

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

August 23, 2018

9:29 a.m. to 10:10 a.m.

August 23, 2018

MEMBERS PRESENT:

Shamonda Graham - Department of Buildings (DOB)  
Elizabeth Knauer, Esq. - Appointed Member  
Madelyn Liguori, Esq. - Department of Sanitation (DSNY)  
Jorge Martinez, Esq. - Department of Health & Mental  
Hygiene (DOHMH)  
**Russell Pecunies, Esq. - Department of Environmental  
Protection (DEP)**  
Tom Shpetner, Esq. - Appointed Member  
Matthew Smith, Esq. - New York City Police Department  
(NYPD)  
Abayomi Whint, Esq. - NYC Fire Department (FDNY)

ALSO PRESENT:

**Kelly Corso, Esq. - Assistant Commissioner for Hearings**  
Division Adjudications, OATH  
Svetlana Goryacheva - Business Integrity Commission (BIC)  
Diana Haines, Esq. - Senior Counsel for Legislative  
Affairs, OATH  
Timothy Jones, Esq. - Assistant General Counsel, OATH  
Susan Kassapian, Esq. - Deputy Commissioner/Appeals, OATH  
Ashford Morgan - Computer Service Technician, 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

August 23, 2018

INDEX

	Page
Amy Slifka	4
Simone Salloum	4
Russell Pecunies	7
Madelyn Liguori	13
Jorge Martinez	15
Elizabeth Knauer	19
Shamonda Graham	40
Kelly Corso	42

1 August 23, 2018

2 (The board meeting commenced at 9:29  
3 a.m.)

4 MS. AMY SLIFKA, ESQ., DEPUTY

5 COMMISSIONER: Is there a motion to adopt the  
6 minutes from June 28th, 2018? Okay. Everybody  
7 approve? All approve?

8 MR. TOM SHPETNER, ESQ., I have to  
9 abstain. I wasn't here.

10 MS. SLIFKA: Okay. Okay. Very good.  
11 Thank you. One abstention and I approve. Okay.  
12 Alright. So now we're going to introduce OATH's  
13 proposed rule repealing the sewer control  
14 penalty. Simone Salloum is going to present.

15 MS. SIMONE SALLOUM, ESQ., SENIOR

16 COUNSEL: Good morning. I'm Simone Salloum,  
17 Office of General Counsel. We have a lot of  
18 rules on the agenda so I'll try to move through  
19 them fairly quickly.

20 I handed out a revised version of this  
21 rule and the next proposed rule. The only  
22 difference, really, is that we got the law  
23 certifications at the eleventh hour last night,  
24 and there were a couple of technical grammatical

1 August 23, 2018

2 amendments, so if anyone has any questions about  
3 that.

4 MR. SHPETNER: Yeah. Can I see them?

5 MS. SALLOUM: Oh, yeah, did you not get  
6 one of your --

7 MS. SLIFKA: Oh, you should have, okay.

8 ELIZABETH KNAUER, ESQ.,: They're not --  
9 they're right there.

10 MR. SHPETNER: Oh, that's this?

11 MS. SLIFKA: Yes.

12 MS. SALLOUM: Yeah.

13 MR. SHPETNER: Okay.

14 MS. KNAUER: Can you just explain to us--

15 MS. SALLOUM: Yeah.

16 MS. KNAUER: -- what the changes are?

17 MR. SHPETNER: Yeah, I don't --

18 MS. SALLOUM: Yeah. The major change,  
19 other than putting things in parenthesis and that  
20 kind of things was we added a line in the  
21 statement of basis and purpose which basically  
22 just gave a general description of what the  
23 penalty scheduled contained violations for. So,  
24 for instance, in this one we just said the

1 August 23, 2018  
2 penalty -- whoops, sorry. The penalty scheduled,  
3 like, for violations whether it be construction,  
4 regulation of public sewers, including  
5 unauthorized discharge in the public sewers. So  
6 the Mayor's Office of Operations decided it would  
7 be helpful to give people an idea of what this  
8 penalty schedule was about.

9 So this rule proposes to repeal its  
10 sewer controlled penalty schedule. It's found in  
11 Section 3-123 of Subchapter G of Chapter 3 of  
12 Title 48 of the Rules of the City of New York.  
13 It contains summonses issued by the Department of  
14 Environmental Protection for violations of  
15 Chapter 5 of Title 4 of the Administrative Code,  
16 and Chapter 19 of Title 15 of the Rules of the  
17 City of New York. And we are working with DEP  
18 who is proposing a rule adding a similar sewer  
19 control penalty schedule to their rules.

20 Russ, I don't know if you want to talk  
21 about any differences between the current sewer  
22 control penalty schedule and what DEP is  
23 proposing?

24 MR. RUSSELL PECUNIES, ESQ., DEP: Yes.

1 August 23, 2018

2 So the sewer code penalty schedule that is  
3 currently in OATH's rules is going to be changed  
4 by the addition of a number of new provisions  
5 related to the new storm water rules that are  
6 currently in the process of being promulgated.  
7 And so what we've been doing is that we've been  
8 taking our penalty schedules back from OATH as  
9 they need to be changed. And so since this  
10 penalty schedule now needs to be changed we're  
11 going to promulgate it into our rules and OATH is  
12 going to repeal it from theirs.

13 MS. SALLOUM: Does anyone have any  
14 questions?

15 MR. SHPETNER: Yeah. This is -- I think  
16 is a comment that could be applied to a number of  
17 these initiatives, if you wanna call them that.  
18 There's a paragraph in each of them that begins  
19 with working with the City's rulemaking agencies,  
20 and I need to discuss--, goes on to say that  
21 they're all these criteria about modifying  
22 regulatory burdens and so on. There's absolutely  
23 no information in any of these rules, any of the  
24 materials explaining what these criteria are and

1 August 23, 2018

2 how they were met.

3 So, as a blanket matter, I find these  
4 materials wanting for lack of specificity. And  
5 they certainly don't advance, you know, the  
6 notion that any kind of real substantive review  
7 has been performed. They're just like all face  
8 statements to that effect. So, you know, I  
9 think, you know, also getting these materials,  
10 you know, in one of the meeting is probably not a  
11 great procedural matter -- ma-, great way to go  
12 procedurally.

13 There's no opportunity to review them or  
14 debate them. I understand that it's probably  
15 only reducing a sentence, but I find that this is  
16 probably not the best way to be going. I, I --  
17 how do we, how do we get more information on  
18 this, this paragraph I adverted to initially?  
19 There's no -- there's -- you know, there's  
20 nothing in the record about it.

21 MS. SALLOUM: Right. I can get more  
22 information from the Mayor's Office of  
23 Operations. They did a retrospective rule review  
24 for every agency and came up with a list of rules



1 August 23, 2018

2 for each agency to, to change and some way to  
3 modify, and so --

4 MR. SHPETNER: Right. But that -- my  
5 question goes beyond that. It says that -- I'm  
6 just paraphrasing it. They all end with this  
7 conclusory sentence that says this proposed rule  
8 appeal is identified as meeting the criteria for  
9 this initiative. There's no criteria and there's  
10 no explanation of how the criteria were met.

11 MS. SALLOUM: Right. Yeah, I --

12 MR. SHPETNER: And for the meantime.

13 MS. SALLOUM: I can --

14 MR. SHPETNER: And I'm being asked to  
15 vote on something where I have no idea what  
16 actually I'm voting on.

17 MS. SALLOUM: So I can find out what the  
18 criteria was that the Mayor's Office of  
19 Operations used. It was their rule review and --

20 MR. SHPETNER: Well, I would propose we  
21 table all of these --

22 MS. SLIFKA: Oh, I don't --

23 MR. SHPETNER: -- before we --

24 MS. SLIFKA: Go ahead.

1 August 23, 2018

2 MR. SHPETNER: No, no. Please. Go  
3 right ahead.

4 MS. SLIFKA: Well, I mean, what's  
5 happening here is we're moving the rules which  
6 are basically staying the same from OATH rules  
7 into DEP rules, so nothing's --

8 MR. SHPETNER: Well, that doesn't --

9 MS. SLIFKA: -- changed.

10 MR. SHPETNER: -- say that here.

11 MS. SLIFKA: But that, but that is  
12 what's happening.

13 MR. SHPETNER: But that's not what these  
14 materials are reflecting. They, they don't say  
15 anything about that.

16 MS. SLIFKA: Actually, they do. She  
17 just read it. She just read it.

18 MR. SHPETNER: All it said --

19 MS. KNAUER: DEP is proposing a related  
20 rule adding similar --

21 MR. SHPETNER: Right.

22 MS. KNAUER: -- to the sewer control --

23 MR. SHPETNER: So where is that?

24 MS. SLIFKA: Right.

1 August 23, 2018

2 MR. SHPETNER: I, I mean, I'd like to  
3 see it and I'd like to know what the criteria  
4 are. It's, it's just a bald faced statement that  
5 I'm being asked to rubberstamp.

6 MS. SLIFKA: I'm confused because --

7 MR. SHPETNER: Don't be. It's -- right  
8 here it says --

9 MS. SLIFKA: I, I understand, but --

10 MR. SHPETNER: -- all these criteria --

11 MS. SLIFKA: -- we've been doing this --

12 MR. SHPETNER: -- that, that have been  
13 met. I know and I vote against it every time it  
14 comes up.

15 MS. SLIFKA: Alright.

16 MR. SHPETNER: Because I feel like the  
17 entire thing's a, you know --

18 MS. SLIFKA: But we have been moving the  
19 rules.

20 MR. SHPETNER: Right.

21 MS. SLIFKA: And this is the goal, and  
22 the rules are, with the exception of one  
23 additional rule they're staying the same. And --

24 MR. SHPETNER: It doesn't say that.

1 August 23, 2018

2 MS. SLIFKA: Well, Russ just spoke to  
3 that.

4 MR. SHPETNER: It just said they're  
5 substantially --

6 MS. SLIFKA: Russ just spoke to that.

7 MR. SHPETNER: That they're rolling out  
8 a rule. Isn't that what you said, Russ?

9 MR. PECUNIES: Well, we --

10 MS. SLIFKA: He --

11 MR. PECUNIES: -- we, we will be adding  
12 a new penalty is when we promulgate the penalty  
13 schedule into our rules it will be the existing  
14 schedule that OATH is repealing plus additional  
15 penalties related to the new storm water rules  
16 that are in the process of being promulgated.

17 MR. SHPETNER: Okay. That's --

18 MS. SLIFKA: And, and our --

19 MR. SHPETNER: -- probably -- that's  
20 fine, but that doesn't say that here.

21 MS. SLIFKA: But we're just voting to  
22 remove the rules from OATH's -- from, from our  
23 rules into DEP's rules. That's all -- that's  
24 what this vote is about.

1 August 23, 2018

2 MR. SHPETNER: Right.

3 MS. SLIFKA: Yes.

4 MR. SHPETNER: My initial -- my initial  
5 complaint is a very specific one that there's a  
6 discussion of these criteria but there's no  
7 explanation of how they matter and what they are.

8 MS. SLIFKA: That's the law department's  
9 language.

10 MR. SHPETNER: Okay. Well, I'm not  
11 voting on it.

12 MS. SLIFKA: I, I understand that. I  
13 understand that. I hear your motion, but --  
14 Madelyn Liguori, you wanted to say something?

15 MS. MADELYN LIGUORI, ESQ., DSNY: Yes.  
16 Russ, I -- I'm assuming the sewer -- the new  
17 sewer penalty schedule will go through CAPA so  
18 there would be ample opportunity --

19 MR. PECUNIES: Yes. The, the --

20 MS. LIGUORI: -- for the public to  
21 comment --

22 MR. PECUNIES: We -- our, our --

23 MS. SLIFKA: Correct.

24 MS. LIGUORI: -- on those --

1 August 23, 2018

2 MR. PECUNIES: The, the --

3 MS. LIGUORI: -- on that new penalty  
4 schedule.

5 MR. PECUNIES: Right. So it -- what it  
6 is, it's a simultaneous repeal and adoption of  
7 the new penalty schedule, the new penalty  
8 schedule has to be put through the CAPA process.  
9 It's -- essentially, it's a new rule. Even  
10 though most of it is the same as the existing  
11 schedule that's in OATH's rules. For us, it's a  
12 new rule. So, you know.

13 MS. LIGUORI: Okay.

14 MR. PECUNIES: Yeah.

15 MS. SLIFKA: Alright.

16 MS. LIGUORI: Making sure.

17 MS. SLIFKA: Go ahead.

18 MR. JORGE MARTINEZ, ESQ., DOHMN: Does  
19 this language need to be --

20 MS. SLIFKA: Jorge Martinez, for the --

21 MR. MARTINEZ: I'm sorry. Jorge  
22 Martinez, Department of Health. To your point,  
23 does this language need to even be here?  
24 Considering that all we're doing is you're saying

1 August 23, 2018

2 is repealing thing -- one thing and then  
3 promulgate, essentially, the same thing in most  
4 cases.

5 MS. SLIFKA: Okay.

6 MR. MARTINEZ: Each agency, you know,  
7 does his own thing, but it's basically what -- it  
8 mirrors what ECB had in its rules.

9 MS. SLIFKA: The language has been in  
10 the past --

11 MS. SALLOUM: No, wait.

12 MS. SALLOUM: Yeah.

13 MS. SLIFKA: Okay. I just wanted to  
14 confirm that. Simone's confirming --

15 MS. SALLOUM: Yeah.

16 MS. SLIFKA: -- that the language has  
17 been in the -- everything we, we vote on in the  
18 past. Yes.

19 MS. LIGUORI: Madelyn Liguori --

20 MS. SLIFKA: Yes, Madelyn Liguori?

21 MS. LIGUORI: -- Sanitation. I do all  
22 the rules for Sanitation and all of our  
23 retrospective rules have to include that  
24 paragraph.

1 August 23, 2018

2 MS. SLIFKA: So there's the answer.

3 MS. LIGUORI: So we already have  
4 included in several rules that we have  
5 promulgated that fall -- fell with under the  
6 Mayor's Office of Operations Retrospective Rules  
7 Initiative.

8 MS. SALLOUM: Thank you.

9 MS. SLIFKA: Okay. So the language has  
10 to be there.

11 MS. LIGUORI: Which really was to, like,  
12 reduce the duplication in, in, in the rules, make  
13 it simpler, more plain language. I mean, that's  
14 really what the whole intent was behind it.

15 MS. SLIFKA: Okay. Any other questions?  
16 Alright. I, I wanna take a vote. How many are  
17 for this proposal? And myself, so it's one, two,  
18 three, four, five, six, seven, including me. And  
19 abstentions? Okay. And how many are against?  
20 Two. Okay. And we move forward. Thank you.  
21 Okay. Next.

22 MS. SALLOUM: Okay. So similarly, the  
23 next rule we propose to repeal the community  
24 right to know penalty schedule. This is in



1 August 23, 2018

2 Section 3-104 of Subchapter G of Chapter 3 of  
3 Title 48 of the Rules of the City of New York,  
4 and contains penalties for a summons issued by  
5 DEP for violations of Chapter 7 of Title 24 for  
6 the Administrative Code. And DEP is similarly  
7 adding a similar community right to know penalty  
8 schedule to Chapter 41 of Title 15 of the RCNY.

9 MS. SLIFKA: Any question? Okay. Take  
10 a vote. How many is there -- a motion -- I'm  
11 sorry, supposed to ask this. There's a motion to  
12 approve. Okay. Thank you. Okay. And how many  
13 for? One, two, three, four, five, six, seven.  
14 How many against? Okay. Okay. Next one?

15 MS. SALLOUM: Okay. For something a  
16 little bit different we're proposing to amend  
17 Sections 3-15 and 3-16. Subchapter 8 of Chapter  
18 3 of Title 48 of the Rules of the City of New  
19 York. So these are the OATH ECB procedural  
20 rules, and specifically, the sections that were  
21 amending have to do with the appellate procedures  
22 that apply to the proceedings conducted pursuant  
23 to the 1049-A, the Environmental Control Board  
24 portion of the Charter.

1 August 23, 2018

2 So what we did was, basically, we added  
3 proposed language to track what's in Article 78  
4 of the CPLR which is basically that final  
5 decisions, final determinations of the Board are  
6 final determinations of the Tribunal, and that  
7 judicial review may be sought pursuant to Article  
8 78 of the New York Civil Practice Law and Rules.

9 We also just kind of rearranged the  
10 order of 3-16 for judicial review when Board  
11 decisions are delayed. It all would make more  
12 sense to talk about the serving, the filing of  
13 the Article 78 petition, and then the third  
14 condition being that the Board has not issued the  
15 final determination at the time of the filing.  
16 We just thought that was kind of more easier to  
17 read for someone who is trying to follow the  
18 steps of whether they could file an Arti-,  
19 Article 78 before the decision, the Board  
20 decisions do come out.

21 And part of the reason for the other  
22 changes about the final determination is we have  
23 had issues before when an Article 78 is filed of  
24 -- as to whether all administrative remedies had

1 August 23, 2018

2 been exhausted. So we wanted to make it really  
3 clear in the rules that, you know, when the panel  
4 issues a decision, even though it's not going to  
5 the full Board anymore that those are final  
6 decisions of the Tribunal subject to Article 78.  
7 So we just wanted to make it very clear. And  
8 we're doing this in other rules too that the  
9 administrative remedies that that's the end,  
10 basically, for the person. They should file an  
11 Article 78 at that point. Yes?

12 MS. ELIZABETH KNAUER, ESQ., MEMBER:

13 Elizabeth Knauer, Citizen Member. I've got a few  
14 comments. Is it okay if I just run through them?

15 MS. SALLOUM: Yeah.

16 MS. SLIFKA: Sure.

17 MS. KNAUER: I mean, since -- this isn't  
18 a new -- this isn't -- my first comment isn't on  
19 new text, but I figure since you're revising this  
20 anyway. In Section 3-15(a) the very first  
21 sentence. It says, "The Board will establish  
22 panels from among, among its members to review  
23 recommended decisions issued by the Appeals  
24 Unit." I would suggest changing the word issued

1 August 23, 2018

2 to prepared or --

3 MS. SLIFKA: Mm-hmm.

4 MS. KNAUER: -- because issued sounds  
5 like it's a formal --

6 MS. SALLOUM: Right.

7 MS. KNAUER: -- decision, but it's not  
8 really.

9 MS. SALLOUM: That's a good point. We  
10 have that question too come up a lot about  
11 whether the Appeals Unit decision is --

12 MS. KNAUER: Right.

13 MS. SALLOUM: -- is sort of final  
14 decision.

15 MS. KNAUER: So I would suggest changing  
16 that. And then on the -- on Section (b) -- I'm  
17 sorry. Yeah, Section (b). So I, I, I understand  
18 what the goal is here is to make it very clear  
19 about when you need to file an Article 78. I  
20 actually think that the new text in Section (b)  
21 might make it somewhat confusing because I, I  
22 think somebody could read this to suggest that if  
23 you, if you requested superseding appeal decision  
24 then that extends the time to file an Article 78,

1 August 23, 2018

2 which it shouldn't.

3 Presumably, if you want to challenge the  
4 original appeal decision you've got your four  
5 months, correct? That's the idea. You can't  
6 extend that time by requesting a superseding  
7 appeal decision?

8 MS. SALLOUM: Has that. I don't know if  
9 that's come up --

10 MR. PECUNIES: It looks like you can.

11 MS. SLIFKA: I, I -- yeah, I would  
12 suspect you can too because you have the right to  
13 do a superseding appeal so that would --

14 MS. KNAUER: Generally speaking --

15 MS. SLIFKA: Go, go ahead.

16 MS. KNAUER: -- under the general  
17 jurisprudence of Article 78 --

18 MS. SLIFKA: Uh-huh.

19 MS. KNAUER: -- requesting a re-, you  
20 know, a re-evaluation of a, of a -- what's a  
21 final agency action does not extend the statute  
22 of limitations.

23 MS. SLIFKA: Okay.

24 MS. KNAUER: So here I think this is

1 August 23, 2018

2 confusing. If, if the intent is that you wanna  
3 give somebody a second bite at the apple then --  
4 but my -- what I -- how I think it should work is  
5 that you've got your four months to challenge the  
6 appeal.

7 MS. SLIFKA: Mm-hmm. Mm-hmm. Mm-hmm.

8 MS. KNAUER: And then you request a  
9 superseding appeal decision. Really what you're  
10 challenging is the, the, the -- is the grant or  
11 denial of the, of the decision. Because what,  
12 what happens with these superseding appeals is  
13 the decision is you don't meet the criteria for a  
14 superseding decision. So it's actually a denial  
15 of the request.

16 MS. SLIFKA: I think that that's --

17 MS. KNAUER: And so that's what they  
18 could challenge.

19 MS. SLIFKA: That makes sense.

20 MS. KNAUER: But the challenge there  
21 would be much limited. It doesn't re-, much more  
22 limited. It wouldn't reopen the entire appeal  
23 for challenge. It would only op-, reopen the,  
24 the -- that, that limited discretion that the

1 August 23, 2018

2 Board has to issue a superseding appeal decision  
3 because there was some error of --

4 MS. SLIFKA: Yeah. I, I think that's --

5 MS. KNAUER: -- the law that was missed.

6 MS. SALLOUM: So are you --

7 MS. SLIFKA: I think that's a --

8 MS. KNAUER: So not so much we're  
9 committed --

10 MS. SLIFKA: -- good -- I think that's -  
11 -

12 MS. KNAUER: -- for review.

13 MS. SLIFKA: -- good point. I think  
14 you're --

15 MS. SALLOUM: So you think that we  
16 strike the, the language do you think that would  
17 --

18 MS. KNAUER: Well, I think that --

19 MS. SALLOUM: -- or put a reference  
20 back?

21 MS. KNAUER: -- you should -- I think, I  
22 think you could, you could just make it clear and  
23 say -- add a sentence that says to the effect of  
24 filing a request for a superseding appeal

1 August 23, 2018

2 decision --

3 MS. SLIFKA: Will not extend.

4 MS. KNAUER: -- will not extend your  
5 total limitations' period for seeking judicial  
6 review of the initial appeal decision. So adding  
7 a sentence to that effect to make it quite clear.

8 Also, the sentence in (b), "The  
9 superseding appeal decision will become the final  
10 determination of the Board," actually I, I  
11 believe, and, Peter, correct me if I'm wrong.  
12 But I believe when the Board set -- when the  
13 Board denies the request for the superseding  
14 appeal decision that's, that's what the decision  
15 is. It's not -- they don't issue --

16 MS. SLIFKA: A new decision.

17 MS. KNAUER: They don't always issue a  
18 new decision. They just say we're denying this  
19 request because there was no error of fact or  
20 law.

21 MS. SLIFKA: That's correct.

22 MS. KNAUER: So I would suggest saying  
23 this superseding appeal decision or a denial of a  
24 request will become a final determination of the



1 August 23, 2018

2 Board.

3 MS. SLIFKA: Yeah, I think that's a good  
4 point.

5 MS. SALLOUM: Yeah.

6 MS. SLIFKA: And so --

7 MS. SALLOUM: So we could -- we can take  
8 a vote with those changes. If everyone agrees  
9 with those changes I think we could take a vote -  
10 -

11 MS. SLIFKA: Right.

12 MS. SALLOUM: -- with the changes  
13 included.

14 MS. SLIFKA: Right. Everybody --

15 MS. SALLOUM: Do we want to read through  
16 it one more ti-, time just to make sure we all  
17 understood?

18 MS. SLIFKA: I think we're agreeing that  
19 -- and it will say --

20 MS. SALLOUM: We will change issue to  
21 prepared.

22 MS. KNAUER: For sure.

23 MS. SALLOUM: And then in (b) we will  
24 add a sentence saying that this will not extend

1 August 23, 2018

2 the time or toll, extend or toll the time.

3 MS. SLIFKA: Well, a superseding request  
4 will not extend the time to file an Article 78  
5 proceeding. Is that the language you were  
6 suggesting?

7 MS. KNAUER: I mean, this was, this was  
8 the exact language I had written.

9 MS. SLIFKA: Okay.

10 MS. KNAUER: But I don't, I don't -- I  
11 mean, I could -- doesn't have to be exactly my  
12 language. Filing of a request for a superseding  
13 appeal decision will not extend or toll the  
14 limitations' period for seeking judicial review  
15 of the initial appeal decision.

16 MS. SLIFKA: That's fine. Do you wanna  
17 send us the language? That's fine.

18 MS. KNAUER: I mean, I wrote it down  
19 here.

20 MS. SLIFKA: Okay. So if you could --  
21 we'll have it.

22 MS. KNAUER: If you can read my  
23 handwriting.

24 MS. SLIFKA: Okay.

1 August 23, 2018

2 MS. KNAUER: I can hand it to you.

3 MS. SLIFKA: Thank you.

4 MS. KNAUER: Do you want me to hand it  
5 up? Your Honor.

6 MS. SLIFKA: Oh, you'll give it --  
7 she'll get it after. Alright. So are we all,  
8 are we all in agreement to change the language?  
9 Okay. So is there a motion to take -- to vote?  
10 Okay. How many are for with the changed  
11 language? Okay. And, and myself included so it  
12 seems unanimous. Okay. Anything else? Okay.  
13 Great.

14 So let's move on to the final one.

15 MS. SALLOUM: Okay. So now we have a  
16 host of final --

17 MS. SLIFKA: Oh, it's not the final one.

18 MS. SALLOUM: -- rules. So these -- the  
19 proposals came to you, I, I believe at the last  
20 Board meeting. So the first one is the final  
21 rule repealing the general vendor penalty  
22 schedule rule in Section 3-109 of Subchapter G of  
23 Chapter 3 of Title 48 of the Rules of the City of  
24 New York. We published this in the City Record

1 August 23, 2018

2 on July 6th, 2018 and a public hearing was held  
3 on August 6th, 2018, and no one attended or  
4 testified at the public hearing.

5 So, essentially, this is the exact same  
6 rule that was presented to you at the June Board  
7 meeting. And, again, I, I know I said this in  
8 the June Board meeting, but the change to this  
9 penalty schedule that DCA did was added a -- one  
10 new violation for a continuing unlicensed general  
11 vending. And then all the rest of the penalties  
12 remain the same.

13 MS. SLIFKA: So is there a motion to  
14 take a vote on re-, the final rule repealing the  
15 general vendor. Okay. All in favor? Okay.  
16 One, two, three, four, five, six, seven,  
17 including myself. And those opposed? Two.  
18 Okay.

19 MS. SALLOUM: Okay. The next one is the  
20 final repeal of the air asbestos penalty schedule  
21 rule Section 3-101 of Subchapter G of Chapter 3,  
22 Title 48 of the Rules of the City of New York.  
23 We published this in the City Record on July 6th,  
24 2018 and a public hearing was held on August 7th,

1 August 23, 2018

2 2018. No one attended or testified so, again,  
3 this is the same, the same rule repealing the air  
4 asbestos penalty schedule. DEP, I think, is  
5 ready to promulgate their air asbestos penalty  
6 schedule and we will work to ensure that there is  
7 no lag in between the promulgation of the repeal  
8 and the promulgation of the new penalty schedule.

9 MS. SLIFKA: Okay. Is there a motion to  
10 approve, to approve? Okay. All approve? Okay.  
11 It's seven again, yes? Okay. And those against?  
12 Two. Okay.

13 MS. SALLOUM: Okay. And then final rule  
14 pro-, to repeal the public wholesale markets,  
15 fish market and other public markets penalty  
16 schedule rule in Section 3-108 of Subchapter G of  
17 Chapter 3 of Title 48 of the Rules of the City of  
18 New York. This proposed rule repeal was  
19 published in the City Record on July 6th, 2018,  
20 and the public hearing was held on August 6th,  
21 2018. No one attended. We didn't receive any  
22 public comment.

23 So, again, this is, essentially, the  
24 same rule. Identically the same, the same rule

1 August 23, 2018

2 repealing the, the markets' penalty schedules.

3 Does anyone have any questions?

4 MS. SLIFKA: Okay. Is there a motion to  
5 approve? All, all approve? Okay.

6 UNIDENTIFIED SPEAKER: Oh, wait. I'm  
7 sorry.

8 MS. SLIFKA: Okay. Okay. Okay. I'm  
9 sorry. Okay. And how many for? Okay. Seven.  
10 And how many against? Okay.

11 MS. SALLOUM: Okay. Last one is the  
12 final rule repealing the food vendor penalty  
13 schedule, the health code, and the miscellaneous  
14 food vendor violations' penalty schedule. The  
15 health code abatement penalty schedule and the  
16 public health law penalty schedule found in  
17 Sections 3-107, 110, 112, and 117 of Subchapter G  
18 of Chapter 3 of Title 48 of the Rules of the City  
19 of New York.

20 This was published in the City Record on  
21 July 6th. The public hearing was held on August  
22 7th. No one attended. We didn't receive any  
23 public comment, and DOHMH also held their public  
24 hearings, and, again, they're, they're

1 August 23, 2018

2 promulgating these penalty schedules and their  
3 rules into two different penalty schedules. So  
4 there's a mobile food vending penalty schedule  
5 and then a general penalty schedule containing  
6 the rest of the health code violations.

7 And, as discussed last time, the mobile  
8 food vending is moving to a restaurant grading  
9 system so that was the big re-, reorder of their  
10 penalty schedule. I don't think the penalties  
11 changed, but there's now a grading system in  
12 place.

13 MR. MARTINEZ: Jorge Martinez,  
14 Department of Health. I should say that you  
15 mention that the these -- this rule be kind of  
16 spread out into, into two penalty schedule, one  
17 in Chapter 7 of the Rules of the City of New  
18 York, and the other one in Chapter 6 of the Rules  
19 of the City of New York. The notice of adoption  
20 regarding Chapter 7 will be going to the Law  
21 Department for approval this week. The 104  
22 Chapter 6 adoption notice will actually be going  
23 to the Law Department approval after Labor Day.

24 I'm told that if we repeal this rule now

1 August 23, 2018

2 that there won't be a gap because they'll be a  
3 time -- you know, they'll be time to allow us to  
4 --

5 MS. SALLOUM: Yes.

6 MR. MARTINEZ: -- have it officially on  
7 board, right?

8 MS. SALLOUM: Yeah. With all the  
9 penalty schedules, after the vote happens I stay  
10 in communication with the agencies and don't  
11 submit it to the City Record until they're ready  
12 to submit. So we just sort of hold on to it and  
13 this -- the publication of the City Record is  
14 what triggers the 30 day effective date of the  
15 rule. So that's good to know and we will be sure  
16 to keep in touch with DOHMH before publishing.

17 MS. SLIFKA: Okay. Is there a motion to  
18 approve? Okay. And how many for? Seven. Seven  
19 for. And how many against? Two.

20 MS. SALLOUM: Thank you.

21 MS. SLIFKA: Okay. Thank you. Okay.  
22 Russell Pecunies will now request for C and Ds.  
23 Will make a request.

24 MR. PECUNIES: Good morning. My name is



1 August 23, 2018

2 Russell Pecunies with legal, the Department of  
3 Environmental Protection. This month DEP is  
4 requesting that the Board issue one cease and  
5 desist order under the noise control code. The  
6 respondent is NYU. The premises is 33 Third  
7 Avenue in Manhattan. This location has been  
8 cited for noise from the air conditioning unit on  
9 three occasions now, most recently in May.

10 The hearing date on the -- that ticket  
11 is coming up in September. Due to the repeated  
12 violations and continuing failure to come into  
13 compliance the Department is requesting that the  
14 Board issue an order to cease and desist.

15 MS. SLIFKA: Okay. Any questions?  
16 Okay. Is there a motion to approve? Okay. And  
17 how many approve? Okay. One, two, three --

18 MS. KNAUER: I'm just gonna recuse  
19 myself --

20 MS. SLIFKA: Okay.

21 MS. KNAUER: -- from this one, so I  
22 abstain.

23 MS. SLIFKA: Alright. And, Jorge, are  
24 you --

1 August 23, 2018

2 MR. MARTINEZ: Approve.

3 MS. SLIFKA: Okay. So it looks like  
4 seven -- eight approve.

5 MR. PECUNIES: Alright. The next one --

6 MS. SLIFKA: Oh, wait. Russ, did you  
7 vote on that one?

8 MR. PECUNIES: Yes

9 MS. SLIFKA: You voted too?

10 MR. PECUNIES: Yes.

11 MS. SLIFKA: Okay.

12 MR. PECUNIES: The next one is from the  
13 Bureau of Waste Water Treatment. It regards ESG  
14 Grand Corp at 500 Grand Street in Manhattan.  
15 This location was ordered in September of 2017 to  
16 install and maintain a 25 gallon per minute 50  
17 pound capacity grease interceptor on the sink  
18 that I believe is located in the basement.

19 When that order was not complied with  
20 BWT issued a series of summonses to the  
21 respondent for failure to comply with the  
22 Commissioner's order. I believe that they have  
23 defaulted on all of the summonses. They also  
24 failed to apply -- to appear at a mandatory

1 August 23, 2018

2 compliance meeting on April 25th, and due to the  
3 continuing failure to come into compliance the  
4 Department is requesting that the Board issue an  
5 order to cease and desist.

6 MS. SLIFKA: Okay. Is there a motion to  
7 approve? Okay. And how many for? Okay. Looks  
8 like, Russ, you're voting too?

9 MR. PECUNIES: Yup.

10 MS. SLIFKA: Unanimous. Okay.

11 MR. PECUNIES: The Bureau of Water and  
12 Sewer Operations is requesting 28 cease and  
13 desist orders be issued for failing to install  
14 backflow prevention devices in each of these --  
15 for each of these locations. The building owner  
16 has been ordered to install backflow prevention  
17 devices. Upon their failure to comply with that  
18 order the Department has issued a summons, and  
19 they have been adjudicated in violation.

20 As of the current time, each of these 28  
21 building owners is still not in compliance with  
22 the order to install. Based on that the  
23 Department is asking that the Board issue a cease  
24 and desist order in each of these cases.

1 August 23, 2018

2 MS. SLIFKA: Okay. Is there any  
3 questions? -- oh, okay. Alright. Alright. Is  
4 there a motion to approve? Okay. And all, all  
5 for? Unanimous again.

6 MR. PECUNIES: Okay. And with regard to  
7 one matter that was tabled from the June meeting  
8 concerning a request for a water shutoff at a  
9 quote unquote, hotel, in Brooklyn. The  
10 Department is requesting that that be tabled  
11 again until the October meeting. The entire area  
12 of backflow compliance and enforcement is  
13 currently under review. There have been a number  
14 of meetings with Commissioner Sapienza, including  
15 another one tomorrow.

16 And one of the things that we're looking  
17 at is when we should be going to shut off water,  
18 when we should be requesting OATH hearing  
19 officers to make a recommendation to the Board  
20 for water to be shut off. We've been talking to  
21 the Department of Buildings about what the  
22 criteria are for when the LAA permits to do these  
23 installations get disapproved which is the  
24 problem in this case. The building has over 100

1 August 23, 2018

2 open violations, and therefore, they can't get  
3 their LAA permit to do the work.

4 So this entire area is currently under  
5 internal review. And based on that we're asking  
6 that that issue from the last Board meeting be  
7 tabled again until the next Board meeting.

8 MS. SLIFKA: Okay. Go ahead.

9 MR. MARTINEZ: Question. I just want to  
10 clarify the record. What you're ref-, what Mr.  
11 Pecunies is referring to is the hotel located at  
12 315 93rd Street in Bay Ridge, Brooklyn operated  
13 by Ray -- Bay Ridge Prince Limited Company. And  
14 there was also concern whether or not the hotel  
15 had any long term residents. So what, if  
16 anything, you're doing to determine --

17 MR. PECUNIES: We, we did not inspect it  
18 again because our inspectors, first of all, would  
19 not be authorized to go up and interview people  
20 to find out whether they were living there.  
21 There is a great deal of anecdotal evidence on  
22 the internet to suggest that this establishment,  
23 while you can rent a room there is -- does have a  
24 lot of long term residents.

1 August 23, 2018

2 There are articles on the internet that  
3 suggest that there have been people that have  
4 been living there for many years, paying \$200 a  
5 month for a room. So anecdotally, yes, it does  
6 appear that there are a large number of people  
7 who are, in effect, living there.

8 MR. MARTINEZ: But as a matter of  
9 practice if, if that's the case and you do decide  
10 after going through this review to shut off water  
11 to the premises what, what plan does the City  
12 have in order to handle that situation since --

13 MR. PECUNIES: Well, we're, we're not up  
14 to that yet, but we know that we would have to  
15 speak to -- whenever we do a water shutoff at any  
16 building we know we will have to speak to the  
17 Building's Department, the Fire Department, the  
18 Housing Department, and HPD. We do have liaisons  
19 at each of those agencies. We have not started  
20 to implement any of that yet. Because, again,  
21 we're still discussing internally when we would  
22 be shutting off water for com-, failing to comply  
23 with this. And we would certainly be starting  
24 with commercial locations.

1 August 23, 2018

2 Now, this is officially a commercial  
3 location. It's a hotel. That's what it -- well,  
4 it doesn't have a certificate of occupancy, but  
5 that's what it is officially. People live there,  
6 you know, we happen to be able to find that out  
7 about this place. I'm not sure that there would  
8 be any analogous places to this. But, you know,  
9 it's something that we would have to consider  
10 depending on the type of business whether  
11 somebody might be living there.

12 I think a hotel would probably be the  
13 only type of commercial -- purely commercial  
14 location where people might be living. But, you  
15 know, that, that is something that we'll have to  
16 --

17 MS. SHAMONDA GRAHAM, DOB: Shamonda  
18 Graham, Department of Buildings. Russ, I'd just  
19 like to add that I know we'll definitely  
20 collaborate when something like this happens,  
21 along with other agencies, but I think you should  
22 add maybe DHS and HRA to that list. Because you,  
23 you never know --

24 MS. SLIFKA: Mm-hmm.

1 August 23, 2018

2 MS. GRAHAM: -- how these people are  
3 enabled to live in a place like that, so.

4 MR. PECUNIES: Yeah.

5 MS. KNAUER: Yeah. And just to that  
6 point, I think there are a lot of hotels where  
7 homeless people are currently residing because of  
8 the insufficient capacity in, in shelters. So,  
9 actually, I think there's probably quite a number  
10 of establishments that would be analogous to  
11 this.

12 MR. PECUNIES: Within the category of  
13 hotels.

14 MS. KNAUER: Exactly, yes.

15 MR. PECUNIES: Absolutely. Yes. Mm-  
16 hmm. Yeah. I, I, I think that's probably right.

17 MS. KNAUER: But I just wanna say that,  
18 you know, on my -- personally, I do appreciate  
19 the Department taking the time to really look at  
20 this and how, how these situations can be  
21 addressed --

22 MR. PECUNIES: I mean, this is a  
23 building that is egregiously out of compliance  
24 with a lot of things. And so you do have to



1 August 23, 2018

2 enforce the law, but you also, again, don't wanna  
3 put people out on the street. So it, it -- it's  
4 something -- this particular building we're gonna  
5 have to figure out.

6 There is a provision in the water code  
7 that allows for law department to bring an  
8 action, a court action, a, a -- to, to compel  
9 compliance. It's never been used before. This  
10 may be a situation where it winds up getting used  
11 for the first time.

12 MS. SLIFKA: That's interesting.

13 MR. PECUNIES: So that -- that's a  
14 possible option. The Law Department probably  
15 doesn't wanna be doing that all the time, but in  
16 this case --

17 MS. SLIFKA: They might have to.

18 MR. PECUNIES: -- that might be  
19 something we might have to resort to.

20 MS. SLIFKA: Right. So I assume there  
21 are no objections to tabling this matter for now?

22 MS. GRAHAM: No.

23 MS. SLIFKA: Okay.

24 MR. PECUNIES: No. Thank you.

1 August 23, 2018

2 MS. SLIFKA: Alright. Very good. Thank  
3 you, Russ. Okay. And now, Kelly Corso's gonna  
4 present the presealing reports.

5 MS. KELLY CORSO, ESQ., OATH: Good  
6 morning. Kelly Corso, Assistant Commissioner to  
7 the Hearings Division. We have 20 presealing  
8 reports for the Board today. Nineteen of them  
9 involve backflow violations, and one involves a  
10 noise code violation. I'll start with the noise  
11 code violation.

12 The case involves noise from the  
13 respondent's kitchen exhaust equipment. And at  
14 the hearing the respondent presented evidence to  
15 show work that they had done to bring its  
16 equipment into compliance with the noise code.  
17 So the hearing officer agreed with DEP's  
18 recommendation that the equipment remain unsealed  
19 provided that there are no violations found  
20 during DEP's reinspection or reinspections for a  
21 period of 180 days.

22 MS. SLIFKA: Okay. Is there a motion to  
23 approve? Okay. All, all approve? Okay.

24 Unanimous --

1 August 23, 2018

2 MS. CORSO: And, again --

3 MS. SLIFKA: Thank you.

4 MS. CORSO: -- there are 19 presealing  
5 reports pertaining to backflow violations.  
6 Eighteen of those cases the hearing officers  
7 agreed with DEP's recommendation for no further  
8 action or sealing based on the evidence of  
9 compliance that the respondents presented at the  
10 hearings.

11 MS. SLIFKA: Okay. Any questions?  
12 Motion to, motion to, motion to approve? Okay.  
13 All approve. Very good. Thank you.

14 MS. CORSO: And the final --

15 MS. SLIFKA: Unanimous.

16 MS. CORSO: -- case, the hearing officer  
17 agreed with DEP's recommendation that the C&D  
18 proceedings be discontinued because the premises  
19 has been demolished.

20 MS. SLIFKA: Okay. Any questions?  
21 Motion to approve? All approve. Okay.  
22 Unanimous. Thank you. Okay. Is there a motion  
23 to go into executive session? Okay. We'll go  
24 into executive session.

1 August 23, 2018

2 [OFF THE RECORD]

3 [ON THE RECORD]

4 MS. SLIFKA: Okay. We just had a  
5 discussion about our next meetings. It looks  
6 like it'll be the last week in October, just for  
7 the record. And we're hoping that the ni-, the  
8 meeting after that will be December 13th. If  
9 there are any issues that come up we'll discuss  
10 it at the October meeting.

11 Okay. Is there a motion to adjourn?  
12 Alright. This meeting's adjourned. Thank you,  
13 everyone.

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

Environmental Control Board, August 23, 2018

CERTIFICATE OF ACCURACY

I, Fei Deng, certify that the foregoing transcript of Environmental Control Board on August 23, 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: September 5, 2018

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