 14, 2015, the
23 Department of Sanitation will be authorized to
24 immediately remove any publically accessible

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2 collection bin based on public property and to
3 issue violations to the bin owners.

4 Further where bins are placed lawfully
5 on private property, bin owners must register and
6 file an annual report with the Department of
7 Sanitation. Further the bin owner and the
8 property owner will each be responsible for
9 maintaining the bin in a clean and neat
10 condition, and bin owners who fail to comply with
11 these requirements will be liable for civil
12 penalties. That concludes the first part of the
13 proposal. Are there any questions at this
14 juncture?

15 CHAIRMAN DEL VALLE: No question? Is
16 there a motion?

17 MR SHPETNER: Are we doing them
18 together?

19 CHAIRMAN DEL VALLE: Are we doing them
20 together or are you doing them individually?

21 MR. ARMSTRONG: If it's possible I would
22 just continue on to the second part.

23 CHAIRMAN DEL VALLE: Okay.

24 MR. ARMSTRONG: If that's alright? Just

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2 so everyone can hear it.

3 CHAIRMAN DEL VALLE: Alright.

4 MR. ARMSTRONG: Because it's all part of
5 the same proposal.

6 CHAIRMAN DEL VALLE: Alright.

7 MR. ARMSTRONG: Thank you. Next I will
8 go into the second part of the proposal. So, ECB
9 proposes to amend its sanitation penalty schedule
10 to create a penalty for violations of 16 RCNY 1-
11 04.2. So this prohibits the placement of
12 electronic waste out for solid waste or recycling
13 collection.

14 So, as of January 1st of this year,
15 2015, the New York State Electronic Equipment
16 Recycling and Reuse Act prohibits disposal of
17 electronic waste, solid waste in the state of New
18 York. So, the act prohibits electronic waste
19 from being placed or disposed of in any solid
20 waste management facility or being placed out for
21 collection for disposal at a solid waste
22 management facility or hazardous waste management
23 facility in the state of New York.

24 Pursuant to the charter, the Department

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2 of Sanitation is responsible for the operation
3 functions of waste disposal. In further, under
4 the administrative code, the Department of
5 Sanitation is authorized to issue violations.
6 Accordingly in response to the new act, the
7 Department of Sanitation promulgated 16 RCNY 1-
8 04.2 in order to create a violation for placing
9 electronic waste out for solid waste or recycling
10 collection.

11 So, this proposal in full has been
12 certified by both the New York City Law
13 Department and by the Mayor's Office of
14 Operations. Are there any questions?

15 CHAIRMAN DEL VALLE: No questions. Is
16 there a motion? Then it's approved.

17 MR. ARMSTRONG: Thank you very much.

18 CHAIRMAN DEL VALLE: Russell Pecunies.
19 DEP's request for a cease-and-desist orders.

20 MR. RUSSELL PECUNIES, ESQ. - DEPARTMENT
21 OF ENVIRONMENTAL PROTECTION: Okay. Good
22 morning. This month, the DEP has requests for
23 four different types of cease-and -desist orders.
24 First, the Bureau of Waste Water Treatment is

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2 asking the board to issue a cease-and-desist
3 order to Silver Crust West Indian Restaurant and
4 Grill, at 1695 President Street in Brooklyn. The
5 establishment has disregarded a series of
6 Commissioner's Orders and violations for first
7 failing to provide access to their existing
8 grease trap for inspection. And second, to
9 install and maintain a 35 gallon per minute 70
10 pound capacity grease trap on their three
11 compartment sink. Based on the establishment's
12 continuing failure to comply, the DEP is
13 requesting an order to cease-and-desist. I think
14 each type of order, vote on separately or...

15 CHAIRMAN DEL VALLE: We can vote on each
16 one separately.

17 MR. PECUNIES: Yeah.

18 CHAIRMAN DEL VALLE: Any questions?

19 UNIDENTIFIED MALE 5: No.

20 CHAIRMAN: Motion? It's unanimous.

21 MR. PECUNIES: Okay. Next --

22 CHAIRMAN DEL VALLE: And one, and I'm
23 assuming--

24 MR. PECUNIES: Yes.

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2 CHAIRMAN DEL VALLE: Abstention.

3 MR. PECUNIES: Abstention. Thank you.

4 Next, the Bureau of Environmental Compliance is
5 asking for cease-and-desist orders with regard to
6 three locations under the noise code. The first
7 is at 150 Victory Boulevard in Staten Island,
8 where the exhaust fan has been cited on five
9 occasions over a period going back to November of
10 2013. The second location is at 5114 13th Avenue
11 in Brooklyn where the kitchen exhaust has been
12 cited for excessive noise three times going back
13 to May of last year. And the third location is
14 228 West 18th Street where the kitchen exhaust
15 has been cited on four occasions going back to
16 August of 2013.

17 So, in each of these cases, the DEP is
18 asking that the board issue an order cease-and-
19 desist since the responsible parties have failed
20 to comply despite the series of violations that
21 have been issued.

22 CHAIRMAN DEL VALLE: Questions? Motion?

23 And I think it's unanimous with the --

24 MR. PECUNIES: Yeah.

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2 CHAIRMAN DEL VALLE: One abstention. Is
3 that it?

4 MR. PECUNIES: Yeah. I abstain. Okay.
5 The next group is 15 requests for cease-and-
6 desist orders under the Air Code. These all
7 pertain to locations that have expired
8 certificates of operation for using number six
9 fuel oil. We're getting very close now or
10 somewhat close to the June 30th deadline for all
11 boilers to be off number six. So, this is the
12 largest group of these requests that we've
13 brought so far, and I'm not sure but the, there
14 may be even more of these coming over the next
15 couple of months.

16 There is one location 5 Riverside Drive
17 where there are two separate requests because
18 there are two boilers using number six at that
19 location. In each of these cases, the respondent
20 has been issued a notice of violation, been
21 adjudicated and they have failed to respond by
22 converting. So in each of these 15 cases, the
23 DEP is requesting an order to cease-and-desist.

24 CHAIRMAN DEL VALLE: Questions? Motion.

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2 Again it's unanimous with the one abstention.

3 MR. PECUNIES: Correct. And finally, we
4 have 28 requests for cease-and-desist orders for
5 failing to install backflow prevention devices.
6 In each of these cases, the building owner has
7 been ordered to install the device, has been
8 cited with a notice of violation for not doing
9 so. The notice of violation has been adjudicated
10 there is still no compliance, and so the
11 department is requesting an order to cease-and-
12 desist.

13 CHAIRMAN DEL VALLE: Questions? Motion.
14 Unanimous with one abstention. Thank you.

15 MR. PECUNIES: Thank you.

16 CHAIRMAN DEL VALLE: Kelly Corso will
17 now give us a presentation on pre-sealing
18 reports.

19 MS. KELLY CORSO, ESQ. - ASSISTANT
20 DIRECTOR OF ADJUDICATIONS, ECB: Good morning.
21 I'm Kelly Corso, Assistant Director of
22 Adjudications for ECB. And I'm here to discuss
23 the pre-sealing reports for today's board. We
24 have 26 today. Twenty of the reports pertain to

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2 backflow violations.

3 So, I'm going to discuss the backflow
4 violations first. Fourteen of the backflow
5 cases, the hearing officers recommend that there
6 be no sealing or other action given the
7 respondent's compliance or because DEP has
8 determined that the site of premises had no
9 active water service. In five of the cases, the
10 hearing officers recommend that the c and d
11 orders be discontinued because DEP has determined
12 that the respondents no longer own the premises.
13 Or because DEP has determined that the site of
14 premises does not have its own water supply. In
15 the final backflow case, the hearing officer
16 recommended that the c and d order be
17 discontinued because DEP has determined that no
18 backflow prevention device is required at this
19 time at the premises. Any questions on the
20 backflow cases? Okay.

21 Next, I'm going to go move on to the Air
22 Code cases. We have four those. I'm sorry, we
23 have five of those today. Four of those cases
24 pertain to failure to comply with the Air Code in

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2 connection with the respondent's boiler burners.
3 In three of those cases, the respondent's
4 representatives provided proof of a valid
5 operating certificate, bringing the boiler
6 burners into compliance with the Air Code. In
7 those three cases, the hearing officers
8 recommended no further action is necessary given
9 the respondent's compliance.

10 In the remaining case, the hearing
11 officer recommended that the c and d order be
12 discontinued because the respondent's
13 representative provided proof that the address on
14 the order did not correspond with the
15 respondent's address. A new order has been
16 approved by the board with the correct address.
17 Any questions on the Air Code cases? Okay.

18 And the final cases are two noise code
19 cases. These cases are in connection with the
20 respondents' kitchen exhaust systems. In both
21 cases, the respondent's representative provided
22 proof of work done on each -- to bring it into
23 compliance with the noise code. Based on the
24 evidence of compliance, the hearing officers in

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2 both cases recommend that DEP re-inspect the
3 equipment, and that their equipment remained
4 unsealed if the initial re-inspections show no
5 violation and further re-inspections show no
6 violations for a period of 180 days. And any
7 questions?

8 CHAIRMAN DEL VALLE: That's it?

9 MS. CORSO: That's it.

10 CHAIRMAN DEL VALLE: Is there a motion
11 to accept the report? It's unanimous.

12 MR. PECUNIES: One abstention.

13 CHAIRMAN DEL VALLE: The DEP abstains.
14 I'll ask for a motion for us to proceed with a,
15 executive session to discuss the judicial reports
16 and appeals. Unanimous? I will ask now that
17 non-ECB and/or OATH personnel to please leave the
18 room.

19 [OFF THE RECORD]

20 [ON THE RECORD]

21 CHAIRMAN DEL VALLE: I'll wait a second
22 for anybody who may still be outside to come in.
23 Nobody? Okay. We are now back from executive
24 session. And we have four votes to take on the

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2 appeals. First one has to do with 110 -- the
3 recommendation made on 110 appeals from the
4 February 5 and February 19 appeals panel that was
5 presented. Is there a motion on those? Okay.
6 They're approved unanimously, I believe.

7 We now come to three individual appeals
8 that were discussed in executive session. One is
9 in the matter of Cleve Brian Carter [phonetic].
10 There are two alternatives. I'll, first call for
11 a vote on one, and if that does not have a
12 majority, I'll call for a vote on a second one.
13 Those in favor of the alternative granting the
14 petitioner this, that would be the Parks
15 Department, request for a superseding appeal
16 decision and finding that the respondent was
17 violation of Section 1-05B of Title 56 of the
18 rules City of New York for unauthorized vending.
19 This finds that the expressive matter, the
20 exception in 56 rules of the City of New York
21 Section 1-0, 1-05B does not apply to that
22 respondent's vending of tickets for bus and boat
23 rides. All those in favor?

24 LT. DAN ALBANO, ESQ. POLICE DEPARTMENT:

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2 Chairman, I got to abstain.

3 CHAIRMAN DEL VALLE: Okay. With one
4 abstention by Lieutenant Albano, it is otherwise
5 unanimous.

6 The two other appeals are the subject
7 matter is related -- the legal subject matter
8 that is. One is the matter of Anthony Phillips
9 [phonetic]. Reversing the hearing officer's
10 recommendation, recommended decision rather and
11 order and finding that the respondent was in
12 violation for unauthorized vending under Section
13 1-05B of Title 56 of the rules of City of New
14 York for unauthorized vending. This finds that
15 the expressive matter exception in section 1-05B
16 does not apply to respondent's vending of tickets
17 for bus and boat rides. All those in favor?
18 Opposed? One abstention. It passes.

19 And finally, the matter of Donnell
20 Dinkins [phonetic]. Reversing a hearing
21 officer's recommended decision and order and
22 finding the respondent in violation for
23 unauthorized vending under Section 1-05B of the
24 Title 56 of the rules of the City of New York for

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2 unauthorized vending. This finds that the
3 expressive matter exception, in Section 1-05B
4 does not apply to that respondent's vending of
5 tickets for bus and boat rides in the park. All
6 those in favor? Opposed? One abstention.
7 Alright. It carries.

8 I'll ask -- I'll just remind everyone to
9 please sign in the sign in sheet so we have a
10 full record of everyone who was here in
11 attendance. I thank you all very much, and we
12 are adjourned.

13 (The board meeting concluded at 10:23
14 a.m.)

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CERTIFICATE OF ACCURACY

I, Andrew Slawsky, certify that the foregoing transcript of the Board Meeting of the Environmental Control Board on February 26, 2015 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: February 27, 2015

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