

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

BOARD MEETING

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

February 28, 2019

9:39 A.M. - 10:08 A.M.

February 28, 2019

MEMBERS PRESENT:

**Amy Slifka, Esq. - Deputy Commissioner/Hearings Division,  
OATH**

Joseph Gregory, Esq. - NYC Fire Department (FDNY)

**Elizabeth Knauer, Esq. - Appointed Member**

Madelynn Liguori, Esq. - Department of Sanitation (DSNY)

**Russell Pecunies, Esq. - Department of Environmental  
Protection (DEP)**

Matthew Smith, Esq. - New York City Police Department  
(NYPD)

Douglas Swann - Appointed Member

ALSO PRESENT:

**Kelly Corso, Esq. - Assistant Commissioner for Hearings  
Division Adjudications, OATH**

Nicholas Dietz, Esq. - Assistant General Counsel, OATH

Timothy Jones, Esq. - Assistant General Counsel, OATH

Susan Kassapian, Esq. - Deputy Commissioner/Appeals, OATH

Ashford Morgan - Computer Service Technician, OATH

**Tynia Richard, Esq. - Deputy Commissioner/General Counsel,  
OATH**

**Simone Salloum, Esq. - Senior Counsel, OATH**

Peter Schulman, Esq. - Asst. Director for Appeals, OATH

Frances Shine - Secretary to the Board, OATH

Olga Statz - Deputy General Counsel, OATH

Svetlana Gorysheva - Business Integrity Commission (BIC)

Richard J. Laflunt - OMB

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2 (The board meeting commenced at 9:39  
3 A.M.)

4 AMY SLIFKA, ESQ., DEPUTY  
5 COMMISSIONER/HEARINGS DIVISION, OATH: My name is  
6 Amy Slifka and we are going to start this meeting  
7 but the way we're going to start is a little  
8 backwards from what's usual. What I'd like to do  
9 is see if there is a motion to go into Executive  
10 Session right now.

11 UNIDENTIFIED FEMALE 1: Motion.

12 MS. SLIFKA: Good. And who approves?  
13 All approve. Okay, and myself. Okay. So we're  
14 going to go into Executive Session to start, so  
15 Fran, if -- whoever is not part of the OATH  
16 Board, please step out for a minute. Okay.

17 [OFF THE RECORD]

18 [ON THE RECORD]

19  
20 MS. SLIFKA: Okay. We're still waiting  
21 for Russ, so I guess we'll take a brief recess at  
22 this point in time.

23 [OFF THE RECORD]

24 [ON THE RECORD]

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2 MS. SLIFKA: We are now in regular  
3 session. We were waiting for one additional  
4 member, Russ Pecunies, who's now here. So we're  
5 going to get started with the agenda. Okay. So,  
6 to begin with, is there a motion to adopt the  
7 minutes for the December, from the December 13th  
8 meeting? Okay. Who approves? Okay. Everyone  
9 approves. Okay, all approve. Very good. Okay.  
10 So now we have Simone Salloum, who's going to  
11 introduce the Final Rule amending sections 3-15  
12 and 3-16 of OATH's Rules. Okay?

13 SIMONE SALLOUM, ESQ., SENIOR COUNSEL,  
14 OATH: Okay, good morning, everyone. Like Amy  
15 said, this is the Final Rule amending Sections 3-  
16 15 and 3-16 of Subchapter (a) of Chapter 3 of  
17 Title 48 of the Rules of the City of New York.  
18 These are the rules that govern the Environmental  
19 Control Board proceedings.

20 And, so we published the Proposed Rule  
21 in the City Record on January 22, 2019, and held  
22 a public hearing on February 21, 2019, and didn't  
23 receive any public comment.

24 I did circulate this document called the

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2 Comparison of Proposed Rule to Final Rule. We  
3 made a few clarifications. When the Law  
4 Department reviewed the rule, they had some  
5 suggestions they thought would improve it. And,  
6 so you can see in Section 3-15(a), which talks  
7 about the appeals decisions and when they become  
8 final determinations of the tribunal, and we had  
9 sort of cleaned up that language to make it clear  
10 when judicial review pursuant to CPLR Article 78  
11 can, can begin. And so the only change we made  
12 from the Proposed Rule to the Final Rule is  
13 including the word "appeals decisions," just to  
14 make it very clear that we were talking about  
15 appeals decisions and not hearing officer  
16 decisions, although you could imply that by the  
17 fact that you're talking about the Appeals Unit,  
18 but we just, you know, for, for the layperson,  
19 wanted to make it very, very clear.

20 And then, in Subsection (b) of 3-15,  
21 this is just sort of cleanup. We added an "s" to  
22 appeals decisions just to be consistent with how  
23 we've been calling the superseding appeals  
24 decisions elsewhere.

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2 And then, in 3-16(a), the Law Department  
3 asked that we be more specific about what  
4 decisions we were talking about as well. And,  
5 so, we added some language that says if the Board  
6 has not issued an appeals decision within 180  
7 days from the filing of the appeal, appeal, which  
8 was the timeframe that, that existed in the rule  
9 already and that was from the Charter. We added,  
10 "or if the Board has not issued a superseding  
11 appeals decision," again, within 180 days from  
12 the request of the superseding appeal, that the  
13 respondent may, at that time, seek judicial  
14 review of the recommended decision.

15 So we just wanted to clarify, since,  
16 previously, the rule only talked about final  
17 decisions generally and didn't distinguish  
18 between appeals decisions and superseding appeals  
19 decisions. That, that's why we added that  
20 additional language.

21 Does anyone have any questions?

22 MS. SLIFKA: Okay. So do we have a  
23 motion to adopt the new rules? Okay. And how  
24 many for? It looks, with myself, it's unanimous.

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2 MS. SALLOUM: Great.

3 MS. SLIFKA: Okay, very good.

4 MS. SALLOUM: Thank you.

5 MS. SLIFKA: Okay. Okay, so we're just  
6 going to discuss further the panel composition  
7 right now. Now, I know we put, we put off a vote  
8 on the, on changing the composition because Doug  
9 wasn't here last, at the last meeting.

10 MS. ELIZABETH KNAUER, ESQ., APPOINTED  
11 MEMBER: It was Tom.

12 MS. SLIFKA: Tom.

13 MS. KNAUER: No, it was Tom wasn't here.

14 MS. SLIFKA: I'm sorry, Tom. Tom -- I'm  
15 sorry. I'm looking at Doug. So Tom wasn't here  
16 at the last meeting. Do you want to put it off  
17 again, continue with the panels as it is and put  
18 off a vote about changing it going forward?

19 MS. KNAUER: I guess the, the same  
20 reasoning applies, so.

21 MS. SLIFKA: Right. So we'll, we'll  
22 continue --

23 MS. KNAUER: Continue --

24 MS. SLIFKA: -- with the panels as they



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2 are, with having two citizen members as opposed  
3 to three, until the next Board meeting and,  
4 hopefully, we'll -- Tom will be here and we'll be  
5 able to take a vote on whether it will be a  
6 forever after change of the panel.

7 MS. SALLOUM: We've been voting on it.  
8 This is Simone Salloum.

9 MS. SLIFKA: Okay.

10 MS. SALLOUM: And we've been voting on  
11 it each time --

12 MS. SLIFKA: On, on continuing it the  
13 way it is.

14 MS. SALLOUM: -- to, to the next Board  
15 meeting.

16 MS. SLIFKA: Okay.

17 MS. SALLOUM: So we may want to just do  
18 that again --

19 MS. SLIFKA: Okay.

20 MS. SALLOUM: -- for consistency.

21 MS. SLIFKA: Very good. Okay. So do we  
22 have a motion just to continue the way the panel  
23 is with two citizen members -- what?

24 MS. KNAUER: It's one citizen member.

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2 MS. SALLOUM: I think it's one citizen  
3 member.

4 MS. SLIFKA: Oh, one citi-, I'm sorry.  
5 Right.

6 MS. KNAUER: Right.

7 MS. SLIFKA: Sorry. One citizen member.  
8 So I'm not paying attention. One citizen member  
9 and one ex officio until the next Board meeting.  
10 Do we have a motion for that? Okay. And can all  
11 for, everybody for? Okay. And myself included,  
12 so that's unanimous. Okay, thank you. Okay.  
13 Alright, Russ.

14 RUSSELL PECUNIES, ESQ., DEPARTMENT OF  
15 ENVIRONMENTAL PROTECTION: Alright, thank you.

16 MS. SLIFKA: Russ Pecunies is going to  
17 be presented.

18 MR. PECUNIES: Alright. Russell  
19 Pecunies with the Bureau of Legal Affairs at the  
20 Department of Environmental Protection. So, for  
21 this Board meeting, first, DEP's Bureau of  
22 Wastewater Treatment has a request for a cease  
23 and desist order for 691 Coney Island Avenue in  
24 Brooklyn. The Respondent is Shakeel Khokhar.

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2 This began in August of 2017, when a DEP  
3 inspector observed an overloaded grease  
4 interceptor and, accordingly, issued a summons.  
5 In October, a Commissioner's order was issued to  
6 the respondent to install a variety of  
7 appropriately sized grease interceptors at the  
8 establishment and once again observed a grossly  
9 overloaded grease interceptor.

10 Inspections in November, January and --  
11 in November and January again resulted in  
12 observations of grossly overloaded grease  
13 interceptors and failure to comply with the order  
14 that had been issued in October.

15 And, finally, due to the fact that  
16 respondent had failed to appear for any of the  
17 hearings on the summonses, as well as a mandatory  
18 compliance meeting, the Bureau decided that it  
19 was time to ask the Board to approve a cease and  
20 desist order. So, therefore, at this point, the  
21 Bureau is requesting that, if the respondent does  
22 not -- requesting the issuance of a cease and  
23 desist order, and, if they don't comply,  
24 termination of the water and sewer service to the

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2 premises.

3 MS. SLIFKA: Okay. So is there a motion  
4 to approve? Okay. And how many for? Okay, it's  
5 unanimous.

6 MR. PECUNIES: Okay? We also have 45  
7 requests for cease and desist orders for failure  
8 to comply with Commissioner's orders to install  
9 backflow prevention devices. In each of these  
10 cases, a DEP inspector has determined that the  
11 premises requires backflow prevention devices.  
12 The building owner has been issued an order to  
13 install them. After failure to comply with that  
14 order, a summons has been issued and adjudicated  
15 in violation and there is still no compliance at  
16 each of these 45 premises. So, in each of these  
17 cases, DEP is requesting that the Board issue an  
18 order to cease and desist.

19 MS. SLIFKA: Okay. Is there a motion to  
20 approve? Okay. And how many for? Including  
21 myself, that's unanimous.

22 MR. PECUNIES: And, for Noise this  
23 meeting, we have almost a year's worth of  
24 requests. So we have eight requests. I normally

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2 go through these individually, so I'm perfectly  
3 okay with doing that. But there are eight of  
4 them, so we could vote on them individually or,  
5 if you wanted to vote on them collectively, it's  
6 -- I could just quickly go through each one of  
7 them and --

8 MS. SLIFKA: Alright, let's see if we  
9 can vote on them collectively.

10 MR. PECUNIES: Okay.

11 MS. SLIFKA: Alright.

12 MR. PECUNIES: Alright. So the first  
13 one that I have is for 516 Nostrand Avenue in  
14 Brooklyn. The respondent is Pattie Hut B,  
15 Incorporated, and they have been cited three  
16 times, most recently in December, for noise from  
17 their kitchen exhaust. And due to the continuing  
18 failure to comply, the Department is asking the  
19 Board to issue an order to cease and desist.

20 MS. SLIFKA: Any questions on that? No.  
21 Okay, let's go to the next one. We're going to  
22 try to do them collectively.

23 MR. PECUNIES: Okay, we'll do it --  
24 okay. The next one is Leske's Bakery at 7612 5th

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2 Avenue in Brooklyn. This one is for noise from  
3 refrigeration units. They've been cited three  
4 times, most recently in January, and are still  
5 not in compliance.

6 MS. SLIFKA: Any questions? No. Okay.

7 MR. PECUNIES: Okay. The next one is  
8 SESSION New York at 98 South 4th Street in  
9 Brooklyn. This one is for excessive noise from  
10 the sound system, and they have been cited three  
11 times, most recently in December. And based on a  
12 continuing failure to comply, the Department is  
13 requesting an order to cease and desist.

14 MS. SLIFKA: Questions? Nope.

15 MR. PECUNIES: Okay. The next one is  
16 Oggi Produce, Inc., at 66-64 Fresh Pond Road in  
17 Queens. This one is for refrigeration units, and  
18 they have been cited, again, three times and are  
19 still not complying. So, again, the Department  
20 is requesting an order to cease and desist.

21 MS. SLIFKA: Questions? No. Okay.

22 MR. PECUNIES: The next one is VC Chef,  
23 LLC, at 306 West 13th Street in Manhattan. This  
24 one is for noise from kitchen exhaust, and they

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2 have been cited, again, three times, most  
3 recently in January, and are still not complying.

4 MS. SLIFKA: Questions? No. Okay.

5 MR. PECUNIES: Next, we have Golda Rivka  
6 2, LLC. The premises is 210 West 251st Street in  
7 the Bronx. This is a rather unusual one -- we  
8 actually have two of these -- because the noise  
9 is from a water pump. I don't know that we've  
10 ever had a cease and desist on noise from a water  
11 pump before, but this, this time around, we have  
12 two. They've been cited for excessive noise from  
13 this water pump, again, three times. Still not  
14 in compliance, and requesting an order to cease  
15 and desist.

16 MS. SLIFKA: Questions? No.

17 MR. PECUNIES: The next --

18 MS. KNAUER: Just, I would remark,  
19 likewise, that in my tenure on this Board, I  
20 don't remember --

21 MR. PECUNIES: What's that?

22 MS. KNAUER: I don't, in my tenure on  
23 this Board, I don't remember ever --

24 MS. SLIFKA: Having one for a water

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2 pump.

3 MS. KNAUER: -- having one for a, a  
4 water pump.

5 MR. PECUNIES: A water pump is, it's the  
6 first time I remember ever having excessive noise  
7 from a water pump. But I guess if they're not  
8 being maintained correctly or if they're old,  
9 they can be noisy, so.

10 MS. KNAUER: So if this, if this, if  
11 this, if they don't comply, would this result in  
12 the cessation of water service?

13 MR. PECUNIES: You know, I don't know  
14 what, precisely, what the water pumps at these --

15 MS. KNAUER: Uh-huh.

16 MR. PECUNIES: -- two locations are used  
17 for. It says -- I'm looking at one of the  
18 summonses for the next one at 3515 Henry Hudson  
19 Parkway. It says that the noise is coming from  
20 one cold water pump. So I'm not sure what the  
21 effect of turning off the cold water pump would  
22 be.

23 MS. KNAUER: Alright. I was just  
24 curious.



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2 MS. SLIFKA: Okay.

3 MR. PECUNIES: Yeah.

4 MS. SLIFKA: That's it?

5 MR. PECUNIES: No, two more.

6 MS. SLIFKA: No, one more, two more. I  
7 lost count.

8 MR. PECUNIES: So the next one, which is  
9 the other one with the water pump, is 3515 Owners  
10 Corp. at 3515 Henry Hudson Parkway in the Bronx.  
11 Again, three violations have been issued, with  
12 the most recent one in January, and they're still  
13 not in compliance.

14 And the last one, the respondent is  
15 called Part of the Solution. The premises is  
16 2759 Webster Avenue in the Bronx. This is a  
17 facility that provides services to homeless and  
18 indigent people, and they have a food kitchen and  
19 food preparation facility at the location. So  
20 there is a kitchen exhaust, and they have had  
21 noise from the kitchen exhaust on three  
22 occasions, again, most recently in January, and  
23 are still not in compliance.

24 MS. SLIFKA: Okay. Any questions on any

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2 of these eight ones that Russ just recited? No  
3 questions? Okay. So we're going to take -- is  
4 there a motion to vote on all eight requests for  
5 a C&D? Okay. And how many for? Myself  
6 included, that seems unanimous. Okay. Thank  
7 you.

8 MR. PECUNIES: Alright. Thank you very  
9 much.

10 MS. SLIFKA: Okay. And now we have  
11 Kelly Corso, who's going to give the pre-sealing  
12 reports.

13 KELLY CORSO, ESQ., ASSISTANT  
14 COMMISSIONER FOR HEARINGS DIVISION ADJUDICATIONS,  
15 OATH: Good morning. Kelly Corso, Assistant  
16 Commissioner for Hearings Division. We have 26  
17 pre-sealing reports for the Board today. All of  
18 them have to do with backflow devices. Twenty-  
19 four of them, the hearing officers have  
20 recommended that there be no further action  
21 because the respondents presented evidence of  
22 compliance at the hearings.

23 In one of the additional ones, the  
24 hearing officer recommended that the C&D

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2 proceedings be discontinued because the DEP has  
3 determined that the respondent has complied.

4 In the final one, it's, there is a  
5 recommendation for a water shut-off. The  
6 Respondent is Placido Rodriguez and the premises  
7 is Bailey Laundry, and it's at 3114 Bailey Avenue  
8 in the Bronx.

9 This facility was the subject of a  
10 Commissioner's order back in 2009, and the  
11 respondent did not comply with the order. A  
12 summons was issued. Respondent did not appear at  
13 the hearing. And, in November 2012, the Board  
14 issued a cease and desist order.

15 There have been hearings, there have  
16 been eight hearings on this matter from 2013  
17 until early this year and the case has been  
18 adjourned seven times for the respondent to bring  
19 in some kind of evidence to show that it's in  
20 compliance or attempting to comply, and there has  
21 been no credible evidence of, of compliance.

22 So the hearing officer at the most  
23 recent hearing on February 12th has recommended  
24 that the water be shut off. At each hearing, the

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2 respondent or their rep was warned that this was  
3 a possibility and, to date, they still have not  
4 come into compliance.

5 MS. SLIFKA: Any questions?

6 MS. KNAUER: Well, the usual question.  
7 Is this just a commercial premises?

8 MS. CORSO: It, yes.

9 MR. PECUNIES: Yes, this, this is --

10 MS. KNAUER: This is the laundry?

11 MR. PECUNIES: -- one of the first ones  
12 that we are going -- we're going back through all  
13 of the old files for the premises that are not in  
14 compliance.

15 MS. KNAUER: Mm-hmm.

16 MR. PECUNIES: And the ones that they're  
17 selecting to serve with these water shut-off  
18 warning notices, that they have to call OATH  
19 immediately, get back in front of the hearing  
20 officer and show that they're in compliance.  
21 They're being selected specifically after  
22 inspections because they're purely commercial, no  
23 residential, and they're doing laundromats and  
24 dry cleaners right now. So this is just a

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2 laundromat and nothing else.

3 MS. SLIFKA: Okay. Let's take these --  
4 I first want to deal with the 24. Is there a  
5 motion to approve on the 24 where no sealing or  
6 other action is recommended? Okay. And, and how  
7 many approve? All approve? Okay, very good.  
8 Thank you. Now, the one backflow where the  
9 hearing officer is recommending discontinuance,  
10 do we have a motion to vote on that, to approve  
11 that? Okay. And how many approve? All approve,  
12 including myself. And now, on the last one that  
13 you, Kelly talked about that has to do with the  
14 water shut-off, do we have a motion to approve  
15 that? Okay. And how many for? And it's  
16 unanimous with myself. Okay. Thank you, Kelly.

17 MS. CORSO: Yes.

18 MS. SLIFKA: Okay, is there anything  
19 else you wanted to say? Anything about --

20 TYNIA RICHARD, ESQ., DEPUTY

21 COMMISSIONER/GENERAL COUNSEL, OATH: There was  
22 just one --

23 MS. SLIFKA: Tynia Richard, for the  
24 record.

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2 MS. RICHARD: Thank you. There is just  
3 one mention, because we discussed the fact that  
4 we need more panel members and asked for you guys  
5 to send recommendations. Those have been  
6 received and been passed on to the Appointments  
7 Committee, and they are in the process of  
8 reviewing three of those applicants.

9 MS. KNAUER: Oh, great.

10 MS. RICHARD: Yeah. So we hope to, you  
11 know, have some progress by the next meeting.

12 MS. SLIFKA: Which would be good, so.  
13 Okay. Is there a motion to adjourn? Alright,  
14 thank you, everyone. Thank you for your  
15 patience, and this meeting is adjourned.

16 (The board meeting concluded at 10:08  
17 A.M.)

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19  
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21  
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Environmental Control Board, 2/28/2019

CERTIFICATE OF ACCURACY

I, Gregory Woltman, certify that the foregoing transcript of Board Meeting of the Environmental Control Board on February 28, 2019, 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 that reads "Gregory J. Woltman". The signature is written in black ink and is positioned above a solid horizontal line.

Date: March 27, 2019

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