

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

October 25, 2018

9:25 A.M. to 9:57 A.M.

October 25, 2018

MEMBERS PRESENT:

Shamonda Graham - Department of Buildings (DOB)
Joseph Gregory, Esq. - NYC Fire Department (FDNY)
Elizabeth Knauer, Esq. - Appointed Member
Madelynn Liguori, Esq. - Department of Sanitation (DSNY)
Jorge Martinez, Esq. - Department of Health and Mental
Hygiene (DOHMH)
**Russell Pecunies, Esq. - Department of Environmental
Protection (DEP)**
Matthew Smith, Esq. - New York City Police Department
(NYPD)
Douglas Swann - Appointed Member

ALSO PRESENT:

Quiana Battle - Computer Service Technician, OATH
**Kelly Corso, Esq. - Assistant Commissioner for Hearings
Division-Adjudications, OATH**
Svetlana Goryacheva - Business Integrity Commission (BIC)
Susan Kassapian, Esq. - Deputy Commissioner/Appeals, OATH
Richard LaPlant - Office of Management and Budget
Tynia Richard, Esq. - Deputy Commissioner/General
Counsel, OATH
Simone Salloum, Esq. - Senior Counsel, OATH
Peter Schulman, Esq. - Assistant Director for Appeals,
OATH
Frances Shine - Secretary to the Board, OATH
Amy Slifka, Esq. - Deputy Commissioner/Hearings Division,
OATH
Olga Statz, Esq. - Deputy General Counsel, OATH

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2 (The board meeting commenced at 9:35
3 A.M.)

4 TYNIA RICHARD, ESQ., DEPUTY
5 COMMISSIONER/GENERAL COUNSEL, OATH: Good
6 morning, everyone. I am Tynia Richard, Deputy
7 Commissioner/General Counsel at OATH, designated
8 by the Chair to conduct today's, or preside in
9 today's meeting. I'd like to call the meeting to
10 order. Today is October 25, 2018. Alright. So,
11 first item on the agenda are the minutes. Is
12 there a motion to adopt the minutes for the
13 August 23rd meeting?

14 JOSEPH GREGORY, ESQ., NYC FIRE
15 DEPARTMENT: I abstain.

16 MS. RICHARD: Okay. One abstention.

17 DOUGLAS SWANN, APPOINTED MEMBER:
18 Abstain.

19 MS. RICHARD: Two abstentions. Okay,
20 the motion carries. Number 2 on the agenda is
21 introduction of OATH ECB's final rule repealing
22 the sewer control penalty schedule.

23 SIMONE SALLOUM, ESQ., SENIOR COUNSEL,
24 OATH: Good morning. Simone Salloum, Senior

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2 Counsel at OATH, and we have two rules for your
3 consideration today. The first one is the final
4 rule, repealing the Sewer Control Penalty
5 Schedule, which is currently found in Section 3-
6 123 of subchapter G of Chapter 3, Title 48, of
7 the Rules of the City of New York.

8 So, we proposed the rule repeal in the
9 City Record. It was published in the City Record
10 on August 31, 2018. We had a public hearing on
11 October 3, 2018. No one attended or testified at
12 the public hearing. We didn't receive any
13 written comments, so the rule is unchanged as a,
14 as a, as the version that was proposed. So this
15 penalty schedule contains penalties for summonses
16 issued by the Department of Environmental
17 Protection for violations of Chapter 5 of Title
18 24 of the Administrative Code of the City of New
19 York, and Chapter 19 of Title 15 of the Rules of
20 the City of New York.

21 DEP is promulgating their own sewer
22 control penalty schedule. I believe that was
23 discussed at the last meeting in terms of the
24 changes that DEP is undertaking in terms of the

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2 storm water violations that will be added.

3 So, if anyone has any questions, I'm
4 happy to answer. No?

5 MS. RICHARD: Alright. Is there a
6 motion to approve? Okay, there's a motion. And
7 the vote? Six, and seven in favor. And oppose?
8 Two opposing.

9 MS. SALLOUM: Okay. The second rule is
10 the final rule repealing the Community Right-to-
11 Know Penalty Schedule, which is found in Section
12 3-104 of Subchapter G of Chapter 3 of Title 48 of
13 the Rules of the City of New York. The proposed
14 rule repeal was published in the City Record on
15 August 31, 2018, and a public hearing was held on
16 October 3, 2018. No one attended or testified at
17 the public hearing concerning this rule repeal
18 and we didn't receive any written comments.

19 This is the penalty schedule for
20 violations of the Community Right-to-Know Law,
21 codified in Chapter 7 of Title 24 of the
22 Administrative Code of the City of New York and
23 the Department of Environmental Protection is
24 promulgating a related rule, adding a very

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2 similar Community Right-to-Know penalty schedule
3 to Chapter 41 of Title 15 of the Rules of the
4 City of New York.

5 Any questions?

6 MS. RICHARD: Okay, motion to approve?
7 And vote in favor? One, two, three, four --
8 okay, seven in favor. And those opposing?
9 That's two.

10 MS. SALLOUM: Thank you.

11 MS. RICHARD: Alright. So we now have
12 DEP's request for cease and desist orders.

13 RUSSELL PECUNIES, ESQ., DEPARTMENT OF
14 ENVIRONMENTAL PROTECTION: Alright, thank you.
15 Hi, good morning. My name is Russell Pecunies.
16 I'm with the Bureau of Legal Affairs at the
17 Department of Environmental Protection. So the
18 first thing for this meeting is that, at the last
19 meeting, DEP made a request for a cease and
20 desist order pursuant to the Sewer Code, which
21 was for ESG Grand Corp., which I believe was a
22 grease trap related series of violations. The
23 Board approved the request for a cease and desist
24 order. Between the Board's approving the request

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2 for the cease and desist order and the issuance
3 of the order, before the order could be issued,
4 the respondent came into compliance. So the
5 order did not have to be issued and was not
6 issued. And although that's never happened
7 before, I understand that the procedure would be
8 for us to now ask the Board to approve the
9 withdrawal of that cease and desist order
10 request.

11 MS. RICHARD: Okay. So the motion is
12 made. Those voting in favor? Okay, that's,
13 that's eight. Alright, the motion carries.

14 MS. PECUNIES: Secondly, I would like to
15 just update the Board with regard to a matter
16 that's been discussed at a couple of the recent
17 meetings relating to a shutoff, water shutoff
18 request for a hotel in Brooklyn.

19 So there have been a number of meetings
20 with Commissioner Sapienza and with staff from
21 the Bureau of Water and Sewer Operations. What
22 we have decided to do is to identify a number of
23 purely commercial locations that have defaulted
24 on cease and desist orders for not installing

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2 backflow devices.

3 The cease and desist order provides
4 that, if the respondent defaults as to the
5 hearing, that the Department can terminate the
6 water service without any further process or
7 approval. And we are identifying at, as a, as a
8 test group, sort of -- the guinea pigs, as it
9 were -- ten locations that are high hazard,
10 purely commercial locations that have defaulted
11 on their cease and desist orders, and we're going
12 to do the water shutoffs at those ten locations
13 first as sort of a test group. There are then
14 several dozen additional commercial locations
15 that are in default as to cease and desist orders
16 and we're going to work our way through that
17 list. We will serve warning notices, we will
18 send a crew to mark the sidewalk, and if none of
19 that gets them to, to comply, we will then
20 proceed, since these are purely commercial
21 locations, to terminate the water service.

22 The Commissioner appreciates and
23 understands that we really, as a practical
24 matter, cannot terminate the water to residential

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2 locations, which this hotel that we have been
3 discussing, although it is officially a hotel, is
4 being considered a residential location. The
5 plan currently is to address those by the
6 issuance of repeated summonses and the imposition
7 of repeated fines until they come into
8 compliance, since we can't really go forward with
9 water shutoffs on those locations.

10 So that's the update on the enforcement
11 of the backflow cease and desist orders. So if
12 anyone has any questions about, about that?

13 So, for this meeting, the Department has
14 59 requests for new cease and desist orders for
15 failure to comply with backflow prevention
16 requirements. In each of these cases, the
17 property owner has been ordered to comply, has
18 failed to do so, has received a summons for
19 failing to do so. That summons has been
20 adjudicated in violation or they have defaulted
21 on it. Each of these respondents is still not in
22 compliance. And so, in each of these cases, the
23 Department is asking the Board to issue an order
24 to cease and desist.

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2 MS. RICHARD: Okay, is there a motion to
3 approve? Okay. And votes in favor? Okay.

4 ELIZABETH KNAUER, ESQ., APPOINTED
5 MEMBER: These are -- and it's just for backflow,
6 right?

7 MR. PECUNIES: This is backflow.

8 MS. RICHARD: Okay, all in favor, one
9 abstain.

10 MR. PECUNIES: And, then --

11 MS. SALLOUM: Did you abstain?

12 MS. RICHARD: Do you --

13 MR. PECUNIES: No.

14 MS. RICHARD: Okay.

15 MR. PECUNIES: Alright. And, then, we
16 have three requests for cease and desist orders
17 pursuant to the Noise Code.

18 The first one is G&L Restaurant, LLC,
19 located at 21 West 8th Street in Manhattan. This
20 establishment has been cited on three occasions
21 this year for excessive noise from its kitchen
22 exhaust. And based on the repeated summonses and
23 continuing failure to comply, the Department is
24 asking the Board to issue an order to cease and

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2 desist.

3 MS. KNAUER: I, I have, I have a
4 question.

5 MR. PECUNIES: Mm-hmm?

6 MS. KNAUER: I, when I was -- that one
7 and the third one, is there some relationship
8 between those? Because --

9 MR. PECUNIES: Which? Between this one
10 and --

11 MS. KNAUER: That one -- I'm, I'm sorry
12 that I didn't print them out, but the one that
13 you just referred to and the third one, it, it,
14 it almost seemed like it was the same.

15 MR. PECUNIES: The two, between two of
16 the three noise ones?

17 MS. KNAUER: Yeah.

18 MR. PECUNIES: And the other noise one
19 is 62 West 9th Street.

20 MS. KNAUER: There are three noise
21 right, exactly. Those are the two --

22 MR. PECUNIES: So, this is West 8th and
23 the other one is West 9th.

24 MS. KNAUER: Right. But it, it almost

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2 seemed, and it -- but they were the same date,
3 the last, you know, the, the most, the most
4 recent violation. It almost seemed like it was
5 the same complainant and they were, they saw two
6 potential sources, both of which had been issued
7 violations before. So I, I'm, you know, making a
8 --

9 MR. PECUNIES: One of them is an
10 establishment, based on their liquor license,
11 that's called Loring Place. And the other one --

12 MS. KNAUER: No, no, the, the
13 establishments were different.

14 MR. PECUNIES: Yeah.

15 MS. KNAUER: But, but what I'm asking
16 about was, were they in the same apartment and
17 they saw, the same complaining, complainant's
18 apartment and they saw two potential noise
19 sources, one on 8th Street and one on 9th Street?

20 MR. PECUNIES: Mm-hmm.

21 MS. KNAUER: Do you see what I'm saying?
22 Because it was the same day and the, and these --
23 I didn't Google Map the locations, but I, I guess
24 my question is, do -- are we sure that this isn't

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2 a case of it's either one or the other? But, I
3 mean --

4 MR. PECUNIES: Well, I mean, that could
5 have been a defense that they raised at hearings
6 if they felt that there was some other --

7 MS. KNAUER: But they wouldn't know.
8 How would they know that somebody else was issued
9 a violation?

10 MR. PECUNIES: No, but people come in
11 all the time and say that, that, that it's not my
12 kitchen --

13 MS. KNAUER: But, how would they --

14 MR. PECUNIES: -- exhaust, it's the
15 restaurant across the street.

16 AMY SLIFKA, ESQ., DEPUTY

17 COMMISSIONER/HEARINGS DIVISION, OATH: Right.

18 MS. KNAUER: But this isn't across the
19 street. This is on, this is on the block behind.
20 So I don't know that -- I'm, I just, I feel like
21 it's one thing that --

22 MS. SLIFKA: Yeah, but I think so --
23 Russ, correct me if I'm wrong. They turn off the
24 one, they turn off the -- don't they turn off the

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2 exhaust, get the ambient and then turn it back
3 on?

4 MR. PECUNIES: No, well -- yeah, the way
5 that they take the readings --

6 MS. SLIFKA: Right.

7 MR. PECUNIES: -- is, is that the, the
8 equipment that, at this specific establishment,
9 is turned on and off. So the, the --

10 MS. SLIFKA: That --

11 MR. PECUNIES: -- the equipment at all
12 other establishments is part of the ambient.

13 MS. SLIFKA: Right.

14 MS. KNAUER: So it's just a, a
15 coincidence?

16 MR. PECUNIES: That these are two so
17 close together?

18 MS. KAUER: On the same day.

19 MR. PECUNIES: I suppose.

20 MS. SLIFKA: But if they take the
21 ambient reading with the one on and it's still
22 above the allowable level with the one off, then
23 it's still, you know --

24 [CROSSTALK]

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2 MR. PECUNIES: I mean, none, none of
3 these inspections were done on the same dates.
4 They, there were three for West 8th Street and
5 three for West 9th Street and they were done on -
6 -

7 MS. KNAUER: Okay.

8 MR. PECUNIES: -- six different dates.

9 MS. KNAUER: Alright, I'm sorry. I was
10 wrong. They weren't the same day.

11 MS. SLIFKA: Yeah.

12 MS. KNAUER: I thought there were two
13 that, I thought they were the same date.

14 MS. SLIFKA: Plus, the ambient level
15 would show.

16 MS. KNAUER: Okay, I'm sorry. So it's
17 just a, it's just a coincidence that they were so
18 close together.

19 MR. PECUNIES: That they're -- right.

20 MS. KNAUER: Okay.

21 MR. PECUNIES: So close to each other,
22 yeah.

23 MS. KNAUER: Okay, okay. Sorry about
24 that.

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2 MR. PECUNIES: That's okay.

3 MS. RICHARD: Alright, so --

4 MR. PECUNIES: So have we voted on the
5 first one yet, or?

6 MS. RICHARD: No, we have not voted.

7 MR. PECUNIES: Okay.

8 MS. RICHARD: Is there a motion? Okay.
9 In favor? Alright, so we've got the whole thing.

10 MR. PECUNIES: And the second one is at
11 62 West 9th Street, which is VL62 West 9th
12 Street, LLC, doing business as, I believe, Casa
13 Apicii. And this one has also been cited for
14 excessive noise from the kitchen exhaust on three
15 different occasions this year. And, again due to
16 the repeated violations and continuing failure to
17 come into compliance, DEP is asking the Board to
18 issue an order to cease and desist.

19 MS. RICHARD: Okay, is there any
20 questions? Okay, a motion on that one. In
21 favor? Okay, we have the vote.

22 MR. PECUNIES: And the third one is for
23 35-33 36th Street Corp., located at that address
24 in Queens. This is an establishment in Long

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2 Island City that's known as Studio Square. It
3 has a large outdoor beer garden type area where
4 there are both live bands and DJs. This has been
5 the subject of many, many complaints during the
6 summer months from people in the neighborhood.
7 And although normally, we do not ask for cease
8 and desist orders for music because they can
9 basically just change the sound system, because
10 it's specific to this equipment, because of the
11 persistence of the complaints with regard to this
12 establishment, we have cited them three times.
13 Again, it's a seasonal thing, so one of them is
14 in '16, one of them is in '17 and one of them is
15 in '18. But because this location is a problem
16 every summer and they don't seem to be willing to
17 do anything to address it, the Department is
18 asking that the Board issue an order to cease and
19 desist.

20 MS. KNAUER: As a practical matter, how
21 -- now that it's not summer anymore, how will
22 that, how will that work?

23 MR. PECUNIES: You know, this is, again,
24 it, it's something that -- I mean I've, I've been

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2 involved in a couple of the hearings for this --

3 MS. KNAUER: Uh-huh.

4 MR. PECUNIES: -- and they just take the
5 position that these concerts and DJ things that
6 they have during the summer draw huge crowds.
7 And, if it's too noisy on that night, they don't
8 care. They're not going to do anything about it.
9 It's just for one night and people have to deal
10 with it. That's been their attitude at the
11 hearings that I've been in.

12 MS. KNAUER: No, but I mean if you just
13 --

14 MR. PECUNIES: No, with a situation like
15 this, it's not a mechanical problem. It can
16 always be addressed by just lowering the level --

17 MS. KNAUER: Uh-huh.

18 MR. PECUNIES: -- of the music and
19 putting a limiter on the sound system so that it
20 can't be turned up beyond a level that will be in
21 violation at the adjoining premises. But --

22 MS. KNAUER: I, I mean, I guess --

23 MR. PECUNIES: -- I mean, a- a- again,
24 it would, it -- more than likely, these events

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2 are over now for the season --

3 MS. KNAUER: Right, right.

4 MR. PECUNIES: -- and will not be, we
5 probably won't get any complaints about the place
6 until May. But, since we did issue a third
7 violation in the beginning of September, which is
8 still pending, and, again, since their history
9 is, is that they have not been willing to do
10 anything to address this, the, they, they felt
11 that we should ask, at this point, for a cease
12 and desist order to at least get them to come in
13 and, and tell a hearing officer what they're
14 going to do about this for next season.

15 MS. SLIFKA: Okay, okay.

16 MS. RICHARD: Okay. Any other
17 questions? Okay, motion to approve? Alright.
18 We have unanimous votes in favor.

19 MR. PECUNIES: Okay. Thank you very
20 much.

21 MS. RICHARD: Thank you, Russ. Alright.
22 And now we have DEP's request for pre-sealing
23 reports.

24 KELLY CORSO, ESQ., ASSISTANT

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2 COMMISSIONER FOR HEARINGS DIVISION,

3 ADJUDICATIONS: Good morning. Kelly Corso,

4 Assistant Commissioner for Adjudications -

5 Hearings Division. And we have 16 pre-sealing

6 reports today for the Board. They all involved

7 backflow cases. And, in 15 of them, the hearing

8 officers are recommending no sealing or other

9 action based on the compliance that the

10 respondents have presented at the hearings. And,

11 in the remaining case, the hearing officer is

12 agreeing with the DEP's recommendation that the

13 C&D proceeding be discontinued, because DEP has

14 verified that a backflow device is no longer

15 needed at the premises. And that's all I have.

16 MS. RICHARD: Alright. And is there a

17 motion to approve? Those in favor? Okay, thank

18 you, Kelly. Alright. So is there a motion to go

19 into Executive Session to discuss the judicial

20 report? Okay, motion carried.

21 [OFF THE RECORD]

22 [ON THE RECORD]

23 MS. RICHARD: Alright. So, in addition

24 to the judicial review that was discussed in

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2 Executive Session, I had posed the question of
3 panel composition since, because we have three
4 appointed members currently on the Board and the,
5 over the last while, the number of cases that are
6 being reviewed by the panels have increased
7 significantly and, therefore, the workload placed
8 on the appointed members, who are two to each
9 panel, has increased substantially. We were
10 interested in posing the question, at least the
11 Chair was, posing the question of whether or not
12 the, the members of the Board were interested in
13 considering a different panel composition. And
14 the one proposal that we put before the Board is
15 making the panel one appointed member with one ex
16 officio member.

17 And, so, the question was whether or not
18 the appointed members, in particular, would be
19 interested in that, in doing that in, on a
20 temporary basis. And so, as a result of that
21 discussion, which basically was focused on Ms.
22 Knauer and Mr. Swann, because it really is up to
23 them as to whether or not they think it would be
24 helpful to them.

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2 And, so, the impression is that, that
3 was favorable toward them. Although I want to be
4 clear that there is no requirement for anyone to
5 vote on anything today, because we didn't put
6 this on the agenda formally. But it's my
7 impression that, because of the number of panels
8 that are pending before our next meeting, which
9 would be December, and the caseload expected,
10 that the appointed members, in particular, may be
11 interested in voting in favor of a temporary
12 recomposition. So I will leave that to Ms.
13 Knauer and Mr. Swann to comment.

14 MS. KNAUER: I'll, I'll make the motion
15 to vote on having a temporary composition of two
16 panel members.

17 MS. RICHARD: One appointed and one ex
18 officio?

19 MS. KNAUER: Right. At, at least until
20 the next meeting. And if Tom Shpetner is here
21 then, if he has --maybe you know, we can put it
22 on the agenda for further discussion --

23 MS. RICHARD: Yes.

24 MS. KNAUER: -- for the next meeting.

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2 MS. RICHARD: Sure.

3 MS. KNAUER: But I would, I would make a
4 motion to vote on it for at least for the, for
5 this period of time, that that be the --

6 MS. RICHARD: Okay.

7 MS. KNAUER: -- protocol.

8 MS. RICHARD: Alright, any questions,
9 anyone? Okay.

10 MR. GREGORY: Jo- --

11 MS. RICHARD: -- so there's a motion.
12 Yeah?

13 MR. GREGORY: Alright. Joseph Gregory
14 for the Fire Department. So, I just want to make
15 sure that the temporary period is from now until
16 the next Board meeting?

17 MS. RICHARD: Until the next Board
18 meeting and we'll put it on the agenda again.

19 MR. GREGORY: Okay.

20 MS. RICHARD: Okay? Any other comments?
21 Okay. So the motion, then, is posed to
22 temporarily change the composition as described.
23 Those members in favor? Okay. Any opposed? No
24 opposing. Alright, thank you very much. I want

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2 to, then, confirm. We talked about a December 13
3 date for the next meeting. That'll put us in
4 advance of the holiday, holidays enough so that
5 it doesn't interfere. Is that still good for
6 everyone?

7 MS.KNAUER: Yes.

8 MS. RICHARD: Okay.

9 MR.MARTINEZ: I have a question as far
10 as process. To get into this building, we were
11 told that passes will be preprinted. They never
12 are. So, I mean, is there anything can be done
13 about that?

14 MS. RICHARD: I will ask that question.

15 PETER SCHULMAN, ESQ., ASSISTANT DIRECTOR
16 FOR APPEALS, OATH: Which entrance did you try?

17 MS. KNAUER: The one that we are told to
18 do.

19 [CROSSTALK]

20 MS. RICHARD: Okay.

21 MADELYNN LIQUORI, ESQ., DEPARTMENT OF
22 SANITATION: Well, I got one with an old picture,
23 so I don't know if it was preprinted or if they
24 printed it then.

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2 SHAMONDA GRAHAM, DEPARTMENT OF

3 BUILDINGS: They printed it today.

4 MS. LIGUORI: Oh, they did print it
5 today?

6 MS.GRAHAM: I have the old picture.

7 MS. LIQUORI: Because -- okay. Because
8 I was like, I'm not wearing this today.

9 MS.GRAHAM: But it's faster. It was
10 faster.

11 MS.LIQUORI: Yeah, yeah.

12 MS. RICHARD: Alright. Alright, so I'll
13 -- we will inquire. We also took a vote at the
14 last meeting -- or you guys did, I wasn't here --
15 on the Rule 3-15 of the Procedural Rules
16 regarding the superseding appeals.

17 MS. KNAUER: Oh, right, yeah.

18 MS. RICHARD: Right? We wound up having
19 subsequent discussions about the redraft and we
20 came up with another proposal. Again, we didn't
21 complete it. It's sufficiently advanced. But we
22 do have copies of the memo and we'll put it on
23 the agenda for the December meeting. We'll give
24 you copies of our, the memo that we've drafted.

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MS.KNAUER: Okay.

MS. RICHARD: Alrighty? Alright,
anything else that anybody else would like to
raise? Alright, thank you. The meeting is
closed.

(The board meeting concluded at 9:57
A.M.)

Environmental Control Board, 10/25/18

CERTIFICATE OF ACCURACY

I, Fei Deng, certify that the foregoing transcript of Board Meeting of the Environmental Control Board on October 25, 2018, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

A handwritten signature in black ink, appearing to read "Fei Deng", written over a horizontal line.

Date: November 20, 2018

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018