

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

BOARD MEETING

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

April 28, 2016

9:23 A.M. to 10:23 A.M.

April 28, 2016

MEMBERS PRESENT:

Fidel F. Del Valle, Esq. - Chair, OATH
Ernest J. Cavallo - Citizen Member
Shamonda Graham - Department of Buildings
Joseph Gregory, Esq. - Fire Department
Madelynn Liguori, Esq. - Department of Sanitation
Russell Pecunies, Esq. - Dept. of Environmental Protection
Thomas D. Shpetner, Esq. - Citizen Member
Douglas Swann - Citizen Member

ALSO PRESENT:

Simone Salloum, Esq. - Assistant General Counsel, OATH
Frances Shine - Secretary to the Board, OATH

Rachel Amar - Special Assistant to the Commissioner, OATH
Helaine Balsam, Esq. - Deputy General Counsel, Asst.
Commissioner, OATH

Amy Bedford - Business Integrity Commission
Denis Brogan, Esq. - Assistant General Counsel, OATH
Annah Boxill - Budget Revenue Analyst, OATH
John Castelli, Esq. - Asst. Commissioner, Legislative
Affairs, OATH

Vanessa Caughman - Computer Service Technician, OATH
Kelly Corso, Esq. - Assist. Director for Adjudications,
OATH

Michael Dockett - Assistant Commissioner, Parks &
Recreation

Fana Garrick - Public Affairs Assistant, OATH
David Goldin, Esq. - Administrative Justice Coordinator,
Mayor's Office

Diana Haines, Esq. - Assistant General Counsel, OATH
Vivienne Kahng, Esq. - Deputy Supervising Attorney,
Appeals, OATH ECB

Mark H. Leeds, Esq. - Special Senior Counsel, OATH
Maria Marchiano, Esq. - Deputy Commissioner/Chief Clerk,
OATH

Tynia Richards, Esq. - Deputy Commissioner, General
Counsel, OATH

Peter Schulman, Esq. - Assist. Director for Adjudications,
OATH

Amy Slifka, Esq. - Deputy Commissioner, OATH
Doris Stewart - Department of Transportation
Thomas Southwick, Esq. - Supervising Attorney, Appeals,
OATH ECB

April 28, 2016

Ed Wilton - Director of Financial Services, OATH

INDEX

	Page
Fidel F. Del Valle, Esq.	4
Thomas D. Shpetner	4
Amy Slifka, Esq.	4
Shamonda Graham	12
Ernest J. Cavallo	25
Diana Haines, Esq.	28
Michael Dockett	29
Madelynn Liguori, Esq.	36
Russell Pecunies, Esq.	36
Douglas Swann	40
Kelly Corso, Esq.	42

April 28, 2016

(The Board Meeting commenced at 9:23
A.M.)

MR. FIDEL DEL VALLE, ESQ., CHAIRPERSON,
COMMISSIONER & CHIEF ADMINISTRATIVE LAW JUDGE,
OATH: Good morning everyone.

ALL: Good morning.

MR. DEL VALLE: Is there a motion to
accept the last meeting or any changes or
objections to it?

MR. THOMAS D. SHPETNER: I have to
abstain.

MR. DEL VALLE: Okay, there's one
abstention. They're unanimously adopted. I'll ask
Deputy Commissioner Slifka to give us our
quarterly presentation.

MS. AMY SLIFKA, ESQ., DEPUTY
COMMISSIONER/EXECUTIVE DIRECTOR, OATH/ECB:

MS. SLIFKA: Good morning everyone.
Okay, so many of you know what this is about. But
for those of you who don't, this quarterly report
provides a comparison of summonses received for
the first quarter of 2016 with the first quarter
of 2015. The report also has summonses received

April 28, 2016

and decisions rendered in the first quarter of 2016 with the first quarter of 2015. And then we're also looking at the hearing to decision time, the dismissal versus violation rate for the most commonly issued summonses by agency and the number of appeals in the first quarter of 2016.

Okay. So let's begin. Hold on, I'll get you there. Okay, here we go. So for the summonses received in the first quarter of 2016 for DSNY, there was a one percent decrease. It went down to 109,971. DOB, there was a five percent decrease from 12,875 to 12,242. And DOT, there was a 33 percent decrease from 19,516 to 12,989. FDNY, there was an increase from 11,314 to 11,502. DEP, a 16 percent increase from 3,139 to 3,641. And DOHMH was a 12 percent decrease. Parks, there was a 48 percent decrease from 2,311 to 1,212. NYPD, there was an increase from 3,954 to 4,261. DoITT, there was a 25 percent decrease from 183 to 137. And BIC, there was a 45 percent decrease from 39 to 21. And Landmarks, there was a 17 percent decrease from 35 to 29.

Okay. Summonses received, so comparing

April 28, 2016

the first quarter of 2015 to 2016 for the summonses received, there was an 18 percent increase from 93,071 to 109,971. For DOT again, there was an increase, 78 percent increase. For DOB, there was a nine percent decrease. For Fire, there was a six percent increase. For Health, there was a 36 percent increase from 4,590 to 6,248. For NYPD, an 88 percent increase -- a big increase. DEP, there was really no significant difference. Parks, there was a 64 percent increase from 740 to 1,212. For DoITT, it was a 43 percent decrease. For BIC, a big 425 percent increase, four to 21. And for Landmarks, a 46 percent decrease. And overall there was a 19.2 percent increase when you're comparing first quarters. That's a little bit different from the other numbers.

Okay. For total summons heard, there was a 17 percent decrease for sanitation. There was a two percent increase for DOB. There was an 18 percent increase for Health. There was an eight percent increase for Fire. For DEP, there was a decrease. For DOT, there was an 86 percent

April 28, 2016

increase: 2,408 to 4,475. For NYPD, there was a 164 percent increase from 2,042 to 5,387. For DoITT, interesting enough, the number of decisions heard was an increase from 400 to 730. It's an 83 percent increase. Parks, there was 129 percent increase from 171 to 391. For BIC, there was a 75 percent increase, eight to 14. For Landmarks, a decrease and overall there was a 9.8 percent increase of total summonses heard, comparing the first of '15 with '16.

Okay. So for decisions rendered, for Sanitation again there was an increase from 13,933 to 14,672. That's a five percent increase. DOB, there was a decrease. For Health, there was a 14 percent increase: 2,769 to 3,161. For Fire, again there was an increase of eight percent: 3,808 to 4,123. For Department of Transportation, a 75 percent increase. For DEP, there was a decrease of two percent. NYPD, again there was an increase of 1,840 to 2,171. For Parks, there was 125 percent increase from 158 to 355. DoITT, there was a 250 percent increase: 114 to 399. And BIC, there was an 80 percent increase. Landmarks,

April 28, 2016

there was a 78 percent decrease. And overall there was a 10.1 increase in decisions rendered.

And even with that increase in decisions and hearings, we're still getting most of our decisions done in less than ten days -- 90 percent. And all of them are being completed -- well, close to all of them; 99 percent are being completed between ten and 20 days. Okay.

So decisions rendered after the hearings, comparing the dismissal and in violation rate. This one compares the first quarter of '15 with the first quarter of 2016. So in 2015, there was a 38.6 dismissal rate and a 60.6 in violation rate. In the first quarter of 2016, it's a 40.7 percent dismissal rate and a 58.5 in violation rate. And the way this breaks up with agencies, as you can see DSNY has a 58 percent dismissal rate and a 42 percent in violation rate. DOB has a 77 percent in violation rate and a 22 percent dismissal rate. DOT has a 57 percent in violation rate and a 43 percent dismissal. FDNY, an 89 percent in violation rate and a ten percent dismissal rate. DEP, 78 percent

April 28, 2016

in violation and 11 percent dismissed. And NYPD has a 54 percent dismissal rate and a 46 percent in violation rate. DOHMH has a 52 percent in violation rate, 48 percent dismissal. Parks has a 58 percent in violation rate, 42 percent dismissal. DoITT has a 34 percent in violation rate, 66 percent dismissal. And BIC, 78 percent in violation, 22 percent dismissal. And Landmarks, 100 percent in violation rate. Okay.

MR. DEL VALLE: All four of them.

MS. SLIFKA: All four of them, right.

Okay. And the most commonly issued by agency. So for DOT, it's construction materials or equipment stored on the street without a permit or a failure to comply with the terms and conditions of the permits or opening the street without a permit. Interesting enough for NYPD, it's failure to yield violations, which is pretty new for them; and vending in a bus stop and then failure to display license. DOB, it's a failure to maintain your elevator, work without a permit or unlawful acts and failure to comply with an Order of the Commissioner. I'm sorry -- I'm in a little

April 28, 2016

bit of a rush.

DSNY, it's failure to clean 18 inches into the street and a dirty sidewalk area or just a dirty area. Okay. And for DEP, it's failure to submit your annual test report for a backflow preventer, a failure to install a backflow preventer and operating without renewing an expired operating certificate. For FDNY, it's inspection and testing. And fire protection system, failed to prevent unnecessary, unwanted alarms and posting of permits and recordkeeping. For DOHMH, it's failure to eliminate rodent infestation, shown by active rodent signs, first offense. And then failure to eliminate conditions conducive to rodent debris vegetation, again first offense; and failure to eliminate conditions conducive to pests, garbage can spillage.

And Landmarks, it's a violation for work without a certificate of approval. Again, one's for flags and the other one is for your architectural. They're all kind of the same: work without a permit for your storefront type. Okay.

April 28, 2016

And for DoITT, it's failure to provide a working public pay telephone and operator services; requirements are missing and permissible as per requirement of the subsection and failure to clean, maintain public pay telephone as per requirements of the subsection.

For Parks, it's failure to comply with the direction and prohibitions on signs; unleashed or uncontrolled animals in the park and unauthorized vending. And for BIC, it's idling of motor vehicle engine over three minutes; failure to display an identification card as per the subsection; and again failure to display identification card as per the subsection.

Okay. And Appeals, the summonses by enforcement agency. So for the first quarter of 2016, most of the appeals are DOB appeals: 240. DSNY is 171. FDNY: 76. Health: 37. DEP: 25. DOT: 54. NYPD: 19. Parks: 47. And DoITT: 8.

Okay. And as far as defaults go, DSNY has a 69 percent default rate. DOT has a 12.8 percent default rate. And DOB has a 5.4 percent default rate.

April 28, 2016

Okay. I think that says it all. Any questions? Ah, that's because Dan's not here today.

MR. DEL VALLE: Yeah.

MS. SLIFKA: I get off easy. Okay, thank you.

MR. DEL VALLE: I think it's interesting that since DOT went to electronic summons writing, they've been knocking out summonses like gangbusters. At least compared to what they were doing before. We have a proposal from the Department of Buildings.

MS. SHAMONDA GRAHAM, EXECUTIVE DIRECTOR, ADMINISTRATIVE ENFORCEMENT UNIT, DEPARTMENT OF BUILDINGS: Good morning everybody. My name is Shamonda Graham and I am the Executive Director of the Administrative Enforcement Unit at the Department of Buildings. Today, the Department of Buildings is proposing the addition of five additional codes to the DOB's penalty schedule and also the increase of two fines that are included already in the penalty schedule.

Back in February as most of you are

April 28, 2016

aware, there was a deadly crane accident. That accident prompted action of my Department to basically review our codes to ensure that infractions related to safety, construction safety in particular, were an effective deterrent in order for the Department to decrease the amount of bad actors.

As a result, the Department also promulgated new rules as it relates to the construction superintendents and when they are required at worksites and what they should do while they are at these jobsites. So that in order to enforce the new rules that are actually going to be in Title 1 of the Rules of the City of New York, the Department is asking for the five codes to help us enforce the new rules.

Those codes relate to construction superintendents: one, for them failing to notify the Department if something happens at the worksite; two, for them failing to fully cooperate should the Department or any other City agency have an investigation; three, for them failing to report -- not the construction

April 28, 2016

superintendent but for the person in charge of the worksite failing to designate a construction superintendent or failing to make sure that they're at the site as required; and then last but not least, class 1 and 2 violations for construction superintendents who fail to perform their duties.

In addition to those codes, we're also asking to increase two of our fines: one related to failing to designate a site safety coordinator, which is a bit different from construction superintendent; but we're asking to increase that fine so that it aligns with the fine that we're requesting for construction superintendent, so that the fines are congruent. The second increase that we're asking for is an increase to the fine that relates to the site's safety orientation program that's required to be conducted at all sites.

We're asking that that fine to be increased because again our main goal is to promote a zero tolerance for safety related violations. And that being the case, we really

April 28, 2016

want to ensure that we've made clear that not only do the workers require training but the worksites need to remain safe.

MR. DEL VALLE: The rules that you mentioned, the new rules, when do they go into effect?

MS. GRAHAM: I believe the effective date is on or about May 30th. They actually were published in the City Record today. If you all would like a copy, I did bring a copy with me. So if you'd like a copy, you can take one and pass it to each Board Member.

MR. DEL VALLE: Was there a public hearing on it already?

MS. GRAHAM: Yes.

MR. DEL VALLE: Or it's signed by the Commissioner I see.

MS. GRAHAM: Yes, the public hearing was already held and they went to City Record today for final publication. So, they'll be effective in May -- next month, the end of May.

MR. DEL VALLE: You may not have the answer to this question but on something that is

April 28, 2016

considered so critical since it was precipitated by a major accident that involved people being injured and killed; why weren't the penalty schedules included with the DOB's rulemaking? Because now it's going to take at least another three or four months before anybody can do anything because it's coming to a second CAPA process.

MS. GRAHAM: I understand. The Department has every intention of promulgating its own penalty schedule. However, at the time of the accident, the rule for the construction superintendent was already in progress. So the rule had already been written. It was in the middle of gaining approvals. And then when the accident happened, when the Mayor made his announcement, he just indicated that there would be particular fines related to the construction superintendent rule. So in fact, this is the last -- unless there's some emergency, this is the last time that I expect the Department to be at the Board requesting changes to our penalty schedule because we have intentions on repealing

April 28, 2016

and promulgating under our code.

MR. DEL VALLE: That's encouraging because it looks like a little bit of a simple cut and paste thing.

MS. GRAHAM: You know, Commissioner, to address that I just want to make clear that I thought the same thing. And that in review of the code, which is why I'm here today, opposed to repealing the entire penalty schedule, I felt that it would be best that we went line by line to ensure that we don't take anything that maybe could have been a bit cleaner and just simply move it over and wind up having to clean it anyway. So, the Department chose to come today and finish this out because again it was precipitated by an accident and it is under the instruction of the Mayor. It was announced to the public. So we chose to get this done today, to leave here and begin working on the penalty schedule.

MR. DEL VALLE: Well, since we're considering the penalty structure, I find it curious that particularly on the violations that

April 28, 2016

relate to complying with a code such as having a construction superintendent present at the site as required and failure to perform duties per rule and so forth; why isn't there another column essentially saying their permit is suspended until compliance, since this is a life and death safety issue?

MS. GRAHAM: That, I would love to give you an answer to. However, that is absolutely a policy decision that I would not be at liberty to discuss or give you an answer to. But I will however bring that back to my agency and make sure that they understand you're interested in knowing the answer to that and surely get back to you or the Board if necessary.

MR. DEL VALLE: Well, we might just consider it ourselves.

MS. GRAHAM: Excuse me?

MR. DEL VALLE: This Board may insert that by ourselves, yeah.

MS. GRAHAM: I understand. I understand.

MR. DEL VALLE: And before we publish them or after we publish them, depending on how

April 28, 2016

the testimony goes and what we see, maybe we should insert that because frankly, some of the - - we're talking about essentially operations that are multimillion dollar or billion dollar operations of billion dollar corporations to whom maybe a \$25,000 fine is lunch money. And they can cavalierly ignore some of these safety requirements. But if we suspend their permit, that might grab their attention and then they'll comply. I mean, which after all is the object of the exercise.

MS. GRAHAM: Absolutely.

MR. DEL VALLE: The object of the exercise isn't collecting \$25,000. The object of the exercise is getting them to operate safely and not kill people who are walking down the street when a gargantuan crane falls on their head.

MS. GRAHAM: I absolutely agree. But what I should note and I wish I had the building code in front of me or our rule books; but I should note that I do believe we have a section. You can't quote me. But I do believe that we do

April 28, 2016

in fact have a section that allows for us to revoke permits or not give licenses should a contractor or should a person who's licensed by the Department fail to comply with our rules.

If I am correct, I do believe we have that provision. However, it is not attached to any particular infraction or violation, meaning we don't have it associated with the infractions; where if you don't do this, then we may revoke your privileges. The way it's actually outlined is that if you don't comply with certain rules or for a certain amount of time or you incur a certain amount of fines or have a certain amount of violations, we are able to review. But that would require notice and it would also require some back and forth between us and the person we're trying to revoke the license of.

MR. DEL VALLE: Well, I'm not talking about revoking.

MS. GRAHAM: Well, revoking, stopping the privileges.

MR. DEL VALLE: Well, maybe you should take a look at some other agency rules where

April 28, 2016

safety violations are involved. For example, Taxi and Limousine Commission rules have for at least since 1971 included provisions that if there's a safety violation found in a cab and a summons is issued and the respondent is found guilty, that license is suspended until the issue is resolved, that is until compliance. And all that it involves is you pay your fine, whatever it is; and within X number of days you appear at the inspection site and an inspector looks at the car. And if whatever it was needed to be corrected is corrected, your license is restored. If it's not, then you're suspended until you replace the car or repair the equipment.

It doesn't seem like it requires a big production. Everybody's on notice. If you are not in compliance, your license is suspended until you comply. And that's that. And that's been the case for like almost 50 years without anybody having a problem with it.

MS. GRAHAM: So, I'd like to point out that with taxis or driving in particular if you suspend, revoke, if you stop the person from

April 28, 2016

operating because they're now no longer licensed; then he or she won't take anyone else anywhere, they won't operate. That's fine because each action they take is specific and individual.

In our case however, a person who may have broken one rule may be active at many sites. And the last thing that we want is to stop them from working and then maybe create another infraction or another safety related violation because they're unable to attend to the sites where they're already working. So again that is a policy issue that I can take back to the Department and you can add if you see fit. However, I just want to point out that the Department of Buildings and the work that we do is a tad bit different because stopping at one site is very different than stopping across the board because a person --

MR. DEL VALLE: I didn't say stopping across the board. I said --

MS. GRAHAM: You mean just for that site?

MR. DEL VALLE: Where the violation is.

April 28, 2016

MS. GRAHAM: Okay.

MR. DEL VALLE: That -- I mean, that's where the danger is. I mean, if you have a dangerous crane at Worth and West Broadway, that doesn't mean you have a dangerous crane in Brooklyn somewhere. But if that crane is dangerous and you haven't complied with taking care of whatever you have to take care of at that site, it seems to me you should be stopped from continuing to operate until you take care of what you have to take care of to make it safe.

MS. GRAHAM: Okay. So that's a bit different because the Department does have stop work orders, which actually handle that concern. The stop work orders, that is the function of stop work order. If the Department finds that there is a very dangerous condition, then the inspector without any of these rules; the inspector would stop the work at that site immediately and the work would not be able to resume until not only the corrections have been made but until the Department actually comes out and confirms that those corrections have been

April 28, 2016

made. So that's inherent in our operational processes: stopping work at a particular site when there is an infraction that is dangerous.

MR. DEL VALLE: Is not having a safety supervisor on site for example considered something that would result in a stop work order until they bring somebody on site to do it?

MS. GRAHAM: I have seen that happen. However, I don't want to answer across the board because we have a number of operational units. But I can say and I can attest to: I have seen a stop work order placed because -- I want to make sure it was the site safety manager and what actually happened was the site safety manager was not on site if I remember correctly; they stopped the work until the site safety manager came back. So when the site safety manager did come back, the inspector did actually install and remove a stop work order in the same day because it happened that the person was at lunch.

MR. DEL VALLE: That's encouraging.
Anyone?

MR. ERNEST J. CAVALLO, CITIZEN MEMBER:

April 28, 2016

Yeah. I am going to vote for this, Shamonda. But I'm always curious: a terrible accident happens and then we get these kind of rules. Was any study done to say that this kind of rule or these kind of fines would be sufficient to avoid the kind of negligence that created the original accident? Or is it just a knee-jerk reaction? Something has to be done because that's what the press wants and that's actually what the public wants too? They want to see some action. What kind of --

MR. DEL VALLE: That's exactly my concern.

MR. CAVALLO: Yeah, I agree with you. The \$25,000 may not be the kind of deterrent or the kind of incentive for them to make sure that it will --

MR. DEL VALLE: They do what they have to do.

MR. CAVALLO: -- it will be a safe site.

MS. GRAHAM: I understand.

MR. CAVALLO: What kind of work goes into this?

April 28, 2016

MS. GRAHAM: So for this in particular, because I am new to the Department and I can't speak --

MR. CAVALLO: Yeah, but you're good. So keep going.

MS. GRAHAM: Oh, I'm going to. Believe me, I'm going to. I can't speak for what may have taken place that is unbeknownst to me.

MR. CAVALLO: Right.

MS. GRAHAM: However, what I can speak for is what went into this because believe me, my blood and sweat and tears are here.

MR. CAVALLO: Oh, good.

MS. GRAHAM: So one of the main things that did happen is we did review our statistics. Those statistics were not only in the press release, they were provided to the public and they were part of the decision to make the fines what they were. And as far as a full-blown study, I am not aware that a study was conducted. And in fact, just from experience, not necessarily with the Department of Buildings; raising a fine is usually the first approach to see what happens.

April 28, 2016

And then you go back to your operation and you see how that impacts the industry and how much compliance you get. And then you work around your operational strategies to ensure that you get compliance, whichever way: because of the fine or because of how you react, as far as like you said, stopping work at certain sites. So fines, raising fines is a factor and it does help with deterrents. However, I would and again, me - - not say that that is the only factor; if there was a study done, I cannot honestly answer that. But if there's not, maybe we might have one. No, I don't know.

MR. CAVALLO: Okay, thank you.

MR. DEL VALLE: Excuse me. Any other questions? Is there a motion to publish the proposal? It's unanimous with I assume one abstention.

MS. GRAHAM: Absolutely. Thank you very much.

MR. DEL VALLE: Thank you. And in a very timely fashion I think, we have a proposal from the Parks Department, which is asking us to

April 28, 2016

revoke the existing rules here because they are in the process of adopting the penalty schedule incorporating them into their own rulemaking process. And Ms. Haines from our General Counsel's Office is going to give us the communication from the Parks Department.

MS. DIANA HAINES, ASSISTANT GENERAL COUNSEL, OATH/GC: Good morning everybody. Assistant General Counsel, Diana Haines. Parks has asked the ECB to propose a rule to repeal the Department of Parks and Recreation penalty schedule, which is currently housed in ECB's rules. We will simultaneously be repealing this rule as Parks is enacting its own penalty schedule within its chapter; I believe it's Chapter 56 of the Rules of the City of New York.

MR. DEL VALLE: And by the way, we've already passed a rule that instructs the hearing officers to apply that penalty structure.

MS. SLIFKA: We're working on it.

MR. DEL VALLE: Huh?

MS. SLIFKA: It's in process.

MR. DEL VALLE: Well, we've said --

April 28, 2016

we've had a resolution to that effect, that's for sure. Is there a motion?

MR. CAVALLO: I have discussion and questions.

MR. DEL VALLE: Yes, I'm sorry.

MR. CAVALLO: I opposed this the last time it came up and I oppose it this time as well. First of all, did Parks ask us or did we ask Parks? There's nobody here from the Parks.

MS. SLIFKA: Yes, there is.

MR. CAVALLO: Is there?

MS. SLIFKA: Yeah, Mike?

MR. CAVALLO: Is this Parks generated or was this ECB generated?

MR. MICHAEL DOCKETT, ASSISTANT
COMMISSIONER, PARKS & RECREATION DEPARTMENT:
It's both. The City wanted to do it. So, it's OATH. It's ECB and Parks together. We agree with the move to bring it under our rules. We think it's better for the public. They can look in one place. They see our rules, see our penalties. It makes sense and we are able to adjust it through CAPA.

April 28, 2016

MR. DEL VALLE: Could you identify yourself for the record?

MR. CAVALLO: Thank you.

MR. DOCKETT: Oh, sure. So, I'm Mike Dockett, Assistant Commissioner of Parks.

MR. CAVALLO: Thank you. I had a second question then. If the whole purpose of this is to make it easier for the public to find it, why doesn't somebody just cut and paste our rules and put them in the Park's website, which is easy as pie?

MR. DOCKETT: Right. Well, we do have your rules linked to them from our website.

MR. CAVALLO: Right.

MR. DOCKETT: So that's there. The other part is for us to change the penalties in the future, it's easier for us to go through the CAPA process for that.

MR. CAVALLO: Okay. But easier is not always better.

MR. DOCKETT: Okay.

MR. CAVALLO: And I think the Commissioner's previous comments indicate the

April 28, 2016

value of a Board that's not the Parks Department or an individual agency that's making its own rule and having some oversight on it. His suggestion just previously that we should insert for instance a stop work order in that previous section and things like that do come up at this Board and we do modify the rules that are sometimes presented to us. It doesn't happen often but I think it's useful.

I also have no confidence in the CAPA process, since I know most people don't ever even show up and this is probably the only time that some independent citizens have some input in this process; even though there's only three of us here or four of us. And I just don't think that this is, well, I don't see what the role of the Environmental Control Board, that this Board is if every agency's going to just make its own rules behind closed doors and rely on just the CAPA process.

MR. SHPETNER: Tom Shpetner, Citizen Member. Ernie raised his hand before I did but he expressed my views completely accurately. So, I

April 28, 2016

just wanted to endorse him.

MR. DEL VALLE: I'll have to add a couple of things. The CAPA process at the agency level is no more behind closed doors than us. The public has an opportunity to appear and either appear or submit written comments on any agency's proposed rulemaking. It is curious to me anyway that rulemakings in this context seems to have very little public interest. My prior experience in other agencies, particularly where I was Chairman of the Taxi and Limousine Commission, we would fill up almost an auditorium every time there was a rulemaking. Are taxi drivers better citizens? I don't know. Or more engaged citizens? I don't know.

But it is of concern to me that the entity, the adjudicatory entity is creating penalty structures, which raises questions in some folks that I've spoken to minds to the objectivity of the process: the Court is deciding what's a felony and what's a misdemeanor and what's a violation and what the penalty structure is in any case.

April 28, 2016

But the process that we just went through a few minutes ago exemplifies one of the great failings of the current system, which is it took from February to the end of April for an agency following the CAPA process to make corrective rulemaking, which won't be in effect until I understand the end of May. And now the entire ritual has to be duplicated, which will take another three or four months that the people of the City of New York will not be protected by these rules. It sounds like a Rube Goldberg kind of thing, where people criticize the government as incapable of getting out of its own way, despite its good intentions.

As to what is the function of the Environmental Control Board? The function of the Environmental Control Board when it was created in 1977 was as a super enforcement agency. It was. And if you still look at some of the language that existed in the Charter, it is essentially in those terms. And the Environmental Control Board -- never mind that it did the rules for penalties; it did the rules for the

April 28, 2016

Sanitation Department; it did the rules for Environmental Protection; it did the rules for a host of other related environmental/quality of life agencies.

And as time has progressed over the last 45 years or so, Sanitation Department does its own rules now and it's its own agency. DEP is its own agency. It does its own rules and so forth. And the only thing that remains of the Environmental Control Board is the adjudicatory function. It doesn't set policy for anything else essentially. The agencies do that themselves. It's a bit anachronistic in that sense.

And at this point, when I inquired why we did this process initially last year or almost a year ago, I was told it's because that's the way it was in the Charter and in State law. And then when I asked to see where does it say that in the State law or the Charter or the Ad Code, after research our Counsel's Office and then the Corporation Counsel basically came back and said: No, it's not anywhere in State law. It's nowhere in the Charter. It's nowhere in any law. It's

April 28, 2016

essentially lore, not law. And it for some reason never got around to being put together with the agencies when they did their own rulemaking.

It's a legacy item. Which in my mind raises questions whether we even have the authority to do it in the first place? Except that we've been doing it for 42 years, which is of some concern to some folks in some agencies in the City of New York. Considering the rules are really not our rules; they are DOB's rules or Park's rules or somebody else's rules. And we are somehow coming out of leftfield with no legal basis to do this.

I think it's inappropriate for the adjudicatory agency to create its own penalty schedule relating to outside agencies. I think it is incredibly cumbersome and inappropriate to extend the rulemaking process to almost a year; especially when some of these issues are important issues that have to be addressed quickly. I think it's the Parks Department's business to do its own rules, as it is DOB's business and TLC's business and every other

April 28, 2016

agency's business.

State Legislature when it passes rules and violations of law, it creates the penalty structure. It doesn't go to State Supreme Court and ask the State Supreme Court to figure out what the penalties should be for whatever crime they're talking about. I recommend that we proceed with the Parks Department request and I'm asking for a vote. So, those in favor please signify. That's one, two, three, four in favor. Those opposed?

MS. MADELYN LIGUORI, ESQ., DEPARTMENT OF SANITATION: I'm going to abstain.

MR. DEL VALLE: And one abstention. So, it's four to three. The proposal passes. Thank you. And the Department of Environmental Protection, speak of the devil. And congratulations on completing your [unintelligible] [00:40:29].

MR. RUSSELL PECUNIES, ESQ., DEPARTMENT OF ENVIRONMENTAL PROTECTION: You noticed that. Yes, thank you. Russell Pecunies, with the Department of Environmental Protection. This

April 28, 2016

month DEP is requesting one order to cease and desist be approved under the noise code. This is for Open Kitchen at 123 William Street. The people who work at 66 John Street might be familiar. It's right up the block.

The location has been cited on three occasions for noise from the kitchen exhaust. The noise actually is directly impacting a daycare center on Dutch Street, which is around the corner. And they are complaining about not only noise but also odors from this kitchen exhaust on pretty much a daily basis. We don't have the violations issued yet for the odors, although we may be bringing a cease and desist for that next month. But for now we are asking the Board to approve a cease and desist order with regard to noise from the kitchen exhaust due to the repeated violations.

MR. DEL VALLE: Is there a motion? It's unanimous with one abstention.

MR. PECUNIES: Yup, thank you.

MR. DEL VALLE: Proceed.

MR. PECUNIES: We also have one I

April 28, 2016

request under the sewer code. This is for Nous Les Amis Restaurant and Bakery at 2187 Clarendon Road in Brooklyn. This location was first inspected by DEP in January of last year when it was observed that the grease trap, which was rated to handle 50 pounds of grease, had 173 pounds of grease in it. Then in May the grease trap -- a different grease trap was inspected that was rated to handle 70 pounds of grease and had 288 pounds of grease in it. In June that same grease trap was again observed to have 288 pounds of grease in it. And an inspection in October found 224 pounds of grease in a grease trap that was rated to handle 100 pounds of grease.

A series of orders and summonses were issued to this establishment requiring them to maintain their grease traps properly. In August they were also ordered to have a BIC licensed waste hauler clean out the grease traps at least once a month. They have failed to comply with all of these orders based on the most recent inspection, which was on March 31st. And based on that, the Department is asking the Board to issue

April 28, 2016

an order to cease and desist.

MR. DEL VALLE: What is the effect of the grease trap being overloaded?

MR. PECUNIES: It does not work properly. In other words, it's supposed to be -- at some point it will just stop collecting grease and grease will go --

MR. DEL VALLE: Into the sewer?

MR. PECUNIES: -- into the drain. A 70-pound rated trap will just build up to the point where it's got 288 pounds in it. But at some point it just stops doing its job and the grease just goes down the drain.

MR. DEL VALLE: Is there a motion?
Unanimous with one abstention.

MR. PECUNIES: Okay. And finally, the Department is requesting for 28 locations that have failed to comply with Commissioner's Orders requiring them to install backflow prevention devices and in each of these cases where summonses have been issued and adjudicated and the respondents still have not complied, that the Board issue cease and desist orders.

April 28, 2016

MR. DOUGLAS SWANN, CITIZEN MEMBER: A question: The backflow prevention devices, how are the inspectors sent out? Because I've noticed over time that it just seems a large number of these cases are in the Bronx, in Upper Manhattan. Why are they --

MR. PECUNIES: We do them sort of on a rotating basis among the boroughs. Some months, they'll all be Brooklyn. Some months, they'll all be Bronx. Some months, they'll all be Manhattan.

MR. SWANN: I notice that it seems that over and over --

MR. PECUNIES: Just so that we sort of keep the number of cases that we need to put in sort of evenly distributed among the boroughs. There will be -- our inspectors, the original Commissioner's Order that starts this process is based on an inspection by a DEP inspector. That can either be an inspection depending on what the building is and what type of business may be located in the building. That can be a drive-by inspection that just sees that there's a laundromat there or it can involve the inspector

April 28, 2016

having to go into the building and inspect the plumbing.

Those inspections tend to be done in certain regions. So they'll concentrate on one area of one borough and a different area of a different borough. And so that's why there may be a month where all of these things come from the Bronx and they're all sort of in a particular area of the Bronx because there was a time when we sent our inspectors to that area of the Bronx and did a lot of inspections in that area and generated a lot of orders.

But in terms of which 28 we pick to bring to the Board each month, Kevin Grant of my staff, who does these requests, basically rotates it among the four boroughs. Staten Island has very few of these. But he rotates it among the four boroughs to just kind of keep it evenly distributed.

MR. DEL VALLE: Any other questions? Motion? Same score. It's approved.

MR. PECUNIES: Okay.

MR. DEL VALLE: Thank you.

April 28, 2016

MR. PECUNIES: Thank you.

MR. DEL VALLE: I'll ask Kelly Corso to give us our pre-sealing reports.

MS. KELLY CORSO, ESQ., ASSISTANT DIRECTOR OF ADJUDICATIONS, ECB: Good morning. Kelly Corso, Assistant Director for Adjudications. We have 71 pre-sealing reports today. Sixty of those cases are cases where the respondent didn't actually appear for a pre-sealing hearing but DEP is recommending and the hearing officers are agreeing that the proceeding should be discontinued. And this discontinuance recommendation is based on DEP's review of records showing that either the respondent has come into compliance or that they don't own the cited premises. And in one case it's based on an inspection of the premises showing that compliance is no longer required. So those are 60 of the 71 pre-sealing reports.

The 11 remaining cases are cases where the respondents did appear for the pre-sealing hearing. Eight of those cases were backflow violations and three were air code violations. In

April 28, 2016

all of the 11 of those cases, the hearing officers recommended that there be no sealing or other action based on the evidence of compliance that the respondents presented at the hearings. Thank you.

MR. DEL VALLE: Is there a motion to adopt? It's unanimous with one abstention. Thank you. And is there a motion to go into Executive Session, so we can listen to all kinds of hot stuff? And I think it's unanimous. We'll take a second.

[OFF THE RECORD]

[ON THE RECORD]

MR. DEL VALLE: Thank you. Having returned from Executive Session, is there a motion to affirm the appeals decisions from April 7th of 2016 and April 21? It's unanimous. Is there a motion to adjourn? We are adjourned.

(The Board Meeting concluded at approximately 10:23 A.M.)

CERTIFICATE OF ACCURACY

April 28, 2016

I, Lea Simmons, certify that the foregoing transcript of Environmental Control Board on April 28, 2016 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

A handwritten signature in cursive script, appearing to read "Lea Simmons", written in black ink. The signature is fluid and somewhat stylized, with a long horizontal stroke at the end.

Date: April 29, 2016

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018