

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 22, 2019

9:39 A.M. - 10:15 A.M.

August 22, 2019

MEMBERS PRESENT:

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

ALSO PRESENT:

**Kelly Corso, Esq. - Assistant Commissioner for Hearings
Division Adjudications, OATH**
Nicholas Dietz, Esq. - Assistant General Counsel, OATH
Svetlana Goryacheva - Business Integrity Commission (BIC)
Timothy Jones, Esq. - Assistant General Counsel, OATH
Susan Kassapian, Esq. - Deputy Commissioner/Appeals, OATH
Maggie Nieves - Public Affairs Associate, OATH
**Tynia Richard, Esq. - Acting Commissioner/Acting Chief
Administrative Law Judge, OATH**
Peter Schulman, Esq. - Asst. Director for Appeals, OATH
Frances Shine - Secretary to the Board, OATH
Amy Slifka, Esq. - Deputy Commissioner/Hearings Division,
OATH
Olga Statz - Deputy General Counsel, OATH
Jarrod Whittington - Member of the Public

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2 (The board meeting commenced at 9:39
3 a.m.)

4 TYNIA RICHARD, ESQ., CHAIR, ACTING
5 COMMISSIONER/ACTING CHIEF ADMINISTRATIVE LAW
6 JUDGE, OATH: My name is Tynia Richard and I am
7 Acting Commissioner and Chief, Acting Chief ALJ
8 here at OATH. I'd like to call the meeting to
9 order. Today is August 22, 2019. So let's get
10 started. Is there a motion to adopt the minutes
11 for the June 20, 2019 meeting? And I -- we did
12 only just a little bit ago hand those out. So if
13 you all you wanted to --

14 TOM SHPETNER, ESQ., APPOINTED MEMBER: I
15 would like --

16 MS. RICHARD: -- have time to review --
17 Elizabeth KNAUER, ESQ., APPOINTED
18 MEMBER: Yeah, I didn't even notice them.

19 [CROSSTALK]

20 MS. RICHARD: -- and then, and then I
21 can come back to that toward the end of the
22 meeting, okay? Alright. So we'll, we'll move on
23 to the next item. Number 2. We're going to
24 introduce a presentation of the OATH ECB Proposed

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2 Repeal, Hazardous Waste Materials Penalty

3 Schedule, by Nicholas Dietz.

4 NICHOLAS DIETZ, ESQ., ASSISTANT GENERAL
5 COUNSEL, OATH: Good morning. I'm Nicholas
6 Dietz, Assistant General Counsel at OATH. Today,
7 we're proposing a rule to repeal OATH's Hazardous
8 Materials Penalty Schedule. This is being done
9 because the Department of Environmental
10 Protection will be promulgating its own hazardous
11 materials penalty schedule, which will
12 incorporate OATH's current hazardous materials
13 violations. So, going forward, it would be DEP
14 rather than OATH that would be handling
15 violations and penalties involving hazardous
16 materials. Are there any questions? Okay.

17 MS. RICHARD: Okay. Is there a motion?
18 Okay. And all in favor? And all opposed? Okay,
19 thank you.

20 Alright, next we have introduction of
21 DEP's request for cease and desist orders and Mr.
22 Pecunies.

23 RUSSELL PECUNIES, ESQ., DEPARTMENT OF
24 ENVIRONMENTAL PROTECTION: Okay, yep. Okay, good

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2 morning. Russell Pecunies with DEP Legal. This
3 month, DEP is requesting that the Board issue, I
4 believe it's 50 cease and desist orders involving
5 failure to install backflow prevention devices.
6 In each of these cases, the property owner has
7 been ordered to install the required devices.
8 They have been issued a summons for not complying
9 with that order. The summons has been
10 adjudicated in violation and the property owner
11 is still not in compliance with backflow
12 prevention requirements. So, in each of these
13 cases, the Department is requesting that the
14 Board issue an order to cease and desist.

15 MS. RICHARD: Okay. Are there any
16 questions? Is there a motion to approve? Okay.
17 And all those in favor of the motion? Okay,
18 that's unanimous.

19 MR. PECUNIES: Alright, thank you.

20 MS. RICHARD: Thank you. Alright. And
21 next, the DEP's request for pre-sealing report by
22 Kelly Corso.

23 MS. CORSO: Good morning. I'm Kelly
24 Corso, Assistant Commissioner for Adjudications

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2 for the Hearings Division. And we have 17 pre-
3 sealing reports for the Board today. Two of them
4 involve Noise Code cases and 15 of the reports
5 involve backflow cases, including one that's a
6 water shut-off recommendation. So I'll cover the
7 Noise Code cases first and then move on to the
8 backflow cases.

9 In one of the Noise Code cases, the
10 Respondent presented evidence of work that was
11 done on the air conditioning equipment at the
12 hearing to bring that equipment into compliance,
13 and the hearing officer agrees with DEP's
14 recommendation that the equipment remain
15 unsealed, provided that the initial re-inspection
16 and further re-inspections for a period of 180
17 days show no violations.

18 In the second Noise Code case, this one
19 involved noise from the respondent, Con Edison's
20 gas generator. The respondent has provided
21 evidence that it's disconnected its gas supply so
22 that the generator is now inoperable. DEP has
23 inspected the generator and confirmed that the
24 generator has been completely decommissioned and,

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2 based on the decommissioning of the generator,
3 the hearing officer agrees with DEP's
4 recommendation that the C&D order be discontinued
5 for that case. So those are the two Noise Code
6 cases.

7 The backflow cases, in 14 of them, the
8 hearing officers recommended no sealing or other
9 action, based on the respondents' evidence of
10 compliance presented at the hearings.

11 In one of them, the hearing officer
12 agreed with DEP's recommendation that the C&D
13 proceeding be discontinued because the underlying
14 summons has been dismissed.

15 Now, in the final backflow case, this is
16 one in which the hearing officer is recommending
17 the water be shut off. The respondent in this
18 case is 5804-5808 New Utrecht Avenue, LLC, and
19 the premises is a restaurant and catering hall
20 and it's located at 5804 New Utrecht Avenue in
21 Brooklyn.

22 This case started back in 2013 when DEP
23 issued a Commissioner's Order for the respondent
24 to install a backflow prevention device at the

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2 premises. The order warned the respondent that,
3 if it failed to comply, that its water could be
4 shut off. And, in October of 2015 and May of
5 2017, DEP issued summonses to the respondent
6 because it had failed to comply with the
7 Commissioner's Order. The respondent failed to
8 appear for either of the hearings and default
9 decisions were issued.

10 On October 25, 2018, the Board issued a
11 cease and desist order to the respondent because
12 the DEP record investigation that was done
13 revealed respondent still had not complied with
14 the Commissioner's Order. The case and desist
15 order instructed the respondent to appear at a
16 special hearing to show why the water should not
17 be shut off to the premises. And this case has
18 been adjourned five times between January 8,
19 2019, and July 2, 2019, for the respondent to
20 present evidence of compliance. And although
21 respondent's representative presented a letter
22 evidencing that they had hired a licensed
23 plumber, they have not produced any evidence as
24 to the status of filing the required plans for

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2 the installation of the backflow device.

3 And the, the respondent's representative
4 has been advised during the hearings that water
5 will be shut off if they continue to ignore the
6 order to comply. And at the last hearing, which
7 was on July 2, 2019, respondent's representative
8 offered no evidence of any progress toward
9 achieving compliance and actually stated that the
10 respondent does not use water from the line in
11 question.

12 DEP has recommended that the water
13 service to the premises be terminated and, based
14 on the history of the case and the respondent's
15 continued failure to comply with the
16 Commissioner's Order, the hearing officer
17 recommends that the water to the premises be shut
18 off.

19 That's it.

20 MS. RICHARD: Okay, thank you. Are
21 there any questions?

22 MS.KNAUER: I just -- sorry. This is
23 Elizabeth Knauer, Appointed Member. I just, I
24 don't have a question. I just, I need to recuse

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2 myself from -- or I think I should recuse myself
3 from one of these matters, so --

4 MS. RICHARD: Okay, so you want to
5 divide.

6 MS. KNAUER: -- if we're, if we're
7 voting --

8 MS. RICHARD: We'll divide them up.

9 MS. KNAUER: -- if we're, yeah, if we're
10 voting as --

11 MS. RICHARD: Mm-hmm.

12 MS. KNAUER: -- you know, on all of them
13 at once, maybe we could just separate them. And
14 that's the Dell's Cherries one.

15 MS. RICHARD: Okay.

16 MS. KNAUER: Because a, a colleague of
17 mine represented the complainant in that matter,
18 so I just --

19 MS. RICHARD: Okay.

20 MS. KNAUER: -- think, to be on the safe
21 side, I should recuse myself.

22 MS. RICHARD: Okay. Alright. So then,
23 is -- are there any questions as to the water
24 shut-off case? Is there any reason for us to

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2 vote on that separately, then, from the others?
3 There's no -- okay. Alright, then. So then
4 let's, is there a motion, then, to approve --
5 well, you can just abstain, right? You can just
6 vote to abstain on the, if --

7 MS. KNAUER: Right. I'm just thinking,
8 if you were voting on all of them --

9 MS. RICHARD: Yeah, yeah, yeah.

10 MS. KNAUER: -- I would, I would have to
11 abstain on all of them.

12 MS. RICHARD: Okay. So as to the Dell's
13 Cherries case, is that the, the type -- that's
14 the respondent's name?

15 MS. CORSO: That's correct. It's a
16 cease and desist, Cease and Desist Order No. A-
17 2016-0010.

18 MS. RICHARD: Okay, great. So, as to
19 that case, is there a motion to approve? Okay.
20 And how many are in favor of approving? Okay.
21 And how many oppose? Any abstentions? Okay.

22 As to the remaining -- as to the noise,
23 two Noise Code cases, is there a motion to
24 approve? And all in favor? Okay, unanimous.

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2 And as to the 14?

3 MS. CORSO: That's right.

4 MS. RICHARD: The 14 backflow cases,
5 motion to approve? All in favor? And that's
6 unanimous. Okay.

7 MS. Richard: Okay. Alright. Anything
8 else? That's it. Okay. Thank you.

9 MS. RICHARD: Alright. So is there a
10 motion, then, to go into the Exec-, the Executive
11 Session to discuss --

12 SHAMONDA GRAHAM, DEPARTMENT OF
13 BUILDINGS, DOB: Yes.

14 MS. RICHARD: -- the judicial report?
15 Okay, all in favor?

16 [OFF THE RECORD]

17 [ON THE RECORD]

18 MS. RICHARD: Okay, go ahead.

19 MR. SHPETNER: Well, wait. Are we back
20 on the record?

21 MS. RICHARD: We are.

22 [CROSSTALK]

23 MR. SHPETNER: Oh, okay.

24 MS. RICHARD: Okay. So we're on, back

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2 on the record after review of the judicial
3 report, which was presented by Timothy Jones,
4 General Counsel's Office. And someone wanted to
5 raise an issue regarding the item in the minutes
6 from the last meeting.

7 MS. GRAHAM: So, Shamonda Graham,
8 Department of Buildings. My only question was,
9 during our last meeting when we did have the very
10 long-winded discussion relating to the case where
11 we couldn't come to a decision where, basically,
12 we didn't have enough votes, we did all agree
13 that in the event there aren't enough votes, then
14 the decision of the hearing officer would be the
15 final decision. So I don't think there's any
16 dispute to that and I think we all agreed with
17 that. But what we didn't come to agreement with
18 is what we would send the respondent and what we
19 would send the petitioner, including the language
20 that it would be in.

21 I think we were all in agreement that it
22 couldn't be a decision and order, because no
23 decision had been made. In the minutes, it says
24 that both parties were advised that the hearing

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2 officer couldn't make a final determination,
3 which is fine.

4 MS. RICHARD: That the Board couldn't,
5 so -- yeah.

6 MS. GRAHAM: That, that, yeah, that the
7 hearing officer's decision was --

8 MS. RICHARD: Yeah.

9 MS. GRAHAM: -- the final determination
10 because the Board couldn't make a decision. But
11 I'd just like to see the language. Now, granted,
12 I have to be open and admit, and transparent, I
13 probably have a copy of this in my office because
14 it's my agency. But, as a general matter and as
15 just being a Board member, I really think that we
16 should have seen the language first and agreed to
17 it, and I'd like to see it now, without searching
18 my office, on behalf of the Board.

19 MS. RICHARD: Well, we can certainly
20 send it to you. It's a letter.

21 MR. SHPETNER: Actually, could we see it
22 now-now.

23 MS. RICHARD: It's an administrative --

24 MS. GRAHAM: Yeah, I meant --

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2 MS. RICHARD: Oh, I don't have it.

3 MR. SHPETNER: Can we see it -- well, we
4 can get it, right? Somebody's got a, a computer.

5 MS. RICHARD: I don't --

6 MR. SHPETNER: Let's, let's look at it
7 now.

8 MS. RICHARD: -- I don't, I don't have
9 it. I'm happy to pro-, provide it to you.

10 MR. SHPETNER: I'm, I'm free right after
11 this meeting, too.

12 MS. RICHARD: Alright.

13 MR. SHPETNER: We should really look at
14 it now. But, look, this goes a little, a little
15 deeper. First of all, it was a very contentious
16 discu- -- Tom Shpetner, Appointed Member by the
17 way. We had a very contentious discussion at the
18 last hearing about this case.

19 MS. RICHARD: Sure.

20 MR. SHPETNER: And --

21 MS. RICHARD: There were very deep
22 disagreements about the substance of the case.

23 MR. SHPETNER: Excuse me. I, I --
24 that's, that's not the issue, though. But it was

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2 a lengthy discussion. It generated some very
3 spirited debate, because there was a lot going on
4 here about whether we defer to the hearing
5 officer, how, you know, how, you know, how we
6 adduce evidence against somebody who, you know --
7 we, we made a decision without a great factual
8 length.

9 So this footnote from these meetings,
10 from, from last meeting, I mean I just saw this
11 today. First of all, can we get the minutes for
12 each meeting one week prior to the Board meeting?
13 Can we commit to that?

14 MS. RICHARD: Well, here's what I
15 commit. I can commit to the fact that providing
16 them this morning was late. That was not
17 intentional.

18 MR. SHPETNER: Okay, but, but like four-
19 fifths of this document for four or five years
20 that I've been reading it is cut and paste,
21 tables of decisions.

22 MS. RICHARD: Mm-hmm.

23 MR. SHPETNER: There's very few moving
24 parts to this document. Okay, so it should

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2 probably be done -- it used to be done a week, a
3 week or so after. Jim Macron used to turn
4 around fast. But can we just get it a week
5 before the meeting? Give somebody two to four
6 weeks to get it done.

7 MS. RICHARD: I've said what I'm going
8 to say.

9 MR. SHPETNER: Okay. And I think that's
10 --

11 MS. RICHARD: This was late.

12 MR. SHPETNER: -- that's probably --

13 MS. RICHARD: This was late and it
14 shouldn't have been.

15 MR. SHPETNER: Okay. But even if it had
16 been done yesterday, which I would still argue
17 was late, there's really some serious problems
18 with what is written here because it says --

19 MS. RICHARD: What is the serious
20 problems with it?

21 MR. SHPETNER: Well, it says after the
22 meeting it was determined that if 180 days have
23 expired.

24 MS. RICHARD: That's when we learned,

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2 that's when we counted the days, yeah, we
3 realized that 180 days had passed before our
4 meeting. But the substance of the 180-day
5 standard had already been discussed.

6 MR. SHPETNER: Right, but we got the
7 count wrong?

8 MS. RICHARD: No, we didn't, we didn't
9 give you a count. We didn't know --

10 MR. SHPETNER: It said after the meeting
11 --

12 MS. RICHARD: -- how many days had --

13 MR. SHPETNER: -- it was determined that
14 it was wrong.

15 MS. RICHARD: No, no, no, no, no.

16 MR. SHPETNER: That it expired.

17 MS. RICHARD: That the 180 days had
18 happened a few days before the meeting. We had
19 not counted at the time of the meeting, because
20 we had not decided, as a matter of policy, that
21 we were going to use the 180 days as the
22 standard.

23 MR. SHPETNER: Since this -- let, let's
24 just recast it this way. This is kind of an

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2 interesting postscript to our discussion, because
3 it really is outcome determinative, right? We
4 had discussed promulgating the decision, five to
5 four, to hold the respondent liable. Right? And
6 --

7 MS. RICHARD: Well, right. At the fro-,
8 at the prior meeting, that's, that was the final
9 vote. And then we subsequently realized we could
10 not take action on five votes.

11 MR. SHPETNER: Right. So I've been
12 sitting around wondering about what's, you know,
13 thinking this was a dead letter and I find out
14 this morning that it's actually not, that, that
15 it we-, went in favor of the minority, right?

16 MS. RICHARD: It did not go in the favor
17 of any -- it went to the hearing officer,
18 whatever --

19 MR. SHPETNER: Right.

20 MS. RICHARD: -- that decision was.

21 MR. SHPETNER: Right, exactly. That's
22 my point. I don't know. This is a --

23 MS. RICHARD: The hearing officer
24 decision was actually in the direction of where

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2 you wanted --

3 MR. SHPETNER: That's what I mean.

4 MS. RICHARD: -- the decision to go.

5 MR. SHPETNER: So that, so in other
6 words, I walked out of that vote a loser,
7 thinking last month, a, a losing a --

8 MS. RICHARD: You walked out of the min-
9 , out of, out of -- well, no, actually. The
10 hearing officer decision always went in the
11 direction that you wanted it to go, so you, you
12 walked out as a winner based on our conversation
13 that it was going to go back to the hearing
14 officer decision.

15 MS. KNAUER: And I think you, in April -
16 -

17 MR. SHPETNER: I'm [unintelligible]
18 [00:05:51].

19 MS. KNAUER: -- I think there were two
20 meetings where this was discussed.

21 MR. SHPETNER: Oh, I'm sorry. I'm
22 conflating two meetings.

23 MS. KNAUER: So in April, in April,
24 before the time had passed, we voted on it. And

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2 then, that was the five to four vote. You walked
3 out of that meeting think-, thinking that there
4 would be a reversal. It turned out that, on
5 reflection, that wasn't possible because it
6 hadn't been a sufficient number of votes in favor
7 of reversing.

8 MR. SHPETNER: Right.

9 MS. KNAUER: So then, when we met again,
10 I, you know, I don't know if it would have made a
11 difference if we had known the 180 days had
12 already passed. Would we have had any further
13 discussion about it?

14 MR. SHPETNER: Well, then it would have
15 been --

16 MS. KNAUER: We would have just --

17 MR. SHPETNER: -- dismissed, right?

18 MS. KNAUER: I mean, ultimately, we --

19 [CROSSTALK]

20 MS. KNAUER: -- I don't think -- well,
21 it doesn't matter because, ultimately, the same
22 result --

23 MR. DIETZ: Right, same result.

24 MS. KNAUER: -- pertains because we

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2 didn't, we didn't vote again with a sufficient
3 number to --

4 MS. RICHARD: We were still stuck.

5 MS. KNAUER: -- state one way or the
6 other. We were still stuck.

7 MS. RICHARD: We were stuck in the exact
8 same place.

9 MS. KNAUER: So it ended up being,
10 whether we had known that or not, it was, it, it
11 ended up being the same result. If we had spent
12 a lot, you know, another hour and a half
13 discussing it and then voted again and there was
14 a seven-person vote on one side, then, you know.

15 MR. SHPETNER: Look --

16 MS. GRAHAM: It wouldn't have mattered,
17 though.

18 MS. RICHARD: No.

19 MS. GRAHAM: But if we had done that, it
20 wouldn't have mattered, because --

21 MS. KNAUER: Well, like we --

22 MS. GRAHAM: -- 180 days --

23 MS. KNAUER: -- we would have left
24 thinking one thing and then would have found out

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2 later on that our --

3 MR. SHPETNER: Can we just communicate
4 better?

5 MS. KNAUER: -- effort was --

6 MR. SHPETNER: That's the point I'm
7 trying to make here.

8 [CROSSTALK]

9 MR. SHPETNER: That, that's the
10 overarching takeaway comment. We need to
11 communicate better. I mean I had no idea you
12 were the Commissioner. That's good news.

13 MS. RICHARD: Was I supposed to call you
14 and tell you that?

15 MR. SHPETNER: I don't know. It's good
16 news. Why not send out an e-mail to all of us
17 saying, hey, this is an officially done thing.

18 MS. RICHARD: Well, it was noted.

19 MR. SHPETNER: Congratulations.

20 MS. RICHARD: It was noted in the paper.
21 But I, I didn't, we didn't, we didn't --

22 MS. GRAHAM: Yeah, I saw it.

23 MR. SHPETNER: The paper, meaning The
24 New York Times or something? I don't know.

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2 MS. RICHARD: Well, I don't think
3 they're that interested.

4 MR. SHPETNER: Well, I'm really
5 interested, and to push out a note to the whole
6 Board --

7 [CROSSTALK]

8 MS. RICHARD: I'd love them to be.

9 MR. SHPETNER: -- to say, hey, this just
10 happened, is a really good idea. It's --

11 MS. RICHARD: Tom, believe me, there's a
12 lot --

13 MR. SHPETNER: I believe you.

14 MS. RICHARD: -- there's, there's a lot
15 that I've had to do --

16 MR. SHPETNER: I believe you.

17 MS. RICHARD: -- in the last few days,
18 okay?

19 MR. SHPETNER: But just like, hey, this
20 is an official act of, you know, the office is a
21 really --

22 MS. RICHARD: I, I just, you know.

23 MR. SHPETNER: -- good idea to commu- --
24 I don't know. Am I making sense or I'm not

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2 making sense?

3 MS. RICHARD: Are you happy about it?

4 MR. SHPETNER: I'm glad as can be. But
5 I, I'm, I'm bewildered why --

6 [CROSSTALK]

7 MS. RICHARD: You have, you have some
8 kind of way to show it. I mean --

9 MS. KNAUER: Can I just put on the
10 record to, to express my congratulations?

11 MS. GRAHAM: Yeah, right? Let's all
12 congratulate you.

13 MS. RICHARD: Thank you.

14 MR. SHPETNER: Wait, wait a second.
15 Before we all start backslapping, why can't you
16 just tell us?

17 MS. RICHARD: I, I, I wish you wouldn't
18 take it personal, Tom. I have been busy.

19 MR. SHPETNER: I'm not taking it
20 personally. I just think you're --

21 MS. RICHARD: I have been busy.

22 MR. SHPETNER: -- we're, we're really
23 committed to really poor governance. And
24 communicating with your Board --

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2 MS. RICHARD: I, I am not committed, I
3 am not --

4 MS. GRAHAM: Whoa. Shamonda Graham,
5 Department --

6 MS. RICHARD: You, you're committed?

7 MS. GRAHAM: -- of Buildings.

8 MS. RICHARD: Who is committed? Who is
9 committed to poor governance?

10 MS. GRAHAM: I am not committed to poor
11 governance.

12 MR. SHPETNER: Look, like see, we have
13 vacancies on, on the citizen side that have been
14 open for a year or more. I think the --

15 MS. RICHARD: And we've been working
16 hard.

17 MR. SHPETNER: -- governance issues that
18 I've raised are significant and I really do think
19 that a quick e-mail saying, hey, important
20 organizational development is a great first step
21 at healing some of those deficiencies. That,
22 that's --

23 MS. KNAUER: My, my un- --

24 MR. SHPETNER: -- that's important.

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2 MS. KNAUER: -- my understanding is that
3 an e-mail went out more internal, it was, it was,
4 it didn't -- I mean I found out and I, and I
5 regret not having contact --

6 [CROSSTALK]

7 MR. SHPETNER: I found out because of a
8 taped-up message on your nameplate.

9 MS. RICHARD: You did what?

10 MR. SHPETNER: I found out because of a
11 taped-up message on your nameplate. I mean
12 that's, that's --

13 MS. RICHARD: You see? You see?

14 MR. SHPETNER: -- that's not --

15 MS. RICHARD: We're very busy.

16 MR. SHPETNER: -- that's not impressive.
17 I believe you that you're busy. I just thinking
18 writing an e-mail or, or --

19 MS. GRAHAM: Well, yeah, it was, it was
20 in the papers. And, not for nothing, because of
21 --

22 MR. SHPETNER: I sit on this Board. I
23 shouldn't have to go read the Daily News --

24 MS. GRAHAM: -- because of --

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2 MR. SHPETNER: -- for OATH news.

3 MS. GRAHAM: -- some of the issues we
4 have faced as a Board, you know, in, in Tom's
5 defense in what he's saying, I, I get your point.
6 But, at the same time, because of all of those
7 issues, I guess some -- me, personally, I was
8 watching. Watching, waiting. I watch the
9 papers. I put key words, alerts, so it's like --
10 I don't think that's a big deal and I don't want
11 to lose sight of, of, of the point, because the --
12 -- my bigger point is, the last meeting, when we
13 left, we agreed to certain points, but where we
14 did not agree is how we would communicate, going
15 back to your point, that message to both the
16 respondent and the petitioner. So I don't want
17 us to lose sight of that. And, you know, my only
18 point is, okay, well, let's see. Because this
19 language and whatever we send needs to be what we
20 send every time we run into this. And given the
21 make-up of the Board, like I said to you before,
22 I believe we are going to see this again. And
23 since we're going to see it again, the Board
24 should not only know what these notifications or

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2 advisements say, we should actually, as far as
3 I'm concerned, vote on it and say, on the record,
4 yes, we agree to this instrument.

5 MS. RICHARD: So I, I, I will tell you
6 that it never occurred to me that that was
7 something that the Board needed to vote on
8 because, as with any administrative decision that
9 the Agency makes, it's, it's drafted as an
10 administrative decision. It was not a legal
11 decision.

12 MS. GRAHAM: Got it.

13 MS. RICHARD: It was an administrative
14 communication that this is what we are doing;
15 therefore, the hearing officer decision stays.
16 Now I'm, I'm, I'm happy to, to send out the
17 letter to you, but that's why I, I -- otherwise,
18 we would have waited until the meeting if I
19 thought it was a decision that the Board drafts.

20 MS. GRAHAM: Got it.

21 MS. RICHARD: So that, that was, that
22 was the decision there. I mean that was the
23 thought process.

24 MS. KNAUER: So, Tynia, your point is

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2 that the, the letter that went out clearly came
3 from OATH as the administrative agency and it
4 didn't --

5 MS. RICHARD: As a tribunal, right.

6 MS. KNAUER: -- and it wasn't, it was
7 not --

8 MS. RICHARD: Right.

9 MS. KNAUER: -- representing itself as -
10 -

11 MS. GRAHAM: The Board.

12 MS. KNAUER: -- a communication from the
13 Board. It just --

14 MS. RICHARD: Right.

15 MS. KNAUER: -- reflected what had gone
16 on --

17 MS. RICHARD: Correct.

18 MS. KNAUER: -- in the Board's --

19 MS. RICHARD: In the same way that you
20 have decisions in the motions to vacate.

21 MS. KNAUER: Right.

22 MS. RICHARD: Right?

23 MS. KNAUER: Right.

24 MS. RICHARD: Those are not, you know,

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2 necessarily, you know, long hearing officer
3 decisions. Those are, you know, denied, that
4 kind of a thing.

5 MS. KNAUER: But, but given --

6 MS. RICHARD: But this was, this did
7 provide an explanation because I wanted people to
8 understand, in the same way that the minutes
9 talked about the section of law that we were
10 relating to, I wanted the, the, the parties also
11 to understand, you know, how we had come to that
12 decision, what law we used to decide, even though
13 the law wasn't, the rule that we cited wasn't
14 exactly on point, but that's, that was our
15 guiding force.

16 MS. KNAUER: Could I make a, just a
17 suggestion that since Shamonda has raised just,
18 you know, an interest in seeing the language,
19 that it be shared with us, and then that we could
20 have on the agenda for next meeting just a dis-,
21 you know, a possibility of a discussion if, if
22 any of the Board members have concerns about the
23 language so that perhaps it could be modified, if
24 it does occur again, to reflect those concerns?

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2 So I'm just suggesting an agenda item. Nothing,
3 nothing more than that, for the next.

4 MS. RICHARD: I, I don't have a problem
5 with putting it on the agenda.

6 MS. GRAHAM: And we may not need to
7 discuss it. You, you know what I mean? If you
8 send it out, it might just be, oh, okay, now we
9 know what it looks like, what it says, and --

10 MR. PECUNIES: This particular letter
11 has gone out, correct?

12 MS. RICHARD: Yes.

13 MR. PECUNIES: Okay. So it's, why, why
14 don't we just say that we'll get a copy of it to
15 review before the October meeting and, if anybody
16 has any questions or concerns, they can raise
17 them --

18 MS. KNAUER: Right.

19 MR. PECUNIES: -- in October.

20 MS. KNAUER: That's, that's exactly what
21 I was suggesting.

22 MS. RICHARD: Mm-hmm, mm-hmm.

23 MR. SHPETNER: And also to your point, I
24 think it, it -- I mean, I consider myself a Board

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2 member not just when I'm here, but --

3 MS. GRAHAM: Exactly.

4 MR. SHPETNER: -- when I'm, all the
5 time, I'm, I'm an appointed Board member of this
6 Board. So it would be nice to be apprised of new
7 developments, whether it be a change in
8 leadership or appointment of new members, ahead
9 of the meetings.

10 MS. RICHARD: That's a fair point. It's
11 a fair point.

12 MS. KNAUER: Right, because it, you
13 know, especially over the summer, it's easy to
14 miss things in the --

15 MS. RICHARD: Mm-hmm.

16 MS. KNAUER: -- in the newspaper.

17 MS. RICHARD: Anything else?

18 MR. SHPETNER: Yes. How are we doing on
19 the appointments for the three other members?

20 MS. RICHARD: We are moving forward.
21 We're close to one appointment who, an individual
22 who will be before the City Council next month.
23 And that's the final end of the process. There
24 are two others who are still going through an

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2 earlier part of the process. So we're, we're
3 getting there. Any other questions? Alright.
4 Is there a motion to adjourn? Okay.

5 MS. KNAUER: Oh, I don't --

6 MS. RICHARD: Yes? Wait, wait.

7 MR. DIETZ: I think you wanted to wait
8 on --

9 MS. KNAUER: -- as part of -- Tynia, I
10 don't think we voted on the --

11 [CROSSTALK]

12 MR. DIETZ: The minutes.

13 MS. KNAUER: -- the minutes, because I
14 don't think we --

15 MR. PECUNIES: On the minutes.

16 MS. RICHARD: Oh, that's right. Let's
17 go back to the minutes. That's right.

18 MR. SHPETNER: Can we, so did --

19 MS. RICHARD: Did, did you want to have
20 any additional time to read?

21 MR. SHPETNER: Yeah, can we look at
22 these minutes when we get the next set of minutes
23 and do them altogether? Because I don't want to
24 just --

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2 MS. RICHARD: Okay.

3 MR. SHPETNER: -- skim them in a meeting
4 and then -- I want to read them, you know.

5 MS. RICHARD: I don't think there's a
6 problem, is there?

7 [CROSSTALK]

8 MR. SHPETNER: Well, the problem is I
9 haven't read them, you know, so.

10 MS. RICHARD: No, no, no. I mean, I
11 mean it's sort of a governance issue. Is it, did
12 you have a --

13 MS. GRAHAM: Yeah, we can
14 [unintelligible] [00:14:56].

15 MS. RICHARD: Okay. Alright, that's
16 fine. We'll, we'll --

17 MR. SHPETNER: So can we circulate them
18 together?

19 MS. RICHARD: -- so we'll hold it, we'll
20 hold it, then, for the next meeting. Alright?
21 We'll recirculate.

22 MR. SHPETNER: Can you just, we should
23 circulate them together, if we could?

24 MS. RICHARD: Well --

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2 MR. SHPETNER: That way, they're just
3 minutes altogether.

4 MS. RICHARD: Well, I'm going to send,
5 we're going to send these out, along with a copy
6 of the letter.

7 MS. GRAHAM: You guys realize the
8 meeting, or --

9 MS. RICHARD: That'll be, that'll be
10 soon.

11 MS. GRAHAM: -- the meeting minutes are
12 published online?

13 MS. RICHARD: Yeah.

14 MS. GRAHAM: On Goo-, you can Google the
15 meeting minutes well before the meeting.

16 MS. KNAUER: The minutes that haven't
17 been approved?

18 MR. SHPETNER: These? These were --
19 unapproved minutes are available online?

20 MS. GRAHAM: I don't know whether
21 they're approved or not, but you can Google the
22 minutes. I'm just --

23 MR. SHPETNER: Well, if I --

24 MS. KNAUER: Right, after, after we vote

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2 on them.

3 MS. RICHARD: I think it's after
4 approval. Yeah, it's after approval.

5 MS. GRAHAM: Okay.

6 MR. SHPETNER: Okay. Unapproved minutes
7 shouldn't be anywhere. Right, okay.

8 MS. RICHARD: Okay. Alright. So then
9 is there a motion to adjourn?

10 MR. SHPETNER: Yes.

11 MS. RICHARD: Alright.

12 UNIDENTIFIED FEMALE 1: Oh, next --

13 MS. CORSO: Dates.

14 MS. KNAUER: The dates oh.

15 MS. RICHARD: Oh, right. We have to
16 talk about dates.

17 MS. GRAHAM: We want to go.

18 MS. RICHARD: Okay. We can't adjourn.
19 We can't adjourn.

20 MS. GRAHAM: There's so much --

21 [CROSSTALK]

22 MS. RICHARD: What, what did, what are -
23 -

24 MS. KNAUER: Dates for the next meeting.

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2 MS. RICHARD: -- what are you, what are
3 we looking at? October or November?

4 MR. PETER SCHULMAN, ESQ., ASSISTAN DIRECTOR
5 FOR APPEALS, OATH: Oc-, October and December right
6 now.

7 MS. RICHARD: December, right?

8 MR. SCHULMAN: It's, yeah, October and
9 December, unless you want to go into next year.
10 But, right now, we need October and December.

11 MS. RICHARD: Do we want to pick the
12 first one in, in next year? Why don't we do
13 that?

14 MR. SCHULMAN: Yeah, okay.

15 MS. RICHARD: Okay.

16 [CROSSTALK]

17 MR. SHPETNER: I'm being
18 [unintelligible] [00:16:14]. This is the last of
19 2019?

20 MS. RICHARD: Oh, please. We're all,
21 we're all --

22 UNIDENTIFIED MALE 1: October, December,
23 and then --

24 MS. RICHARD: -- we're on, yeah.

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2 MS. GRAHAM: What, what, what date for
3 October? What dates?

4 [OFF MIC CONVERSATION]

5 MS. KNAUER: The 24th? I'm, I'm just
6 picking a Thursday.

7 MS. RICHARD: Right.

8 MR. SCHULMAN: Yeah. I think people
9 like --

10 [CROSSTALK]

11 MS. GRAHAM: I won't be here, for sure.

12 MS. KNAUER: There's the 17th. The
13 Thursdays, you have the 17th, 24th and 31st. I
14 don't know why the 10th, though.

15 MS. GRAHAM: You guys can, you can still
16 go forward.

17 MR. SHPETNER: What about the 10th? I
18 don't know. The 24th, there's no objection.

19 MS. RICHARD: What about the 17th?

20 MR. SHPETNER: No objection.

21 MS. GRAHAM: I'm fine.

22 MS. CORSO: It's probably okay for me.

23 MR. SHPETNER: I think that works.

24 MS. CORSO: Probably okay.

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2 MS. RICHARD: Okay, 17 October. So
3 December is going to be, what, the 5th or the
4 12th? Any preference for you, Russ? I know --

5 MR. PECUNIES: I don't.

6 UNIDENTIFIED MALE 2: Either one is
7 fine.

8 MS. KNAUER: So the 5th or the 12th,
9 either way?

10 MS. GRAHAM: Yeah, that's fine.

11 MS. RICHARD: Okay. Either one of those
12 two days. You want to go with --

13 MS. GRAHAM: That's October, not
14 December.

15 MS. RICHARD: -- the 5th? Let's do the
16 5th.

17 MS. GRAHAM1: Yeah, let's do the 5th.

18 MS. CORSO: December 5th?

19 MS. RICHARD: December 5.

20 MS. GRAHAM: That date is standing out
21 for me. Let me just check my calendar.

22 MR. PECUNIES: And the October date was?

23 MS. KNAUER: The 17th.

24 MS. RICHARD: The 17th.

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2 MR. PECUNIES: The 17th? So 10/17 and
3 12/5?

4 MS. RICHARD: Yeah.

5 MS. GRAHAM: That's Election Day, no?

6 MS. RICHARD: It should be --

7 MS. GRAHAM: Am I -- oh, I'm in, no, I'm
8 in November. Sorry, guys. I pick out, I like
9 need, I need to --

10 [CROSSTALK]

11 MS. RICHARD: And what about January?
12 The end of January or early February?

13 UNIDENTIFIED FEMALE 2: Early February.
14 No, February.

15 MS. CORSO: it would be February.

16 MS. GRAHAM: Oh, wow.

17 MS. CORSO: Actually, it would Mar-,
18 March.

19 MS. RICHARD: See we're, we're, we're
20 early in December, so --

21 MS. GRAHAM: Yeah.

22 MS. CORSO: It would be early March,
23 then.

24 MS. GRAHAM: January or February.

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2 MS. KNAUER: No, February.

3 MS. GRAHAM: No, it would be February.

4 MS. KNAUER: February.

5 MS. RICHARD: Yeah.

6 MS. CORSO: We, we, we're meeting every
7 two months or quarterly?

8 MS. KNAUER: Two months.

9 MS. GRAHAM: Two months.

10 MS. CORSO: Two months. Okay, sorry.

11 MS. RICHARD: So Feb, what, 20?

12 MR. SHPETNER: Well, just we should
13 probably think, is there a public school calendar
14 that's even published this early?

15 MS. CORSO: Yeah, that's probably
16 Presidents' Day.

17 MS. KNAUER: Yeah, that's the week,
18 that's Presidents' Week off.

19 MS. GRAHAM: Yeah.

20 MR. SHPETNER: Because Presidents' can
21 land around there, and it's not --

22 MS. CORSO: It's, no, it's definitely
23 that week. That's --

24 MS. GRAHAM: It's that Monday. I'm

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2 looking at it.

3 MS. KNAUER: No, and they're off, also.

4 MR. SHPETNER: And the Board of Ed does
5 not do a great job of telling you the whole thing
6 and, like now, even though you're having these
7 sort of normal --

8 MS. CORSO: It's definitely school
9 holiday.

10 MR. SHPETNER: -- discussions about what
11 to do, they don't --

12 MS. KNAUER: It is?

13 MS. RICHARD: Mm-hmm.

14 MS. SUSAN KASSAPIAN, ESQ., DEPUTY
15 COMMISSIONER FOR APPEALS, OATH: So what about the
16 13th? Because it, we're doing it early December,
17 so.

18 MS. GRAHAM: I will certainly probably
19 be out. You said the 17th?

20 MS. KNAUER: 13th.

21 MS. CORSO: 13th.

22 MS. RICHARD: 13th.

23 MR. PECUNIES: 13, 2/13.

24 MS. GRAHAM: Okay.

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2 MR. SHPETNER: I mean, Monday is
3 extended --

4 [OFF MIC CONVERSATION]

5 MS. GRAHAM: Yeah. The Monday, and I
6 think the Monday before --

7 [CROSSTALK]

8 MR. SHPETNER: So that's probably. Do
9 you -- they don't have a schedule up yet, do
10 they?

11 MS. GRAHAM: Yeah.

12 MR. SHPETNER: For next year?

13 [CROSSTALK]

14 MS. GRAHAM: Yeah. It's been out since
15 June. Yeah, next year's schedule.

16 MR. SHPETNER: Alright. Their mother
17 does that.

18 MS. GRAHAM: You can import them into
19 your --

20 MR. PECUNIES: 10/17, 12/5 --

21 MS. RICHARD: 2/13?

22 MR. PECUNIES: -- and 2/13?

23 MS. RICHARD: 2/13.

24 MS. OLGA STATZ, ESQ., DEPUTY GENERAL

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2 COUNSEL, OATH: So 10/17, 12/5, 2/13.

3 MADELYNN LIGUORI, ESQ., DEPARTMENT OF
4 SANITATION: [Unintelligible] [00:19:34].

5 MR. SHPETNER: Are you? That's
6 important.

7 MS. GRAHAM: Go ahead, Madelynn.

8 MR. SHPETNER: You don't get --

9 MS. RICHARD: Alright. Then, motion to
10 adjourn? We are adjourned.

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

Environmental Control Board, 8/22/2019

CERTIFICATE OF ACCURACY

I, Gregory Woltman, certify that the foregoing transcript of Board Meeting of the Environmental Control Board on August 22, 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, reading "Gregory Woltman", is written above a horizontal line.

Date: September 4, 2019

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