

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

HEARING  
BOARD MEETING

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

April 30, 2015

9:30 A.M. to 12:05 A.M.

April 30, 2015

MEMBERS PRESENT:

Robert Carver, Esq. - Citizen Member  
Fidel F. Del Valle, Esq. - Chair, OATH  
Joseph Gregory, Esq. - Fire Department  
Renaldo Hylton - Exec. Dir., Dept. of Buildings  
Elizabeth Knauer, Esq. - Citizen Member  
Madelynn Liguori, Esq. - Dept. of Sanitation  
Jorge Martinez, Esq. - Dept. of Health and Mental Hygiene  
**Russell Pecunies, Esq. - Dept. of Environmental Protection**  
Thomas D. Shpetner, Esq. - Citizen Member  
Douglas Swann - Citizen Member

ALSO PRESENT:

Jim Macron, Esq. - Counsel to the Board, OATH/ECB  
Frances Shine - Secretary to the Board, OATH/ECB  
Rachel Amar - Special Assist. to the Commissioner, OATH  
**James Armstrong - Law School Fellow, OATH**  
Helaine Balsam, Esq. - Deputy General Counsel, OATH  
Chris Boyd - Dept. of Health & Mental Hygiene  
John Burns, Esq. - First Deputy Commissioner, OATH  
John Castelli, Esq. - Assist. Commissioner for Legislative  
Affairs, OATH  
Brandon Chiazza - Office of Management & Budget  
**Kelly Corso, Esq. - Assist. Director of Adjudications, ECB**  
Fana Garrick - Public Affairs Assistant, OATH  
David Goldin, Esq. - Administrative Justice Coordinator  
Shamonda Graham - Department of Transportation  
Diana Haines, Esq. - Assistant General Counsel, OATH  
Zhao Jalie Hu - Office of Management & Budget  
Li Huang - Department of Health & Mental Hygiene  
Vivienne Kahng, Esq. - Deputy Supervising Attorney, ECB  
Peggy Kuo, Esq. - Deputy Commissioner/General Counsel,  
OATH  
Mark H. Leeds, Esq. - Special Senior Counsel, ECB  
Maria Marchiano, Esq. - Sr. Counsel/Assistant  
Commissioner, OATH  
Denise Ortega - IT Support, OATH  
Elizabeth Prael - Fire Department  
Martha Robinson, Esq. - Department of Health & Mental  
Hygiene  
Peter Schulman, Esq. - Assistant Director of  
Adjudications, ECB  
Amy Slifka, Esq. - Deputy Commissioner, ECB  
Thomas Southwick, Esq. - Supervising Attorney, Appeals, ECB

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2 (The public hearing commenced at 9:30  
3 A.M.)

4 COMMISSIONER FIDEL F. DEL VALLE, ESQ.,  
5 CHAIRPERSON, OATH: Good morning everyone.

6 MS. ELIZABETH KNAUER, CITIZEN MEMBER:  
7 Good morning.

8 COMMISSIONER DEL VALLE: And welcome to  
9 this meeting of the Environmental Control Board.  
10 We have a pretty long agenda today and I have  
11 some comments to make after the minutes of the  
12 last meeting are adopted. I assume everyone got a  
13 copy of the minutes of the last meeting. And  
14 unless anyone has any objections or corrections  
15 or additions, I'll ask for a motion to accept  
16 them. And I think it's pretty much unanimous and  
17 they're accepted.

18 Before we will get going, I think since  
19 you are in Environmental Control Board, there's  
20 some stuff that you should be made aware of  
21 that's happening right now in the background and  
22 that it's being worked through. I'm not sure how  
23 much of the history of how the Environmental  
24 Control Board's creation you're aware of but it  
25 was created back in 1971. And the vision that

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2 existed at the time I think was quite different  
3 than what's going on right now, as to what we're  
4 doing.

5 I think that the thoughts at the time  
6 were for example that things that now go to our  
7 hearings were stuff that would be coming directly  
8 to the Board as a whole. And we would be making  
9 decisions on daily quality of life stuff; that  
10 this was the generation that created things like  
11 the community boards and the school boards and  
12 the whole constellation of boards that exist in  
13 the City of New York. Most of us have no idea  
14 what they are or who they are or what they do.  
15 And many of them don't know who they are, what  
16 they are or what they do either. And history has  
17 evolved over the last 40 years or so has shown  
18 that what was envisioned in those starry-eyed  
19 days didn't quite reflect reality.

20 As you also know, starting about five  
21 years ago somebody found Ed Koch's memo of 1979  
22 which said that all administrative tribunals in  
23 the City of New York were eventually going to be  
24 consolidated into OATH. And the process was  
25 reignited and the process, the way it was done

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2 was I guess for expediency at the time to get it  
3 done quickly. The Environmental Control Board was  
4 lobbed off from DEP with a rather blunt  
5 instrument. The Taxi Tribunal was lobbed off from  
6 the TLC. The Health Tribunal was lobbed off from  
7 the Health Department. And by June we will also  
8 be doing DCA -- Department of Consumer Affairs  
9 hearings. But we will not be lobbying off their  
10 Tribunal. We'll just be absorbing the caseload.

11 The point that I'm making is that as  
12 this has evolved, we now have four tribunals,  
13 four distinct tribunals with four distinct sets  
14 of procedures, policies, practices, physical  
15 locations and so forth. Which makes the City of  
16 New York from the perspective of somebody who  
17 gets a summons one day from the Health Department  
18 and another day from the Sanitation Department go  
19 crazy. The processes are different. The appeals  
20 processes are different. The deadline dates are  
21 different. The computer systems are different.  
22 They don't talk to each other very well.

23 We have started a process of  
24 homogenizing I call these processes. So that  
25 eventually a citizen or anyone else who has to

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2 deal with the violation or an alleged violation I  
3 should say -- I have a problem with the term  
4 notice of violation I'll get into in a minute --  
5 has a uniform process and they can expect the  
6 same type of appeals procedure and the same type  
7 of deadlines; the same type of procedure if you  
8 fail to appear at a hearing and you needed to get  
9 it reopened, all of that process is the same and  
10 it'd be accessed equally.

11 So that you can go to a hearing officer  
12 and it doesn't matter whether you have a  
13 Sanitation summons or a Buildings Department  
14 summons or a Fire Department summons or a Police  
15 Department summons; the process is going to be  
16 essentially the same and the same hearing officer  
17 can deal with all your summonses. You don't have  
18 to make like a yo-yo going from one place to  
19 another to deal with summonses that are all  
20 theoretically under one agency.

21 The other little and this is something  
22 that I've been here since November and I'm  
23 catching up on a lot of this stuff and speaking  
24 to people and getting feedback; and get a lot of  
25 feedback that says for example: Oh, that

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2 Environmental Control Board, they're horrible,  
3 they're terrible. They're this and that and the  
4 other thing. And I go like: What's horrible and  
5 terrible about it? And maybe I can do something  
6 about it. Well, they gave me a summons for this  
7 and they gave me a summons for that. And their  
8 rules say I can't do this. And then they came  
9 back and they did that.

10 And I said: The Environmental Control  
11 Board didn't give you any summonses. The  
12 Environmental Control Board is the tribunal that  
13 judges the summonses. If you've got an issue with  
14 a Sanitation rule or Buildings Department rule or  
15 whomever rule of the 26 agencies that feed  
16 summonses to us in total; that is something that  
17 should be taken up with them. But they wind up --  
18 they being other agencies with a nice cover of  
19 sending out a summons that says on top of it:  
20 Environmental Control Board. And people think  
21 they're getting a summons from the Environmental  
22 Control Board.

23 Somehow though when they get a summons  
24 from the Police Department that takes them to  
25 criminal court and it says criminal court on top



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2 of the summons, they don't think criminal court  
3 issued them the summons. But magically they think  
4 Environmental Control Board issued them the  
5 summons.

6 So one of the things that we're doing  
7 among other things is working to make summonses  
8 uniform. And at the top of the summons it'll be  
9 very clear who issued the summons. It'll very  
10 clearly say Sanitation Department as the agency  
11 or whatever and which is another piece of the  
12 puzzle. There are an insane number of summons  
13 forms in the City of New York that come this way.  
14 We have been working very, very hard and our  
15 General Counsel has been working very hard in  
16 setting up a process where the summonses look as  
17 consistent as possible. So anybody getting a  
18 summons knows where to look at what in the  
19 summons to know what their rights are, what their  
20 responsibilities are and what it is and who's  
21 giving it to them and what it's all about.

22 And just as a point of example and this  
23 doesn't really apply directly to ECB because it's  
24 on the Taxi Tribunal side, 25 years ago TLC had  
25 two types of summonses: an enforcement summons

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2 and an administrative summons. Enforcement  
3 summonses were issued by taxi inspectors on the  
4 street or at the inspection facility at Woodside.  
5 And an administrative summons was issued from TLC  
6 headquarters generally in response to a consumer  
7 complaint. It's two different forms, basically  
8 the same thing. One was 8-1/2 by 11 and the other  
9 one was like standard little ticket form. Today,  
10 TLC issues 35 different types of summonses.

11 Alright? And you multiply that by all  
12 the agencies, it gets kind of nuts, apart from  
13 the fun we have with data processing. Some  
14 agencies send us the information regarding  
15 summonses electronically, which is its own  
16 challenge because we have computers having to  
17 have translating programs in between computers  
18 because, you know, one is an Apple; one is an IBM  
19 or whatever. That's not what they are but I'm  
20 giving you as an example. To talk to us, some of  
21 them give it us on paper. The guys that give it  
22 to us on paper after they get around to sending  
23 it to us, which may be a week or two after the  
24 summons is written; we have to send it to  
25 somebody else, a vendor who charges us a lot of

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2 money to do the data entry: scan it, data entry,  
3 put it in our system. A lot of mistakes get  
4 introduced in that process as you can imagine;  
5 particularly on how good somebody's handwriting  
6 was. That all costs a fortune.

7 But the problem there is for the public  
8 is that I got a ticket this morning. I go to an  
9 ECB hearing a few days later and we have no idea  
10 what they're talking about. We can't help them.  
11 We can't process it. We can't even accept a  
12 guilty plea because we don't have it. So they  
13 walk away thinking ECB is a bunch of idiots. ECB  
14 gave me this summons. First, they think it was an  
15 ECB summons. And then they think we don't know  
16 what summonses we gave out. We're working through  
17 a process to deal with that as well. And these  
18 are things that will be introduced as this year  
19 progresses. So I believe that you guys since  
20 you're all on the Board should know about this  
21 stuff because you may be asked about it.

22 And finally, you probably have heard a  
23 lot of controversy in the press with people  
24 putting all kinds of spins on things lately about  
25 criminal court versus administrative hearings;

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2 whether certain violations should go to  
3 administrative hearings or should go to criminal  
4 court. I can't say a whole lot about that right  
5 now because frankly there's a lot of discussion  
6 going on right now as to how to respond to those  
7 issues. There have been a lot of stories in the  
8 *Daily News* and *New York Post* about that. Some of  
9 it creating a misconception spin on some of these  
10 issues and some being very straightforward and  
11 appropriate matters for general public debate as  
12 to what public policy should be in regard to some  
13 of this stuff.

14 Just so that you know and unfortunately  
15 because of a death in the family, Lieutenant  
16 Albano can't be here today and I'm sure he'll  
17 acknowledge this; and the reason the Police  
18 Department is a member of this Board is because  
19 the Police Department does write summonses that  
20 are returnable to ECB. And they do and it is a  
21 substantial number. Many of those things are  
22 stuff that have been covered in the press as  
23 criminal court stuff. But in the context of a  
24 number of summonses that we process it's  
25 miniscule. We process about 700,000 summonses a

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2 year. From the Police Department, we get about  
3 3,000 a year. But the point is it's not an alien  
4 concept.

5 Along the lines of we process 700,000  
6 summonses a year, there's one more point. And  
7 this is primarily directed to City agencies. And  
8 I want to make this very clear. Just as I was  
9 very deadly serious when I talked about people  
10 trying to interfere with the impartiality and  
11 neutrality of hearing officers and ALJs; for  
12 historic reasons that I'll gladly talk to folks  
13 later on when there's time, many agencies see  
14 OATH or the Environmental Control Board hearing  
15 process as a service operation. Like some people  
16 see the Sanitation Department: You produce a  
17 bunch of garbage. You give it to the Sanitation  
18 Department and they'll process it and get rid of  
19 it and it magically disappears over there  
20 somewhere. And I don't care what happens after  
21 that because that's Sanitation Department's  
22 problem.

23 Well, what we have of the 26 or so  
24 agencies that bring cases to OATH, about 16 send  
25 them directly to the ECB tribunal. And it's not

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2 unique to the ECB tribunal from other agencies  
3 that basically see themselves; they see OATH and  
4 ECB in particular as a summons processing thing.  
5 For those of you who are lawyers here and may be  
6 aware of this, there are organizations like  
7 American Clerical. American Clerical is a private  
8 company that provides a service to attorneys. And  
9 the service is along the lines of if you have  
10 certain things that are due in court on a  
11 particular day, papers that have to be filed or  
12 submitted; American Clerical and I use American  
13 Clerical because that's the one I used to use but  
14 there's like two others. And this is not an  
15 endorsement of any particular company. That's the  
16 official disclaimer there folks. They'll pick up  
17 the motions or whatever or orders to show cause  
18 that you need filed the next morning in court;  
19 they'll pick them up, take them to court and if  
20 necessary they'll sit there through calendar call  
21 and stand up and go say submit and they submit it  
22 to the clerk. And at the end of the day, they'll  
23 pick up whatever is signed by the judge and  
24 deliver it to your office by 5:30; very neat,  
25 very lovely.

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2 If the judge says I want to take oral  
3 argument on this today on second call, then  
4 they'll call you at the office and say: You got  
5 to get your butt down here because the judge  
6 wants to have an oral hearing. Fine, and you do  
7 that. That is how a lot of agencies view us. They  
8 write summonses and they expect us to process  
9 them through like it was just clerical paperwork.  
10 And that may come from maybe that's how they did  
11 it when these tribunals were in-house for some of  
12 them. I don't know. I frankly don't care. But we  
13 are an independent neutral tribunal. And we are  
14 going to stick to that very jealously. We are not  
15 going to provide collateral services to agencies.

16 Some agencies want us to have our  
17 hearing officers for example go into their  
18 computers and determine what the violation  
19 history is of a particular respondent. That is  
20 the function of the prosecutor. That is not the  
21 function of the judge or the function of the  
22 hearing officer and that is being brought to a  
23 stop. And there's a lot, a lot, a lot of pushback  
24 from certain agencies. And that's just too bad.

25 My marching orders when I got appointed

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2 to this job by the Mayor of the City of New York  
3 was to protect the integrity of this system.  
4 That's what I'm going to do. And it's going to be  
5 done very harshly if necessary. Most agencies  
6 understand that, particularly those and I hate to  
7 sound elitist, that are run by lawyers. They get  
8 it right away. They understand that the  
9 adjudicatory process has to be neutral. Some  
10 can't wrap their brains around it. They simply  
11 can't. To them it's just a bureaucratic function,  
12 you know, that's just another step in the chain.  
13 And those will eventually be brought around.

14 I do not want at the end of the exercise  
15 to be for this entity to be perceived as some  
16 sort of de facto tax operation. We're not the  
17 Sheriff of Nottingham. Alright? And if there's  
18 anybody who doesn't know who the Sheriff of  
19 Nottingham is, I suggest you go and read about  
20 Robin Hood. Nor am I Robin Hood either. But the  
21 purpose of and this may come up in the context of  
22 some of the stuff we'll be discussing today, the  
23 purpose of a fine or penalty is to change  
24 unacceptable behavior. It is not to raise  
25 revenue. And we will be as much as possible



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2 divorcing our processes from revenue as possible.

3 And if that isn't working as far as  
4 changing inappropriate behavior, then it is for  
5 the enforcement agency to figure out how to do it  
6 better. Not for us. Someone had suggested that I  
7 come up with suggestions for enforcement agencies  
8 how to do it better. I am certainly capable of  
9 doing that. It is totally inappropriate for me to  
10 do that because I would be then telling the  
11 enforcement agency how to do their jobs. And my  
12 job is not to tell them how to do their job. My  
13 job is to adjudicate whether the cases that they  
14 bring before the various tribunals are done  
15 fairly, impartially and in a neutral manner. And  
16 some of them are having a lot of problem getting  
17 over the neutral part but that's the way it is.  
18 So that said, because you may get after tomorrow  
19 some questions from people you know, is where  
20 we're at and to be continued. Is Amy here?

21 MS. AMY SLIFKA, ESQ., DEPUTY

22 COMMISSIONER, ECB: Yes.

23 COMMISSIONER DEL VALLE: Amy Slifka,  
24 Deputy Commissioner for ECB, is going to tell us  
25 all of the exciting things that have happened in

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2 the last quarter. Am I blocking anybody?

3 MS. SLIFKA: Okay. A lot of you have  
4 been through this before. But for those of you  
5 who are new here, what I'm going to be reporting  
6 on is the number of violations received by ECB,  
7 broken down by issuing agency; and a quarterly  
8 comparison of the violations received, the  
9 violations heard and the decisions rendered; a  
10 look at the elapsed time from hearing to decision  
11 date and a look at the decision results for each  
12 of the issuing agencies. Also, we'll look at the  
13 most commonly issued violations.

14 So again, let's see if I do this right.  
15 Okay, good. Alright, so violations received by  
16 ECB for the first quarter of 2015. For DSNY, it's  
17 93,071, which is an eight percent decrease. DOB,  
18 it's 13,457, which is a five percent increase.  
19 DOT is a 26 percent decrease, 7,277. FDNY, six  
20 percent increase. DEP, 14 percent increase. DOHMH  
21 is a 33 percent decrease to 4,590. And Department  
22 of Parks and Recreation is a 39 percent decrease  
23 to 740. NYPD was a 46 percent decrease to 2,268.  
24 DoITT was a 29 percent decrease to 240. And BIC,  
25 43 percent decrease 3 to 7 to 4, it looks like.

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2 And Landmarks, it was a 29 percent increase from  
3 42 to 54. A lot of this could be weather related.  
4 We're dealing with the first quarter. The weather  
5 wasn't so great the first quarter.

6 COMMISSIONER DEL VALLE: Well,  
7 historically when weather is bad people are nicer  
8 for some reason.

9 MS. SLIFKA: Right. Or they can't get  
10 out to issue the violations. So --

11 COMMISSIONER DEL VALLE: Well, fewer  
12 people get shot too.

13 MS. SLIFKA: So -- okay, and comparing  
14 first quarter 2014 with first quarter 2015, you  
15 can see for DSNY there actually is a 19 percent  
16 increase. For DOB it's an 18 percent increase.  
17 FDNY actually is a ten percent decrease. DOT is a  
18 seven percent decrease. DOHMH is a three percent  
19 increase. DEP is a 19 percent increase. NYPD is  
20 4,726 to 2,268. It's a 52 percent decrease. But  
21 there's been a controversial time. So I think  
22 that has to do with some of the decrease.  
23 Department of Parks and Recreation is a 45  
24 percent decrease. Again, I think that's weather  
25 related: 1,356 to 740. DoITT is a six percent

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2 decrease. Landmarks is from 61 to 54. It's an 11  
3 percent decrease. BIC from eight to four, it's a  
4 50 percent decrease. Agency code missing, 133 to  
5 104; it's a 22 percent decrease. And  
6 miscellaneous from 24 to 62. That actually went  
7 up and it's a 158. Overall though it's been a ten  
8 percent increase from the violations received in  
9 the first quarter of 2014 to the first quarter of  
10 2015.

11 Okay. So for the total violations heard,  
12 quarterly comparison again, 2014 first quarter,  
13 2015 first quarter. So DSNY, you could see it  
14 went up. It went up 16 percent. DOB went up one  
15 percent. FDNY actually went down to eight  
16 percent. DEP went down two percent. DOHMH went up  
17 two percent. DOT went up 27 percent from 1,889 to  
18 2,408. NYPD obviously went down 49 percent: 3,976  
19 to 2,042. DoITT went down 909 to 400, a 56  
20 percent. Department of Parks and Recreation is  
21 down 49 percent. Landmarks is up 69 percent. BIC,  
22 one to eight; it went up 700 percent. Agency code  
23 missing is down 45 percent. And miscellaneous is  
24 down 27 percent. But basically the violations  
25 heard, like zero percent difference: 44,502 to

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2 44,392.

3 Okay. And decisions rendered, quarterly  
4 comparison. Well, DSNY is up 26 percent: 11,091  
5 to 13,933. DOB is up 22 percent. FDNY is up two  
6 percent. DOHMH is up five percent. DEP is up ten  
7 percent: 1,937 to 2,127. Again, NYPD down: 2,095  
8 to 1,840. It's a 37 percent decrease. DOT is up  
9 36 percent. Department of Parks is down 38  
10 percent. DoITT is down 53 percent: 244 to 114.  
11 Landmarks is up 100 percent from nine to 18.  
12 Again, BIC, winner: one to five, 400 percent  
13 increase. And then agency code missing: 38  
14 percent down. And miscellaneous down 25 percent.  
15 But overall the number of hearings decisions  
16 rendered is up 12 percent.

17 Okay. So here is the decision first  
18 quarter. We're getting approximately 85 percent  
19 done less than ten days. And we're certainly  
20 getting 98 percent done in less than 20 days. So  
21 decisions rendered after hearings, this is the  
22 percentage of dismissals versus in violations. So  
23 you have overall 60.2 percent found in violation;  
24 38.7 dismissed in 2014 first quarter. It's pretty  
25 much the same in 2015: 60.6 percent in violation;

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2 38.6 percent dismissed. So, it's kind of running  
3 the same.

4 Okay. And broken down by agency, you can  
5 see that for DSNY, 57 percent are dismissed; 43  
6 percent are in violation. For DOB, where the  
7 issuing agency is present, you have 78 percent in  
8 violation; 21 percent dismissed. And DOT, 60  
9 percent in violation; 40 percent dismissed. FDNY,  
10 90 percent in violation; eight percent dismissed.  
11 DEP, 75 percent in violation; 15 percent  
12 dismissed and you have ten percent stip. NYPD,  
13 you have 49 percent in violation; 51 percent  
14 dismissed. Okay. DOHMH, you got 58 percent in  
15 violation; 42 percent dismissed. Department of  
16 Parks, you got 46 percent in violation; 44  
17 percent dismissed. DoITT, 52 percent in  
18 violation; 48 percent dismissed. BIC, they're  
19 really doing well: 80 percent in violation; 20  
20 percent dismissed. And Landmarks, you have 100  
21 percent have been found in violation.

22 So, the most commonly issued violations  
23 have pretty much stayed the same from quarter to  
24 quarter, year to year. DOT, it's opening street  
25 without a permit or failure to permanently

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2 restore your curb cover in required time or your  
3 cut. Failure to comply with the terms and  
4 conditions of a permit. NYPD, basically they're  
5 vendor violations. You're vending in a bus stop  
6 or next to a hospital. You failed to display your  
7 license or items not in or under the cart. Those  
8 are all vendor violations.

9 DOB is failure to comply with an order  
10 of the Commissioner. Failure to comply with an  
11 order to file a certificate of correction. And  
12 then you have miscellaneous violations. DSNY, it  
13 will make sense this time of year. Snow and ice  
14 is your number one and dirt and sidewalks. And  
15 you have dirty sidewalk area and then you have  
16 dirty area. DEP, you have failure to submit your  
17 annual test report for your backflow preventer.  
18 Operating without renewing and expired operating  
19 certificate. Failure to install a backflow  
20 preventer.

21 FDNY, inspection and testing. Failure to  
22 conduct it. This is an unwarranted, unnecessary  
23 alarm. And failure to post permits and have  
24 recordkeeping. For DOHMH, it's failure to  
25 eliminate your rodents, shown by active rodent

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2 signs first. Failure to eliminate conditions  
3 conducive to rodent. And failure to eliminate  
4 conditions conducive to pests with garbage cans  
5 and spillages and such. For Landmarks, it's  
6 basically they're all kind of the same. It's work  
7 without having a certificate of approval or no  
8 certificate. For miscellaneous violations, for  
9 your flag signs or banners and for architectural  
10 changes. And DoITT, it's failure to provide a  
11 working public payphone, telephone and operator  
12 service. Failure to clean, maintain public pay  
13 telephone. Who uses these public pay telephones?

14 COMMISSIONER DEL VALLE: Where are they?

15 MS. SLIFKA: And install, operate,  
16 maintain public pay telephone without having a  
17 permit. For Parks, it's unleashed or uncontrolled  
18 animals. It's failure to comply with directions  
19 or signs. And it's failure to comply with Pedicab  
20 restrictions. And for BIC, it's idling of your  
21 motor vehicles over three minutes and operating a  
22 wholesale operation without a registration. And  
23 that's it. Okay?

24 COMMISSIONER DEL VALLE: I hate to throw  
25 a question out of left field but --



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2 MS. SLIFKA: On the spot.

3 COMMISSIONER DEL VALLE: Where it says  
4 that the issuing agency is unknown or illegible,  
5 does the hearing; I'm assuming that's a data  
6 entry matter. Does the hearing officer know who  
7 is prosecuting that summons?

8 MS. SLIFKA: Not if the issuing agency;  
9 so there's a level where you put down the issuing  
10 agencies. For example, it'll say: 836 is  
11 Sanitation. For example, I can't think of another  
12 one. So if that's missing, you don't really know  
13 who issued it. But if the section of law is  
14 something we have jurisdiction over, we conduct a  
15 hearing on that. So, that's where nothing is  
16 missing. Miscellaneous could be Peter Cooper  
17 Village, Stuyvesant Town. So they don't fall  
18 within any of the categories. But they do have  
19 the right; they've been authorized by NYPD, for  
20 example, to issue pooper scooper. I happen to  
21 know because I live in Peter Cooper and they  
22 issue those violations. So that's a miscellaneous  
23 type of agency. So, one's an agency code missing  
24 and one's a miscellaneous agency.

25 COMMISSIONER DEL VALLE: Okay. A pop

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2 quiz. How many people know that 836 is a  
3 Sanitation Department? The Sanitation Department  
4 knows. Okay, one person.

5 MS. SLIFKA: Move over there, we got two  
6 of you. He used to be, you know, so they know.

7 COMMISSIONER DEL VALLE: That goes back  
8 to what I was talking about before. People think  
9 they're getting these summonses from  
10 Environmental Control Board. And unless they work  
11 for the particular agency and happen to know what  
12 their code is or are some very intense nerd, they  
13 have no idea that --

14 MS. SLIFKA: I should know more of them.  
15 But you just put me on the spot, so I can't think  
16 of more right away.

17 COMMISSIONER DEL VALLE: But I think you  
18 get my point.

19 MS. SLIFKA: Okay, thank you.

20 COMMISSIONER DEL VALLE: The Department  
21 of Health and Mental Hygiene has some proposed  
22 rules concerning water tank inspections and  
23 reporting.

24 MR. CHRIS BOYD, DEPARTMENT OF HEALTH AND  
25 MENTAL HYGIENE: Hi, I'm Chris Boyd. I'm the

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2 Assistant Commissioner for Environmental Sciences  
3 and Engineering at the New York City Department  
4 of Health. And I'm with our Counsel and the  
5 Director of Public Health Engineering for  
6 questions.

7 We're coming today before the Board to  
8 request concurrence with allowing us to send  
9 violations for failure to inspect water tanks to  
10 ECB. So a little background, so you understand  
11 the purpose of the inspection process and the  
12 violations that will be issued. There are about  
13 10,000 roof tanks in residential and commercial  
14 buildings in the City of New York. Generally  
15 those are in buildings that are over six-stories  
16 tall. Water pressure from the street can  
17 generally bring water to the sixth floor without  
18 any assistance. Above the sixth floor, depending  
19 on where you are in the City, you need a water  
20 tank or a pump. So, the requirement is for an  
21 inspection of drinking water tanks. That can be a  
22 combined tank; both where some of the water is  
23 used for firefighting purposes, some of the water  
24 is used only for drinking water.

25 So the public health concern is the

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2 prevention of waterborne illness due to  
3 contamination of the water tank and failure of  
4 structural integrity of the water tank that  
5 presents a risk if a water tank, as in the  
6 picture, falls off the roof. So we are concerned  
7 about sediment, biological growth, floatable  
8 debris that gets into the tank, harborage if  
9 there's openings, rodent and bird activity in or  
10 around the tank.

11 Right now building owners are required  
12 to annually conduct an inspection of the interior  
13 and exterior of the tank. They need to sample the  
14 water to verify that it's meeting water quality  
15 standards. And they need to repair and clean the  
16 tank as needed. So, what does our inspection  
17 process look like? What are the requirements  
18 there? The City Council required the Department  
19 of Health to do an annual review. So we did about  
20 a hundred spot inspections. There isn't an active  
21 inspection program prior to that point. It was in  
22 response to a complaint.

23 The results of that survey, that kind of  
24 audit process that continues today, found that  
25 most of the buildings failed to post their notice

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2 to the public that they are able to review and  
3 confirm that water tank inspections occurred. And  
4 we found 27 percent of the buildings in  
5 noncompliance with their annual inspection  
6 requirement; 58 percent had failed to take the  
7 required sample. And the vast majority were not  
8 posting the notice to the public, at 73 percent.  
9 Right now the violations are returnable to the  
10 health tribunal, subject to financial penalties  
11 there. We're requesting to move those to ECB.

12 So, the owner is required to inspect the  
13 general conditions of the tank, the exterior,  
14 structural integrity, access ladders, piping,  
15 hatches, things like that, as well as the  
16 interior. Those are pittings, scalings or  
17 corrosion and rust that needs to be addressed. Is  
18 it going to create a risk in the future? And then  
19 there needs to be a sanitary inspection to  
20 identify actual potential sources of  
21 contamination and address those, drain the tank,  
22 clean it; however restore it to good working  
23 condition and then they're good to go.

24 So we want to make sure that the  
25 activity that happens is done safely. The work

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2 has to be done by a licensed master plumber or  
3 someone who has a permit from the Department and  
4 there is supervision by a master plumber. And we  
5 have a few firms that have a permit. But the  
6 majority of the work is done by several water  
7 tank cleaning companies. And some of the  
8 buildings have a master plumber and he does the  
9 work for them as well.

10 So the enforcement process, there are  
11 recordkeeping elements. So there's a verification  
12 of the public posting. They are required to keep  
13 record of the annual inspection for five years  
14 and make that available upon request by the  
15 Department. Part of the problem is there isn't a  
16 proof of samples being taken. That's one of the  
17 recordkeeping requirements. So when we ask for  
18 proof that you took the sample to verify the  
19 water was safe, that's a challenge for some  
20 building owners.

21 So in 2014, the Board of Health amended  
22 Article 141 of the Health Code to require owners  
23 annual reporting of the tank inspection. So  
24 previously the requirement was for a building  
25 owner to maintain a record and present that

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2 record of inspection upon request. The health  
3 code was changed to make that a proactive  
4 requirement. Now building owners are required to  
5 submit proactively each year proof of an  
6 inspection. They're going to be doing that online  
7 through a web portal or they're going to be  
8 submitting that in paper on a form developed by  
9 the Department.

10 And the proposed penalties range from  
11 250 at initial violation, 500 for failure to  
12 appear and respond and then 500 to 1,000 and  
13 1,000 to 2,000 for the actual tank cleanings; and  
14 kind of the range of the fines. I'm available for  
15 questions if anybody has any questions.

16 MR. JORGE MARTINEZ, ESQ., DEPARTMENT OF  
17 HEALTH AND MENTAL HYGIENE: Jorge Martinez,  
18 Department of Health. Just by way of background,  
19 water tanks is so important. Why is it that some  
20 buildings have water tanks and some do not? I'm  
21 wondering also if you can explain how does the  
22 water get into the water tank. Is it connected to  
23 the municipal City supply in some way? And why  
24 don't we just get rid of water tanks? Why don't  
25 we require pumps? How did it get there in the

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2 first place?

3 MR. BOYD: Yeah. So, water tanks are  
4 filled with municipal water. So there's a  
5 connection between the water main in the street  
6 and a building; that water flows to the building.  
7 And then there's a pump that moves that water to  
8 the top of the building into the water tank. And  
9 then gravity supplies the pressure to the rest of  
10 the building. And some buildings do choose to  
11 install a series of staged pumps to bring water  
12 pressure to different floors. It's really a  
13 building by building kind of decision. Most of  
14 the historical buildings, you'd be asking 10,000  
15 buildings to rejigger their internal plumbing  
16 systems. It would be a gargantuan thing to do.  
17 And we don't think that there would be any public  
18 health benefit from going one way or the other.  
19 It's really a building owner decision in terms of  
20 how they'd like to manage that.

21 COMMISSIONER DEL VALLE: I have a more  
22 fundamental question.

23 MR. BOYD: Sure.

24 COMMISSIONER DEL VALLE: You said these  
25 violations are now returnable to the Health



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2 Tribunal?

3 MR. BOYD: Yes.

4 COMMISSIONER DEL VALLE: You do realize  
5 that by the end of this year there's not going to  
6 be any difference between the Health Tribunal and  
7 the ECB tribunal. So, but what is all this about?  
8 It doesn't make any sense.

9 MR. BOYD: So, the decision to go to ECB  
10 was several-fold. ECB has the ability to generate  
11 automated violation.

12 COMMISSIONER DEL VALLE: We're going to  
13 stop that.

14 MR. BOYD: What?

15 COMMISSIONER DEL VALLE: We're going to  
16 stop that.

17 MR. BOYD: You're going to --

18 COMMISSIONER DEL VALLE: We will not be  
19 issuing violations on behalf of agencies anymore.

20 MR. BOYD: Well, we're not asking you to  
21 issue a violation on behalf of the agency. What  
22 happens is that the tracking number, there's a  
23 docket number that's created for the violation.  
24 The Health Tribunal doesn't have a mechanism to  
25 do that from an algorithm standpoint, where ECB

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2 does.

3 COMMISSIONER DEL VALLE: By the end of  
4 this year, we'll be using one computer system  
5 across all the tribunals. I think somebody should  
6 have talked to us first because I will oppose  
7 this.

8 MR. BOYD: Uh-huh.

9 COMMISSIONER DEL VALLE: Okay? Anything  
10 else?

11 MR. BOYD: So, there you go. Yes, ma'am?

12 MS. KNAUER: Elizabeth Knauer, citizen  
13 member. I just was -- in terms of the violation  
14 penalties, are those the same penalties that are  
15 currently being imposed by the Health Department?  
16 Or I mean --

17 MR. BOYD: The tribunal doesn't have set  
18 penalties. There's not a set penalty schedule.

19 MS. KNAUER: Okay.

20 MR. BOYD: It's determined by the  
21 hearing officer. So, we provide recommended  
22 penalties for, you know, consideration. But the  
23 tribunal doesn't have a set penalty schedule. I'm  
24 assuming that's going to change as well.

25 COMMISSIONER DEL VALLE: Well, one of

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2 the problems with the process that exists at ECB  
3 is the agencies create their rules and then we  
4 here at ECB as a Board in a vacuum have to  
5 determine whether or not the proposed rule  
6 schedule makes any sense.

7 MR. BOYD: Mm-hmm.

8 COMMISSIONER DEL VALLE: And for us to  
9 do that with due diligence, we would essentially  
10 have to replicate, which we don't, the logic  
11 behind fine schedule. And in my view that fine  
12 schedule should be appropriately done by the  
13 enforcement agency, the regulatory agency; as for  
14 example does the Taxi and Limousine Commission.  
15 Taxi and Limousine Commission has rules and part  
16 of their rules creates a fine structure. And they  
17 are the individuals who are in the best position  
18 to analyze and consider within their realm of  
19 public policy what is the appropriate fine  
20 structure to compel people in the industry that  
21 they regulate to abide by the rules.

22 You know, part of what I was talking  
23 about earlier, which is they see ECB as some kind  
24 of a service organization; where agencies plop  
25 down on us proposed fine structures almost in a

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2 vacuum and expect us to rubberstamp them. Which I  
3 think is totally inappropriate for us to for  
4 example decide whether a \$5,000 penalty for  
5 something is appropriate or not. The best person,  
6 entity that should be making that decision is  
7 those people who are working day to day in that  
8 industry, understand the complications of that  
9 industry, understand the financial structure of  
10 that industry, understand what kind of a fine or  
11 penalty or rule will have the desired effect on  
12 that industry; as opposed to us over here just  
13 making a gut determination that: Gee whiz, this  
14 is a really bad thing and \$5,000 is appropriate  
15 for it.

16 That sort of rulemaking really belongs  
17 on the regulatory entity. We are not a regulatory  
18 entity. We're essentially an adjudicatory entity.  
19 The criminal court doesn't decide what the  
20 penalties are under the penal law. That's done by  
21 the Legislature. That's a public policy issue.

22 So my suggestion is that the rules  
23 specify what the penalties are and that it stays  
24 at the Health Tribunal, which is far less  
25 complicated than the ECB Tribunal and

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2 particularly the appeals process and more direct.  
3 And if the issue is one of relating to data  
4 entry, that's something that should have been  
5 brought to frankly my attention and our IT people  
6 could work on it.

7 But you can take this back to your  
8 agency that I will oppose moving any cases that  
9 are returnable to Health returnable to ECB.  
10 Primarily because among other things by the end  
11 of this year every hearing officer under OATH  
12 will be hearing ECB cases, health cases, taxi  
13 cases, sanitation cases, whatever cases  
14 interchangeably. We are now in the process of  
15 cross-training our hearing officers to do that.

16 MR. BOYD: Mm-hmm.

17 COMMISSIONER DEL VALLE: Somebody will  
18 eventually be able to walk into a hearing with a  
19 Sanitation summons and with a Health Department  
20 summons and have one hearing officer adjudicate  
21 everything in one shot, using one computer  
22 system.

23 MR. BOYD: So one of the advantages of  
24 us effecting this change now versus waiting for  
25 the potential integration of multiple boards into

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2 a unified data system that would provide the same  
3 level of capacity is that as we rollout this new  
4 enforcement program, building owners being  
5 required to submit 10,000 reports flowing into  
6 the Department electronically hopefully and  
7 violation determinations being determined based  
8 on the data being supplied or not supplied by  
9 building owners; there will be an automated  
10 process by which to issue a violation for failure  
11 to report.

12 Shifting and keeping that with the  
13 tribunal for the year and then as IT projects go,  
14 they sometimes go a little farther than we  
15 anticipate, would result in the agency having to  
16 assume the clerical responsibility for  
17 individually generating a docket number for  
18 thousands of potential violations. So that would  
19 be a significant sort of administrative burden  
20 that we could address now.

21 I understand that eventually all the  
22 systems will be integrated and there'll be an IT  
23 solution that would accommodate that. But in the  
24 interim it would be efficient, both in terms of  
25 how we process the violation and how the building

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2 owner gets notice in order to have that flow to  
3 ECB. And my assumption is that staff upon seeing  
4 the draft of our proposal shared that draft with  
5 folks internally. Is that assumption not true?

6 COMMISSIONER DEL VALLE: Apparently not.

7 MR. BOYD: Apparently not. Okay. So, you  
8 know, it's not coming out of the blue from our  
9 perspective, that we've been planning to bring  
10 this to ECB for some time; that we've drafted  
11 regulations to come to ECB. We've had comments  
12 from ECB staff on the proposed rule and responded  
13 to those comments. So it is a little surprising  
14 to me to hear now that you feel that you've been  
15 blindsided by this proposal, which is on the  
16 agenda. So I think from an administrative  
17 standpoint, the proposal is solid. It serves the  
18 public purpose. It allows us to implement a new  
19 enforcement requirement that was adopted by the  
20 Board of Health and do that efficiently. We're  
21 rolling out the online portal to allow building  
22 owners to come into compliance and document their  
23 compliance routinely. That'll happen soon. And  
24 violations will start to come out February of  
25 2016. And we anticipate that first round of

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2 violations will be around 2,000 violations.

3 COMMISSIONER DEL VALLE: And the new  
4 computer system I expect will be online in three  
5 months. So, we got a lot of talking to do.

6 MR. BOYD: So in three months the Health  
7 Tribunals are going to be able to generate an  
8 algorithm docket number?

9 MR. DEL VALLE: We have to talk about  
10 this.

11 MR. BOYD: Uh-huh.

12 COMMISSIONER DEL VALLE: Because I don't  
13 like this.

14 MR. BOYD: Okay.

15 COMMISSIONER DEL VALLE: I'll tell you  
16 that right now.

17 MR. HYLTON: Can I ask a question about  
18 the actual proposal in terms of the --

19 MR. BOYD: Sure.

20 MR. HYLTON: -- the procedures that you  
21 have in place? You talk about structural  
22 integrity inspections.

23 MR. BOYD: Yes. Mm-hmm.

24 MR. HYLTON: And I wonder who is doing  
25 those inspections?



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2 MR. BOYD: So those inspections are  
3 being done by a master plumber or staff under the  
4 supervision of a master plumber or a firm that  
5 has a permit from the Department.

6 MR. HYLTON: Of Health?

7 MR. BOYD: Yes.

8 MR. HYLTON: Okay. And you talk about  
9 the Board, Article 141 --

10 MR. BOYD: Yes.

11 MR. HYLTON: -- that requires the  
12 owner's annual reporting of tank inspections.

13 MR. BOYD: Mm-hmm.

14 MR. HYLTON: They're just reporting or  
15 are they reporting, what about defects? If they  
16 found defects, is there a requirement there for  
17 them to repair those defects?

18 MR. BOYD: Yes. Yes.

19 MR. HYLTON: Or just reporting?

20 MR. BOYD: So, the previous process was  
21 simply a certification that the tank met  
22 standards and that was issued by the firm that  
23 inspected it. So the owner would get basically a  
24 certificate of adequacy from the firm that was  
25 performing the work. The new process requires a

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2 more detailed direct affirmation of the things  
3 that were inspected; that the things that were  
4 inspected were in compliance. And if there were  
5 defects, were those defects corrected? And there  
6 is an affirmation at the bottom of the report  
7 that says: The information is being submitted  
8 subject to civil and criminal penalties for  
9 lying.

10 MR. HYLTON: So has there been any  
11 thought to the idea of master plumbers certifying  
12 structural stability of tank structures?

13 MR. BOYD: So the master plumber is  
14 reviewing the tank itself.

15 MR. HYLTON: Okay.

16 MR. BOYD: And making a determination  
17 whether: Is there pittings, is there corrosion,  
18 is there rust present, things that need to be  
19 fixed?

20 COMMISSIONER DEL VALLE: Any other  
21 questions?

22 MR. THOMAS D. SHPETNER, CITIZEN MEMBER:  
23 One of the penalties in the schedule seem to be  
24 sort of an outlier. Under it's 141-07(e) and  
25 it's: failure to clean drinking water tank when

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2 required. I mean, that to me seems like a sore  
3 thumb. I don't understand. I mean, that one seems  
4 to be lumped in with a bunch of other ones about  
5 not giving notice about things or it seems to me  
6 to be the big one. Why was that one set as low as  
7 it was? Do you know?

8 MR. BOYD: That was sort of a decision  
9 from our management based on what we considered  
10 to be the relative risk from the failure to clean  
11 the water tank. We don't have data to identify a  
12 significant risk at this point. It's a  
13 preventative measure. So the fine schedule is  
14 designed to evaluate similar levels of risk to  
15 other Health Department violations.

16 MS. KNAUER: Elizabeth Knauer, citizen  
17 member. I guess just generally speaking, I was  
18 wondering whether given the apparent complete  
19 lack of compliance that exists now whether this  
20 entire penalty schedule is high enough to  
21 encourage building owners to get into compliance?  
22 I mean, I don't know expensive it is to do these  
23 inspections and then do the appropriate repairs  
24 that inspections may reflect.

25 MR. BOYD: Right. Mm-hmm.

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2 MS. KNAUER: But given the public health  
3 concerns, would it be, you know, simply easier  
4 for them to take the risk and defer doing these  
5 inspections and take the risk of not --

6 COMMISSIONER DEL VALLE: Ms. Knauer's  
7 question goes exactly to the same point that I  
8 made before. Which is we're being asked to come  
9 to a decision as to the appropriateness of a fine  
10 structure virtually in a vacuum. You can have  
11 businesses to whom a \$5,000 fine is no more than  
12 a nickel to some of us or other organizations, a  
13 \$5,000 fine could be backbreaking. We don't know.  
14 We don't deal with water towers and buildings and  
15 the owners and have no experience on compliance  
16 and what motivates them and so forth and in a  
17 general public policy structure. And when we are  
18 asked to -- and this is not just your agency,  
19 this is across the board; when we are asked to  
20 pass on these proposals, we are doing so in a  
21 virtual vacuum. And that's not really the right  
22 way to make public policy.

23 MR. BOYD: So I think one way to think  
24 about that is that the agency that's presenting  
25 you the fine schedule has gone through that

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2 deliberative process internally to come up with a  
3 fine schedule based on its expertise and its  
4 understanding of the industry for what they think  
5 is appropriate.

6 COMMISSIONER DEL VALLE: And that's as  
7 it should be.

8 MR. BOYD: And that's as it should be.

9 COMMISSIONER DEL VALLE: And it should  
10 be within that agency's rules to establish that  
11 fine structure. It shouldn't be dumped on us to  
12 assume and take on face value all that should be  
13 done to make that analysis was done and basically  
14 treat us like a rubberstamp. I'm not criticizing  
15 you. I'm criticizing the City Charter basically.

16 MR. BOYD: No, no, I understand. I'm  
17 just trying to -- I just want to get a sense of  
18 how we're going to proceed with this. I don't  
19 know how it works at ECB. Right now if we came to  
20 you with a proposal with no fine schedule and --

21 COMMISSIONER DEL VALLE: It wouldn't  
22 work.

23 MR. BOYD: -- it wouldn't work. So if we  
24 adopted a fine schedule in the health code --

25 COMMISSIONER DEL VALLE: Then it's yours

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2 and it is in place.

3 MR. BOYD: -- then that would work for  
4 ECB as well?

5 MR. DEL VALLE: That would work.

6 MR. BOYD: No, it wouldn't?

7 COMMISSIONER DEL VALLE: It would work -  
8 - that would work in the other tribunals right  
9 now. It would not work with an E-summons. And E-  
10 summons is a summons that's one of the summonses  
11 from like 16 different agencies that either by  
12 regulation or the Administrative Code or the City  
13 Charter must go to the Environmental Control  
14 Board. In 1971 they thought the Environmental  
15 Control Board was something very different than  
16 what it is now. That's how cases are now  
17 structured.

18 Eventually there will be one tribunal, a  
19 hearings tribunal that will hear all the cases;  
20 whether they're Health, Taxi, ECB or whatever.  
21 The distinction will be if it's -- right now the  
22 way the Charter is structured if it has to be an  
23 E-summons, the difference will be that the  
24 appeals process will be different. The appeals  
25 process will have to go through the convoluted

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2 ECB process rather than for example the more  
3 straightforward process in the Health Tribunal or  
4 the Taxi Tribunal. But that's really the only  
5 effective difference. And at the end of the  
6 exercise until there are changes to the Charter,  
7 the only difference will be the appeals process.

8 MR. BOYD: Mm-hmm.

9 COMMISSIONER DEL VALLE: Everything else  
10 will be identical.

11 MR. MARTINEZ, DEPARTMENT OF HEALTH AND  
12 MENTAL HYGIENE: So what do you suggest that the  
13 agency do now? Do you want us to take it off the  
14 table and adopt it as part of the health code?

15 COMMISSIONER DEL VALLE: Right now I  
16 understand this is for the most part in the  
17 health tribunal. I want to have further  
18 discussions with staff of both agencies as to  
19 what the issues are. From what I hear, primarily  
20 the main issue has to do with data processing.  
21 And going through this entire exercise because  
22 there's an issue with data processing that  
23 somehow couldn't be figured out or resolved is --  
24 I'll restrain my editorializing but crazy;  
25 especially in light of the fact that that process

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2 is being, as we speak, being made the same across  
3 the board and being made the same across the  
4 board for 26 agencies in the City of New York. I  
5 want to dive into this a lot more carefully. I  
6 don't want to shoot from the hip and say: Kill  
7 the whole thing or stick it over here or stick it  
8 over there. There's a lot of things that have  
9 popped up over here today that I have some very,  
10 very serious questions about. I would say both.

11 MR. BOYD: So I would say one of the  
12 other challenges we have with using the health  
13 tribunal is I can't serve by U.S. mail from the  
14 health tribunal. I have to serve by a certified  
15 letter, which is like seven bucks a pop.

16 COMMISSIONER DEL VALLE: So we pay for  
17 it.

18 MR. BOYD: No -- well, I pay for that  
19 because I have to do the service. So --

20 COMMISSIONER DEL VALLE: Yeah, but if it  
21 comes to ECB, I have to pay for it. Which by the  
22 way is a subject of the next thing on the agenda.

23 MR. BOYD: So the way we're proposing  
24 this right now is that ECB would not assume any  
25 responsibility for the issuing of the summons.



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2 They would have no involvement in that  
3 whatsoever. That would all be handled by the  
4 Department. If we move to the tribunal, we've got  
5 two big challenges for a program that's going to  
6 rollout in about two weeks. One challenge is that  
7 we're not going to be able to automatically  
8 generate docket numbers for violations. They have  
9 to be done manually. That's a big chunk of work.

10 The second is that there will have to be  
11 a certified letter mailed to every person who's  
12 been violated. The certified letter is a  
13 complicated thing to manage from a clerical  
14 standpoint and it's expensive. So we're talking  
15 hundreds of thousands of dollars in additional  
16 cost to the taxpayer by having us stay at the  
17 tribunal under the current scheme of things.

18 COMMISSIONER DEL VALLE: So understand  
19 as of July 1st, you don't have to use certified  
20 mail.

21 MR. BOYD: As of July 1st, we're going  
22 to be able to go mail?

23 MS. KNAUER: I'm sorry. I'm just a  
24 little confused about the timing. What was the  
25 February 2016 date that you mentioned?

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2 MR. BOYD: So owners have one year to  
3 submit their documentation.

4 MS. KNAUER: So you wouldn't be issuing  
5 these violations until February 2016?

6 MR. BOYD: Yeah.

7 MS. KNAUER: By which point presumably  
8 things will have changed.

9 COMMISSIONER DEL VALLE: A lot.

10 MS. KNAUER: A lot. So, it might be a  
11 moot point. Is that --

12 MR. BOYD: I mean, potentially we're --

13 MS. KNAUER: Right? Is that -- and I'm  
14 just trying to understand.

15 MR. BOYD: Yeah, the challenge is that  
16 we're rolling out IT solutions now. So, we would  
17 have to basically stop all of our IT solutions  
18 now and then roll that over until the tribunal's  
19 data system comes online at some point in the  
20 future. And then we would have to figure out how  
21 to align it. We're in a position now to align all  
22 the IT infrastructure, roll this out and have it  
23 functional now. So it's just a --

24 MS. KNAUER: And that process can't  
25 continue unless we adopt this -- approve this? Or

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2 could it continue under the assumption of --

3 MR. BOYD: I mean, we could go back and  
4 we can try to pull it off the table and see if we  
5 can come up with some better IT solutions. But  
6 again we're --

7 COMMISSIONER DEL VALLE: I assume your  
8 IT folks have been talking to our IT folks?

9 MR. BOYD: My IT folks have been talking  
10 with the ECB IT folks, yes.

11 COMMISSIONER DEL VALLE: Alright.

12 MR. BOYD: To understand how to  
13 implement this and make it work and generate the  
14 algorithm for this violation type; so that we  
15 could do this in an automated way.

16 COMMISSIONER DEL VALLE: Okay. Anything  
17 else? I move to table this at this time until I  
18 get more information supplied to the Board and  
19 other folks. Is there a second?

20 MR. MARTINEZ: Abstain.

21 COMMISSIONER DEL VALLE: We have one,  
22 two, three, four, five, six in favor. Seven in  
23 favor. Two abstentions. Eight in favor, including  
24 myself. Thank you.

25 MR. BOYD: Thank you.

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2 COMMISSIONER DEL VALLE: Oh, that was a  
3 computer. I thought that was an editorial  
4 comment. We have a proposal coming up having to  
5 do with to cure a rather bizarre thing, process I  
6 found in connection with some ECB hearings. Which  
7 is we have a hearing and the respondent is there;  
8 the enforcement agency may or may not be there.  
9 But in any event, it's a straightforward,  
10 relatively simple case where the hearing officer  
11 makes a decision right there essentially. And we  
12 tell the respondent that: We're not going to tell  
13 you what the decision is. We're going to mail it  
14 to you and you might get it in a week or two.  
15 Whereas, we could have just as easily have told  
16 him to wait outside a few minutes, as is done in  
17 some of the other tribunals. Such as for example  
18 the TLC Tribunal, where a cab driver comes in for  
19 a hearing; he has his hearing. He waits outside  
20 and in a short period of time, a clerk comes over  
21 to him or her and hands the respondent the  
22 decision. And they walk away knowing whether they  
23 have to pay a fine or not; whether they're guilty  
24 or not; whether they're suspended or not.

25 For reasons probably lost somewhere in

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2 the mysteries and the fog of space and time, we  
3 don't do that with ECB hearings. We mail it. The  
4 proposal that is about to be presented  
5 essentially allows hearing officers to give the  
6 decision or rather the tribunal to give the  
7 decision to the respondent right there. Some  
8 cases you can't do that because they're a little  
9 more complicated and they require the decision to  
10 be reserved because they may require a longer  
11 decision to be written. It could be involve  
12 multiple issues, any number of reasons. In those  
13 cases it's reserved and the person will get the  
14 decision in the mail.

15 Aside from the fact that we have a \$1.1  
16 million dollar postal budget, which is also  
17 insane in of itself, it just does not in my  
18 opinion make sense to keep somebody hanging,  
19 trying to figure out what their situation is  
20 walking out the door when we could tell them  
21 right there what it is. And that's what's about  
22 to be described. Thank you.

23 MR. JAMES ARMSTRONG, LAW SCHOOL FELLOW,  
24 OATH: Good morning ladies and gentlemen of the  
25 Board. I am James Armstrong, Law Fellow, the

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2 General Counsel's Office. I am presenting right  
3 now a proposed rule that relates to service of  
4 decisions and orders. So this was actually first  
5 discussed last month, as you may remember. And  
6 this rule would specifically say, it would  
7 specify that mail or hand delivery of decisions  
8 and orders is permissible. And further, it would  
9 permit that cease and desist orders are served by  
10 regular mail and personal delivery rather than by  
11 certified mail. This rule has been certified by  
12 Law and OPS. Are there any questions?

13 COMMISSIONER DEL VALLE: I'll just add  
14 that somebody sends me a certified letter, I'll  
15 be lucky to get it before the weekend, which is  
16 when I can get to the Post Office. And many  
17 people ignore and we know this because we get it  
18 back, we get the returns back; never get to the  
19 Post Office. And one more piece is if typically I  
20 mail you a letter by regular mail, in New York  
21 City you get it within one or two days. A  
22 certified letter, because of the extra handling  
23 through the Post Office, you'll be lucky if they  
24 attempt delivery within a week. Expense aside,  
25 just as a matter of I think just plain civility

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2 and common sense, I think this is a more rational  
3 process. Any questions? I'm big into rational  
4 processes. Irrational stuff drives me nuts. No  
5 pun intended.

6 MR. JOSEPH GREGORY, ESQ., FIRE  
7 DEPARTMENT: A question?

8 COMMISSIONER DEL VALLE: Yes.

9 MR. GREGORY: This would allow for the  
10 decisions once they've been determined by the  
11 hearing officer that they would be, if both  
12 parties, meaning if it's an agency, as well as  
13 the respondent themselves, if they would be; the  
14 agency representative would be handed the  
15 decision also? Is that --

16 COMMISSIONER DEL VALLE: At the same  
17 time.

18 MR. GREGORY: Okay.

19 COMMISSIONER DEL VALLE: And it'll be of  
20 course entered into the mystical IT system.

21 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT  
22 OF ENVIRONMENTAL PROTECTION: Russell Pecunies,  
23 DEP. When we discussed this last month, I was  
24 under the impression that the agencies would  
25 still get their decisions by mail.

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2 COMMISSIONER DEL VALLE: Sure.

3 MR. PECUNIES: Yes?

4 COMMISSIONER DEL VALLE: Sure.

5 MR. PECUNIES: Okay.

6 COMMISSIONER DEL VALLE: Unless you want  
7 them, you know, otherwise.

8 MR. PECUNIES: No. But that's fine.

9 COMMISSIONER DEL VALLE: And we're  
10 certainly open to that. Probably eventually we're  
11 all be doing this electronically anyway.

12 MR. GREGORY: Just for clarification.  
13 So, Joseph Gregory, Fire Department. So when you,  
14 piggybacking onto your question about the  
15 clarification regarding the decisions being  
16 mailed. If it's handed to the agency  
17 representative, so you're saying in addition to  
18 that, it would also be mailed? Or --

19 COMMISSIONER DEL VALLE: If that's what  
20 the agency wants.

21 MR. GREGORY: Okay.

22 COMMISSIONER DEL VALLE: Yeah.

23 MR. GREGORY: So the period as far as  
24 for appeal purposes, would that start the clock  
25 ticking upon when it's handed personally to them



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2 or from the mailing?

3 COMMISSIONER DEL VALLE: The clock will  
4 tick from the moment of service to the  
5 respondent. Which is if he's handed it to them  
6 personally, that's when the clock starts to tick.  
7 If it's mailed, it typically starts to tick -- I  
8 forgot; I think it's five days after the date of  
9 mailing, something like that. I'm not sure. It's  
10 what basically I think the CPLR says.

11 MR. GREGORY: So, I just --

12 MS. KNAUER: Elizabeth Knauer, citizen  
13 member. I think the question was that it's for  
14 the agency appealing.

15 MR. GREGORY: Correct.

16 MS. KNAUER: Whether it would if they  
17 were hand-, if it was handed to the agency rep at  
18 the time of the hearing, would their time for  
19 appeal begin at that point or upon five days  
20 after mailing?

21 COMMISSIONER DEL VALLE: I would think  
22 it would begin at the point of service; which is  
23 when it was handed to the agency rep.

24 MS. HELAINE BALSAM, ESQ., DEPUTY GENERAL  
25 COUNSEL, OATH: Can I just interject?

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2 COMMISSIONER DEL VALLE: Mm-hmm.

3 MS. BALSAM: Helaine Balsam, Deputy  
4 General Counsel for OATH, for the purposes of the  
5 record. So if you look at the actual proposed  
6 rule, it says: The decision and order shall be  
7 filed with the Executive Director and served on  
8 all parties or their authorized representatives  
9 either personally or by mail.

10 So to answer your question, Joe, I think  
11 the agency could opt in or out in which way it  
12 wanted to. And then in the appeals rules it says:  
13 any party aggrieved by the hearing officer's  
14 recommended decision and order within 30 days of  
15 service on that same party. So if you were served  
16 with the decision and order by hand delivery, it  
17 would be 30 days. If we mailed it to you, you  
18 would get the extra 35 day-, the extra five days  
19 in the computation of time rule. Does that make  
20 sense?

21 MR. GREGORY: Yeah. So just to even fine  
22 tune it even more. So basically you're saying  
23 that the agency representative can say: Well, no,  
24 I don't want to carry back a whole lot of  
25 decisions. I'd rather it be mailed the way it's

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2 been in the past. Is that correct?

3 MS. SLIFKA: Yeah, I mean, it's up to  
4 the agency. Like you said, it can't be --

5 MS. BALSAM: Just for the record, that's  
6 Amy Slifka.

7 MS. SLIFKA: Yes. So if you want to be  
8 served at the same time the respondent is served  
9 after the hearing, then you collect your decision  
10 and orders. If you don't, they will be mailed to  
11 you.

12 MR. GREGORY: Okay.

13 MS. BALSAM: Same as the respondent will  
14 have that same choice, right?

15 MS. SLIFKA: Correct.

16 MS. BALSAM: They'll be able to stay or  
17 they could be mailed; as it is in the other  
18 tribunals now. Taxi and Health does it the same  
19 way.

20 MS. SLIFKA: As it is the same, exactly  
21 in Health.

22 COMMISSIONER DEL VALLE: Yeah, we won't  
23 hold the respondent hostage and someone can't  
24 leave until we get the thing --

25 MS. SLIFKA: That's right.

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2 COMMISSIONER DEL VALLE: If he walks  
3 out, then we'll mail it to him.

4 MR. RENALDO HYLTON, EXECUTIVE DIRECTOR,  
5 DEPARTMENT OF BUILDINGS: Renaldo Hylton,  
6 Department of Buildings. I just want to make sure  
7 though. So at the end of a hearing, a hearing  
8 officer may hand deliver either to respondent or  
9 to petitioner a copy of their decision and that  
10 starts the clock, correct?

11 MS. BALSAM: Correct.

12 MR. HYLTON: If it's handed?

13 COMMISSIONER DEL VALLE: It'll probably  
14 be a clerk and not the hearing officer.

15 MS. SLIFKA: Actually, it'll be a clerk.

16 COMMISSIONER DEL VALLE: Yeah.

17 MR. HYLTON: Right, right. Okay. If  
18 either parties refuses the hand deliver method  
19 and opted for the mailing to their place of  
20 business or home, that clock will begin at the  
21 time of mailing to either party or to whomever is  
22 getting --

23 MS. BALSAM: Whoever is getting the  
24 mailing.

25 MR. HYLTON: Whoever is getting. So

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2 there'll be two clocks?

3 MS. SLIFKA: Yes.

4 MS. BALSAM: There would be two clocks,  
5 yes.

6 MS. SLIFKA: There will be two clocks,  
7 correct.

8 MS. BALSAM: Yes, yes. Because that's  
9 the way the rules are.

10 MR. HYLTON: Okay. Don't you think that  
11 kind of messes, murks the water for ECB itself? I  
12 mean --

13 COMMISSIONER DEL VALLE: Not really  
14 because if there's a mailing, they'll both be  
15 mailed simultaneously. So the clock will be  
16 running together.

17 MR. HYLTON: I Understand. But --

18 MS. SLIFKA: No, in the sense that we  
19 will have; we will have a database. We will know  
20 who is served personally at the time of the  
21 hearing. And we will know that their clock  
22 started from the time they received it at the  
23 tribunal. If they're not -- if it's not there, we  
24 know that it was mailed to them. Plus, we have  
25 the date of mailing. So we will have --

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2 MR. HYLTON: The difference is five  
3 days, correct?

4 COMMISSIONER DEL VALLE: Yeah.

5 MR. HYLTON: The difference here is five  
6 days?

7 MS. BALSAM: Mm-hmm.

8 MS. SLIFKA: Correct.

9 MR. HYLTON: I mean, how simple could we  
10 have just made it, just to have it start at the  
11 time of mailing if there was mail involved in  
12 either, in any of these parties' decisions to be  
13 mailed or hand delivered? This way you wouldn't  
14 have -- you would just be at the time of  
15 decision, 35 days, right? You understand what  
16 I'm; I'm just saying it's --

17 MS. SLIFKA: Yeah, but we didn't. And  
18 it's an administrative thing and I think we can  
19 handle it.

20 MR. HYLTON: I think we should consider  
21 that, just making it; it's a five-day difference.  
22 And you didn't have to hire another person to try  
23 to figure -- I know you're not hiring somebody  
24 else. But the time for another appeals rep or  
25 some appeals attorney to be looking at service,

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2 you know, between parties and who; I think it  
3 should just be one straight time granted at  
4 mailing.

5 COMMISSIONER DEL VALLE: That's  
6 something to consider, to make it 35 days across  
7 the board or something like that.

8 MS. SLIFKA: Then if it's --

9 COMMISSIONER DEL VALLE: But what we're  
10 doing is actually -- we're actually following the  
11 civil procedure law and rules of the State of New  
12 York. And I'm not too sure we can fudge with that  
13 too much. That's something to look at though.

14 MR. HYLTON: Alright.

15 COMMISSIONER DEL VALLE: Because we may  
16 be locked into whatever it is the CPLR says.

17 MR. HYLTON: Alright.

18 MS. BALSAM: I mean, I don't -- we don't  
19 anticipate that it will be difficult for the  
20 appeals unit staff to be able to --

21 MS. SLIFKA: Calculate.

22 MS. BALSAM: -- calculate the days.

23 MS. SLIFKA: Correct.

24 MR. HYLTON: No, not difficult. Just  
25 another issue, you know, with who's timely,

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2 respondent versus that? And I think it goes into  
3 another --

4 COMMISSIONER DEL VALLE: Well, I think  
5 the way it happens when you get an appeal,  
6 essentially somebody's going to look at the file  
7 and for the whomever it is who's appealing. And  
8 it will be apparent immediately by looking at the  
9 file whether it's 30 or 35 days. They don't have  
10 to compare it to what the other party's time was.  
11 It's just, you know, Joe Blow files an appeal.  
12 You have to look up Joe Blow's case and it says  
13 such and such a date is when the clock starts to  
14 run. Has it run or not? And that's it. You have  
15 to go through that exercise regardless.

16 MS. SLIFKA: You're either counting 30  
17 days or 35 days regardless. So --

18 MR. HYLTON: Right, okay.

19 COMMISSIONER DEL VALLE: I understand  
20 what you're saying. But I think that it's still  
21 going to have to go through the exercise.  
22 Anything else? Is there a motion to accept this  
23 proposal? Which is essentially to -- okay. Well,  
24 I see all the hands up. Were there any  
25 abstentions or negative votes? I didn't catch at



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2 all. Okay, so it's unanimous. Okay, thank you.

3 Sanitation Department has rules  
4 regarding recovery of refrigerants.

5 MR. ARMSTRONG: So, this proposed rule  
6 is in response to a Department of Sanitation  
7 proposal from last month. And it pertains to the  
8 lawful recovery of refrigerants from appliances  
9 disposed of by residents. So this proposed rule  
10 would amend the ECB Sanitation penalty schedule  
11 to create penalties for violations of Sanitation  
12 rules regarding disposal of refrigerants. This  
13 rule has been certified by Law and OPS. Are there  
14 any questions?

15 COMMISSIONER DEL VALLE: With the same  
16 caveat I had before regarding fine structures; is  
17 there a motion? We have one, two, three, four,  
18 five, six, seven, eight, nine in favor and one  
19 abstention. And it's adopted. Thank you. We now  
20 have electronic [unintelligible] [01:24:02]. I'm  
21 sorry. Oh, okay.

22 MS. SLIFKA: I'm sorry.

23 MR. ARMSTRONG: Alright.

24 COMMISSIONER DEL VALLE: Oh, okay, I  
25 thought you were signaling me or something.

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2 MS. SLIFKA: No, I thought he was  
3 leaving. And I was like [unintelligible]  
4 [01:24:14].

5 MR. ARMSTRONG: Alright. So now I  
6 discuss a final rule, which amends the ECB  
7 Sanitation penalty schedule to create penalties  
8 for violations of local law 67, which relates to  
9 publicly accessible collection bins; and that  
10 also creates a penalty for violation of 16RCNY1-  
11 04.2, which prohibits the placement of electronic  
12 waste out for solid waste or recycling  
13 collection. So this rule was published in the  
14 City Record on March 13, 2015. And on April 14,  
15 2015 there was a public hearing heard. It's a  
16 joint hearing for both final rules I'm talking  
17 about today, but including this rule. Two members  
18 of the public attended. But no written comments  
19 or oral testimony were received for this rule.  
20 Are there any questions?

21 COMMISSIONER DEL VALLE: Were the  
22 members of the public opposed or in favor of the  
23 amendment, by the way?

24 MS. BALSAM: They didn't say anything.

25 MR. MACRON: They didn't say anything.

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2 COMMISSIONER DEL VALLE: Oh, they didn't  
3 say anything.

4 MS. BALSAM: They just watched.

5 COMMISSIONER DEL VALLE: Oh, they were  
6 just witnesses. Okay.

7 MS. SLIFKA: They were just hanging out.

8 COMMISSIONER DEL VALLE: Alright. It was  
9 a slow day in Bedrock. Is there a motion? It's  
10 unanimous with one abstention. Buildings  
11 Department?

12 MR. ARMSTRONG: Excellent. Okay. So now  
13 this final rule amends ECB's Buildings penalty  
14 schedule and order, one, to adequately enforce  
15 existing laws and rules; two, to reflect changes  
16 brought about by Local Law 141; and three, to  
17 reflect ongoing efforts by Department of  
18 Buildings to update violations in the Building  
19 rules. This too was published in the City Record  
20 on March 13, 2015. And at the joint hearing on  
21 April 14, 2015 those members attended. There was  
22 one written comment received. That comment, as  
23 well as any relative details about the hearing,  
24 have been provided to the members of the Board.  
25 Are there any questions?

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2 MR. MARTINEZ: Jorge Martinez, DOH. I  
3 point to the comment from National Grid, in  
4 terms relating to damaging a tree. Is there any  
5 definition of what constitutes damage? Because  
6 the commenter seems to infer that minor damage  
7 should not be something that should be issued a  
8 violation against.

9 MR. ARMSTRONG: I might defer on this  
10 question.

11 MS. BALSAM: I mean the comment from  
12 National Grid is sort of weird. Because if you  
13 look at the actual section, it says that you've  
14 damaged the tree without having a permit. But  
15 their comment says that they always have an  
16 arborist and they always get a permit. So, I was  
17 not really sure why they were making that  
18 comment.

19 MR. SHPETNER: Yeah, another -- Tom  
20 Shpetner, citizen member. There's another  
21 peculiar thing, which is I believe it said  
22 something like: There's going to be damage. We're  
23 going to damage these trees anyway. That's why we  
24 have an arb-; and I think that was in there as  
25 well. I don't have I printed out. But it was a

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2 peculiar letter.

3 MS. BALSAM: Right. I mean, basically  
4 what they were saying --

5 MR. SHPETNER: I mean, it said: You  
6 know, we're going to make a mess. But we're going  
7 to take care of it; I think is my --

8 MS. BALSAM: And we're not necessarily  
9 hurting the tree.

10 MR. SHPETNER: That's right.

11 MS. BALSAM: But that of course is  
12 something that they could allege at a hearing and  
13 could be decided at a hearing.

14 MS. KNAUER: Well, I think --

15 MS. BALSAM: And we do this all the time  
16 with Parks violations, by the way.

17 MS. KNAUER: And I think the related  
18 point that Tom was alluding to was that if they  
19 know they're going to potentially damage a tree,  
20 they know that they need to get a permit.

21 MR. SHPETNER: That's right. Yeah, they  
22 --

23 MS. KNAUER: So it's not as though  
24 they're being penalized, you know, for something  
25 that they didn't foresee. So it's easy enough for

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2 them to just get the permit.

3 COMMISSIONER DEL VALLE: It's a very  
4 inartful letter I think, to say the least. You  
5 know, I've got another possible interpretation  
6 that they may be asking for a graduated penalty  
7 schedule or mitigation schedule or God knows  
8 what. But it's a very -- and they didn't bring a  
9 human being into testify, right? They just sent  
10 the letter.

11 MS. BALSAM: Yeah, I, I --

12 COMMISSIONER DEL VALLE: So maybe this  
13 is in the nature of the maximum penalty is  
14 \$5,000, I believe. And we are an international  
15 multibillion dollar corporation and we're not too  
16 concerned about it one way or the other. I don't  
17 know.

18 MS. BALSAM: Actually, the penalty --  
19 the hearing penalty is \$800. So --

20 COMMISSIONER DEL VALLE: Right. I don't  
21 --

22 MS. BALSAM: You know, on the mitigation  
23 question, you know, I would bump it over to  
24 Renaldo. But I think --

25 MS. KNAUER: Couldn't that be part of

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2 the permit conditions? I mean, I don't know how  
3 these permits work. But if they get a permit,  
4 wouldn't whatever mitigation is required be built  
5 into the conditions of the permit?

6 MR. HYLTON: Well -- Renaldo Hylton,  
7 Department of Buildings. Well, the permit is  
8 actually not Department of Buildings permit. It  
9 is actually from the City Planning -- Department  
10 of City Planning. We -- it is built in our code  
11 because we enforce the zoning resolution. So if  
12 they were to get a permit, there would not be a  
13 violation.

14 MS. KNAUER: Right.

15 MR. HYLTON: So there's no issue there  
16 with mitigation. If mitigation -- the reason why  
17 this violation is not mitigatable is because  
18 there is really and if you think about it the  
19 majority of these violations are going to be for  
20 home owners or businesses that remove trees in  
21 these natural districts -- remove them; not  
22 necessarily, you know, accidentally chop the  
23 trunk of it or things like that.

24 COMMISSIONER DEL VALLE: Or not  
25 necessarily accidentally cut around the entire

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2 bark --

3 MR. HYLTON: Right. So that it --

4 COMMISSIONER DEL VALLE: -- so you wind  
5 up killing the tree and then expect the City to  
6 come and take it away because it's a dead tree,  
7 which happens a lot.

8 MR. HYLTON: Correct. And so mitigation  
9 is not; because you have to, in order to mitigate  
10 that issue, that problem, you have to go back to  
11 the City Planning and work out a solution to how  
12 you're going to replace that tree. So it's not --  
13 the mitigation here that they are talking about  
14 is not a penalty. They're talking about fixing  
15 the problem. I think that's what I got from the  
16 letter.

17 MS. KNAUER: But they could work that  
18 out in advance.

19 MR. HYLTON: They can work it out. Yes,  
20 it's always worked out in advance, especially for  
21 these people. But if any home owner should do  
22 that, they would have to go back to the  
23 Department of City Planning and get a permit  
24 basically to undo the damage that they did or  
25 permission to undo the damage. And that's how we



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2 would assess or approve the correction of that  
3 violation.

4 COMMISSIONER DEL VALLE: Make a donation  
5 to the Million Trees Fund and buy a new tree.  
6 Anything else, discussion or whatever? Is there a  
7 motion? It's unanimous with one abstention from  
8 the appropriate agency. Is that it?

9 MR. ARMSTRONG: Thank you.

10 COMMISSIONER DEL VALLE: And show time.

11 MR. PECUNIES: Okay. Russell Pecunies,  
12 DEP. This month DEP has ten requests for the  
13 Board to issue cease and desist orders. These ten  
14 requests are all under the air code for failing  
15 to renew operating certificates. And in each of  
16 these ten cases, the building has an expired  
17 operating certificate to use number six fuel oil;  
18 the use of which will be prohibited as of June  
19 30th. So, since these respondents have all been  
20 adjudicated in violation for failing to renew  
21 their certificates and have not complied with the  
22 order in the decision to come into compliance;  
23 DEP is asking the Board to issue orders to cease  
24 and desist in these ten cases.

25 COMMISSIONER DEL VALLE: Questions? Is

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2 there a motion? It's unanimous in favor with one  
3 --

4 MR. PECUNIES: Abstention.

5 COMMISSIONER DEL VALLE: it is unanimous  
6 with one abstention.

7 MR. PECUNIES: Okay. And DEP has 28  
8 requests for cease and desist orders for failing  
9 to install backflow prevention devices. In each  
10 of these cases, the DEP Commissioner's order to  
11 install was not complied with. A notice of  
12 violation was issued; that NOV has been  
13 adjudicated in violation either in person or by  
14 default. The respondents continue to be in  
15 violation for not installing the required device.  
16 And DEP is therefore requesting that the Board  
17 issue cease and desist orders in these 28 cases.

18 COMMISSIONER DEL VALLE: Is there a  
19 motion? Again, it's approved with one abstention.

20 MR. PECUNIES: Okay. Yup, thank you.

21 MR. DEL VALLE: It's amazing to me how  
22 many people have trouble with backflow  
23 preventers. Is there a motion to go into an  
24 Executive Session to go over --

25 MS. KUO: Pre-sealing.

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2 MR. PECUNIES: Pre-sealing.

3 COMMISSIONER DEL VALLE: Oops. Oh, I'm  
4 sorry. Missed one I see at the bottom line. Pre-  
5 sealing reports.

6 MS. KELLY CORSO, ESQ., ASSISTANT  
7 DIRECTOR OF ADJUDICATIONS, ECB: Good morning,  
8 Board. I am Kelly Corso, Assistant Director for  
9 ECB. We have 34 pre-sealing reports today. And  
10 they're all pretty ordinary, except for the final  
11 one which I will go into detail about. It's a  
12 noise case and the hearing officer in that case  
13 has recommended that the equipment be sealed.

14 So first we have 30 -- I'm sorry, 25  
15 backflow cases. In 22 of those cases, the hearing  
16 officers recommended that there be no sealing  
17 given the respondents' compliance. And in the  
18 three remaining cases, the hearing officers also  
19 recommended that the C&D order be discontinued.  
20 And the reason for those recommendations are: in  
21 one case, respondent is deceased; in the second  
22 case, the premises has been demolished; and in  
23 the third case, a recent DEP inspection showed  
24 that the cited premises is vacant. Any questions  
25 on the 25 backflow cases?

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2 MR. HYLTON: I have a question  
3 procedurally. When we rescind it because the  
4 respondent is deceased, does DEP then take it up  
5 again with --

6 MR. PECUNIES: We, yeah, I know which  
7 one this is because I just got an E-mail about it  
8 yesterday I think. Yeah, the respondent on this  
9 one we would have to start over with the new,  
10 whoever the new building owner is by issuing them  
11 an order to install the device. If they comply  
12 with that, fine; it never comes back to ECB  
13 again. If the new owner doesn't comply, then we  
14 would have to issue a new NOV.

15 COMMISSIONER DEL VALLE: That makes  
16 sense.

17 MS. CORSO: Okay. The next case is a  
18 sewer code case. And in this case the hearing  
19 officer recommended that the C&D order be  
20 discontinued because a recent inspection had  
21 shown that the cited restaurant had come into  
22 compliance. Any questions on that one?

23 Okay. The next cases are air code cases.  
24 There are five of those. In the pre-sealing  
25 report, the hearing officers also recommended

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2 that no further action was necessary, given the  
3 respondents compliance. The respondents were able  
4 to show at the hearing that they had obtained the  
5 operating certificates that were needed. Any  
6 questions?

7 Okay. The noise code cases, we have  
8 three of those. In two of those cases, the  
9 respondents were able to provide proof of work  
10 done on the equipment to bring it into  
11 compliance. And based on that evidence, the  
12 hearing officers recommended that DEP re-inspect  
13 and that the equipment remain unsealed if the  
14 initial re-inspection shows no violation and  
15 further re-inspections show no violation for 180  
16 days.

17 And the final noise case is the one that  
18 I mentioned; where the hearing officer has  
19 recommended that the equipment be sealed. This is  
20 a restaurant located at 228 West 18th Street in  
21 Manhattan. And the equipment involves a kitchen  
22 exhaust fan. This goes back to 2013 when DEP  
23 issued a notice of violation to the respondent  
24 for operating an exhaust fan in excess of 42  
25 decibels. At that time the inspector had noted

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2 that readings taken from three-feet from an open  
3 window in the complainant's apartment showed that  
4 there was a total decibel level of 67, an ambient  
5 decibel level of 56 and that made a source level  
6 of 67. Respondent failed to appear for the  
7 hearing and the case went into default.

8 There were three subsequent notices of  
9 violations issued regarding this equipment. And  
10 in all cases the respondent again failed to  
11 appear and default orders were issued. On  
12 February 26, 2014 the Board issued a cease and  
13 desist order directing the respondent to appear  
14 for a pre-sealing hearing to show good cause why  
15 the equipment should not be sealed. At the  
16 initial March 17th pre-sealing hearing, the  
17 respondent's representative stated that the  
18 respondent had sold the restaurant.

19 The case was adjourned for the  
20 respondent to provide evidence that the  
21 restaurant had been sold. It was adjourned two  
22 more times for the same reason. Finally, at the  
23 pre-sealing hearing on April 21st, the  
24 representative came in and said that he had been  
25 informed that the new owner of the restaurant is

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2 El Cocotero Inc.

3 Now the cease and desist order had been  
4 issued to Morontas Café Inc. DBA El Cocotero.  
5 When the only evidence that the representative  
6 presented with respect to this alleged change in  
7 ownership was a cellphone photograph of a New  
8 York State Department of Taxation and Finance  
9 Certificate of Authority that's addressed to El  
10 Cocotero Inc., Restaurant Solutions NYC, 75  
11 Maiden Lane; which is not even the address of the  
12 restaurant in question.

13 The DEP representative at the hearing  
14 recommended sealing of the kitchen exhaust  
15 because the respondent had failed to present  
16 adequate evidence of the change in ownership and  
17 had failed to provide anything to show that the  
18 equipment was being repaired or replaced. The  
19 hearing officer agrees with the DEP's  
20 representative's recommendation to seal the  
21 equipment immediately.

22 COMMISSIONER DEL VALLE: Any questions?

23 MS. KNAUER: Elizabeth Knauer -- I'm  
24 sorry -- we are on --

25 MS. SLIFKA: Yes.

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2 MS. KNAUER: Okay. Elizabeth Knauer,  
3 citizen member. So has there been any attempt to  
4 try to determine whether El Cocotero Inc. is in  
5 fact a different entity and that they possibly  
6 don't have awareness of these violations prior to  
7 sealing?

8 MS. CORSO: I'm not sure what DEP has  
9 done.

10 MR. PECUNIES: If I'm allowed to --

11 COMMISSIONER DEL VALLE: Yes.

12 MR. PECUNIES: I mean, there are two  
13 different corporations at the time of the  
14 hearing.

15 MS. KNAUER: Uh-huh.

16 MR. PECUNIES: That was looked up. The  
17 restaurant has always been called El Cocotero;  
18 apparently has been for about 20 years.

19 MS. KNAUER: Mm-hmm.

20 MR. PECUNIES: And apparently the  
21 gentleman who owns the restaurant is a very well-  
22 known Venezuelan culinary figure.

23 MS. KNAUER: Mm-hmm.

24 MR. PECUNIES: And he as of February I  
25 believe was quoted in a newspaper article, where



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2 he identified himself as being the owner of the  
3 restaurant. So there may have been a corporate  
4 name change but there does not appear to have  
5 been an actual change in the ownership of the  
6 restaurant.

7 COMMISSIONER DEL VALLE: What's the  
8 location of this restaurant?

9 MR. PECUNIES: Excuse me?

10 COMMISSIONER DEL VALLE: What's the  
11 location?

12 MS. CORSO: 228 West 18th Street.

13 COMMISSIONER DEL VALLE: Alright. I  
14 think the documents with DBA on it kind of tells  
15 the tale. It's the same entity for all practical  
16 purposes. In any case, any discussion or other  
17 questions? Is there a motion to accept? It's  
18 unanimous with one exception --

19 MR. PECUNIES: One abstention.

20 COMMISSIONER DEL VALLE: -- one  
21 abstention rather. Thank you. Now I'll ask if  
22 there's a motion to go into Executive Session?  
23 And it's unanimous. We're going into Executive  
24 Session.

25 [OFF THE RECORD 01:42:14]

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2 [ON THE RECORD [01:42:30]

3 COMMISSIONER DEL VALLE: Okay. We're  
4 back in Executive Session, is there a motion --  
5 Public Session, I'm sorry. Is there number one a  
6 motion to adopt the personnel question, which is  
7 to name me the Executive Director of ECB? All  
8 signify aye. Thank you. That is unanimous.

9 We have two questions on appeal to  
10 determine. One is New York State Racing  
11 Association and the other one is New York City  
12 versus Genting Inc. The issues are essentially  
13 the same. And the question is whether we will  
14 maintain that the New York City fire code is  
15 applicable to inspections at the racetracks? If  
16 everyone concurs on option A that they are  
17 applicable, then that will be the decision. If we  
18 don't have a majority, then we'll discuss whether  
19 or not some other course of action is  
20 appropriate. So I call the question as to whether  
21 or not the New York City fire code should be  
22 applicable in those two cases.

23 MR. HYLTON: Therefore, adopted  
24 alternative to the decision?

25 MR. GREGORY: Right.

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2 COMMISSIONER DEL VALLE: Correct. All in  
3 favor? It's unanimous with one abstention and one  
4 -- two abstentions and I'm not sure how --

5 MS. KNAUER: I was voting --

6 COMMISSIONER DEL VALLE: In the  
7 negative?

8 MS. KNAUER: In the negative.

9 COMMISSIONER DEL VALLE: And one vote in  
10 the negative.

11 MR. MACRON: And what about Doug Swann?

12 COMMISSIONER DEL VALLE: Where's Doug  
13 Swann? Well, he's not present. Thank you very  
14 much.

15 MR. SOUTHWICK: The regular appeals --

16 MR. SOUTHWICK: Wait. Do we need to vote  
17 on the recommendations also, Commissioner?

18 COMMISSIONER DEL VALLE: Oh, I'm sorry.  
19 On the appeals recommendations, is there a motion  
20 to adopt the recommendations? And it appears to  
21 be unanimous. Thank you very much again. Right?  
22 Doug, all done? I'll write a note for you if you  
23 like. Sorry about that. And thank you very much  
24 for coming. Sorry I got a little long-winded.  
25 Some of what happened today reflects I think what

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2 I was complaining about that some agencies view  
3 us as a clerical service instead of an  
4 adjudicatory entity.

5 MR. GREGORY: So, are we out of  
6 Executive Session?

7 COMMISSIONER DEL VALLE: Oh, yeah.

8 MS. SLIFKA: Yes, we're in Public  
9 Session.

10 COMMISSIONER DEL VALLE: We're in Public  
11 Session.

12 MR. GREGORY: I'm sorry. I have concerns  
13 but I'll leave it for -- to talk to specific  
14 people regarding what you just said.

15 COMMISSIONER DEL VALLE: Mm-hmm. Yeah,  
16 yeah. I think a lot's got to be talked about, all  
17 over the landscape.

18 MS. SLIFKA: Motion to adjourn?

19 COMMISSIONER DEL VALLE: A motion to  
20 adjourn? It's unanimous. Thank you. See you.

21 (The public hearing concluded at 12:05  
22 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 April 30, 2015 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



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Date: May 1, 2015

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