

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

BOARD MEETING
PUBLIC SESSION

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

August 24, 2017

9:26 A.M. to 10:09 A.M.

August 24, 2017

MEMBERS PRESENT:

Fidel F. Del Valle, Esq. - Chair, Chief Administrative Law
Judge, Commissioner, OATH
Shamonda Graham - Department of Buildings (DOB)
Joseph Gregory, Esq. - Fire Department (FDNY)
Elizabeth Knauer, Esq. - Appointed Member
Madelynn Liguori, Esq. - Department of Sanitation (DSNY)
**Alyssa Preston, Esq. - Depart. Of Environmental
Protection (DEP)**
Matthew Smith, Esq. - NYC Police Department (NYPD)
Jorge Martinez, Esq. - Dept. of Health & Mental Hygiene
(DOHMH)
Debra Scotto - Appointed Member
Thomas Shpetner, Esq. - Appointed Member

ALSO PRESENT:

Quiana Battle - Computer Service Technician, OATH
John Burns, Esq. - First Deputy Commissioner, OATH
David B. Goldin - Administrative Justice Coordinator (AJC)
Svetlana Goryacheva - Business Integrity Commission (BIC)
Diana Haines, Esq. - Assistant General Counsel, OATH
Susan Kassapian, Esq. - Deputy Commissioner, Hearings
Division, OATH
Mark Leeds, Esq. - Special Senior Counsel, OATH
Vincent P. Maniscalco - Department of Transportation (DOT)
Ashford Morgan - Computer Service Technician, OATH
York Bergin-Pugh - Department of Transportation (DOT)
Tynia Richard, Esq. - Deputy Commissioner/General Counsel,
OATH
Simone Salloum, Esq. - Senior Counsel, OATH
**Peter Schulman, Esq. - Assistant Director of
Adjudications, OATH**
Frances Shine - Secretary to the Board, OATH
Amy Slifka, Esq. - Deputy Commissioner, OATH
Thomas Southwick, Esq. - Supervising Attorney, Appeals,
OATH
Olga Statz, Esq. - Assistant Commissioner/Deputy General
Counsel, OATH
Richard J. Zeitler Jr., Esq. - Staff Attorney, Appeals,
OATH

August 24, 2017

INDEX

	Page
Fidel F. Del Valle, Esq.	4
Thomas Shpetner, Esq.	4
Alyssa Preston, Esq.	4
Simone Salloum, Esq.	4
Peter Schulman, Esq.	9
Shamonda Graham	10

1 August 24, 2017

2 (The Board Meeting commenced at 9:26
3 A.M.)

4 MR. FIDEL F. DEL VALLE, ESQ.,
5 CHAIRPERSON, COMMISSIONER & CHIEF ADMINISTRATIVE
6 LAW JUDGE, OATH: Is there a motion to accept the
7 minutes of the last meeting? I guess it's
8 unanimous with one abstention.

9 MR. THOMAS SHPETNER, ESQ., APPOINTED
10 MEMBER: I want to abstain.

11 MS. ALYSSA PRESTON, ESQ., DEPARTMENT OF
12 ENVIRONMENTAL PROTECTION: Abstain.

13 MR. DEL VALLE: I don't know why I
14 always say is there motion? Everybody raises
15 their hand and it's obvious it's --

16 MR. SHPETNER: It's past practice.

17 MR. DEL VALLE: Uh-oh. That's dangerous
18 you know. We have two rulemaking items before us.
19 And I'll ask Deputy General Counsel to describe
20 them.

21 MS. SIMONE SALLOUM, ESQ., SENIOR
22 COUNSEL, OATH: Good morning. I'm Simone Salloum,
23 Senior Counsel. And there's two --

24 MR. DEL VALLE: Senior Counsel, I'm

1 August 24, 2017

2 sorry.

3 MS. SALLOUM: That's okay.

4 MR. DEL VALLE: Inadvertent promotion I
5 guess.

6 MS. SALLOUM: There's two rules up for
7 your consideration today. They're both final
8 rules, so you've already voted on the proposal.
9 The first one is a final rule repealing the
10 Department of Transportation Penalty Schedule,
11 which is currently found in 3-124 of Subchapter G
12 of Chapter 3 of Title 48 of the Rules of the City
13 of New York. And we published the proposal in the
14 City Record on July 3rd and held a public hearing
15 on August 3rd. No one attended the public hearing
16 and we didn't receive any written comments
17 concerning this rule. The Department of
18 Transportation is also in the process of
19 promulgating the penalty schedule in their rules
20 and we're lined up for that. So, does anyone have
21 any questions on this rule?

22 MR. DEL VALLE: Well, for the benefit of
23 anybody watching, we are not eliminating the
24 rules for the Department of Transportation.

1 August 24, 2017

2 Basically what the rule -- what this does is it
3 moves the rules in together with -- the penalty
4 schedule together with the rules, which are the
5 rules of the Department of Transportation and
6 this has to be done in parallel with DOT. Just so
7 we don't get a weird thing in the *New York Post*
8 tomorrow morning.

9 Is there a motion or any questions
10 before the motion? I guess not. Is there a
11 motion? All those in favor? One, two, three,
12 four, five, six, seven. Opposed? Two opposed. No
13 abstentions. There's nobody left. The rule
14 passes.

15 MS. SALLOUM: And the second rule is
16 very similar. It's the repeal of the Fire Penalty
17 Schedule, which is currently located in 3-106 of
18 Subchapter G of Chapter 3 of the Title 48 of the
19 Rules of the City of New York. We published the
20 proposal in the City Record on July 14th and held
21 a public hearing on August 15th. No one attended
22 the public hearing and we didn't receive any
23 written comments on this rule. And similarly,
24 FDNY is in the process of promulgating the

1 August 24, 2017

2 penalty schedule into their Rules.

3 And just so you know, we did receive Law
4 Certification yesterday. I know that wasn't part
5 of the materials but we received it yesterday.
6 They didn't make any changes to the Notice of
7 Promulgation. So based on your vote, it would be
8 published as is. Does anyone have any questions
9 on this rule?

10 MR. DEL VALLE: And what I said before
11 in regard to the DOT Rules, the same thing
12 applies here. There will still be penalties for
13 Fire Department violations. Is there a motion?
14 Those in favor? One, two, three, four, five, six,
15 seven. And opposed? Two. And no abstentions. The
16 proposal passes.

17 MS. SALLOUM: Thank you.

18 MR. DEL VALLE: And we have Alyssa
19 Preston pinch-hitting for DEP, for the request
20 for cease and desist orders.

21 MS. ALYSSA PRESTON: Thank you. Good
22 morning. Alyssa Preston for the Department of
23 Environmental Protection. DEP is requesting a
24 cease and desist order be issued to respondent,

1 August 24, 2017

2 Ujima House S.U.S. Three violations were issued
3 for operating a kitchen exhaust in violation of
4 Section 24-227. DEP is also requesting a cease
5 and desist order be issued to respondent, Kingdom
6 Hall of Jehovah's Witnesses Amsterdam. Four
7 violations were issued for operating its air
8 conditioning system in violation of 24-227.
9 Finally, DEP is requesting a cease and order be
10 issued to respondent, Rolka Ryszard. Four
11 violations were issued for operating his air
12 conditioning unit in violation of Section 24-227.

13 In addition, the Department is
14 requesting 26 orders to cease and desist for
15 failure to comply with Commissioner's Orders to
16 install backflow prevention devices. In each of
17 these cases, DEP ordered the building owner to
18 install the appropriate backflow prevention
19 device. The owners failed to comply with the
20 order and were issued summonses. The owners were
21 then found in violation and still have not
22 complied with the DEP's orders to install the
23 backflow prevention devices. There has no
24 compliance to date.

1 August 24, 2017

2 MR. DEL VALLE: Any questions? Is there
3 a motion? All those in favor? One, two, three,
4 four, five, six, seven, eight. The motion passes.

5 MS. PRESTON: Thank you.

6 MR. DEL VALLE: This is not Kelly Corso.
7 This is Peter Schulman. He's pinch hitting today
8 as well and that's according to the schedule.

9 MR. PETER SCHULMAN, ESQ., ASSISTANT
10 DIRECTOR FOR ADJUDICATIONS, OATH: Yes, thank
11 you. So I'm going to be presenting the C&D
12 requests. But three of the backflow cases that
13 you were originally sent are being held off.
14 Those are 2016-0292, 2016-0296, 2016-0377. So
15 that leaves us with 11 pre-sealing reports for
16 today. Nine involve backflow violations. One
17 involves a Noise Code violation and one involves
18 an Air Code violation.

19 In eight of the backflow cases, the
20 hearing officers recommended no sealing or other
21 action based on respondent's evidence of
22 compliance presented at the hearings. In one of
23 the backflow cases, the hearing officer agreed
24 with DEP's recommendation of no sealing or other

1 August 24, 2017

2 action based on DEP's approval of an exemption
3 for the respondent's premises from backflow
4 device installation requirements.

5 The Noise case involves noise from a
6 respondent's kitchen exhaust system. The
7 respondent presented evidence of work done on the
8 cited equipment to bring it into compliance with
9 the Noise Code. The hearing officer then agreed
10 with DEP's recommendation that the equipment
11 remain unsealed if DEP's initial re-inspection
12 and further re-inspections for a period of 180
13 days show no violations.

14 The Air Code case involved the
15 respondent's failure to have a valid operating
16 certificate for its boiler-burner. Based on the
17 proof of a valid operating certificate for the
18 boiler-burner that the respondent presented at
19 the pre-sealing hearing, the hearing officer
20 recommended no further action. And that's it for
21 the C&Ds.

22 MR. DEL VALLE: Any questions? Motion?

23 MS. SHAMONDA GRAHAM, DEPARTMENT OF
24 BUILDINGS (DOB): I abstain. I wasn't here.

1 August 24, 2017

2 MR. DEL VALLE: All in favor? It's
3 unanimous with one abstention.

4 MR. SCHULMAN: Thank you.

5 MR. DEL VALLE: Thank you. Is there a
6 motion to go into Executive Session to review
7 judicial? Is there anyone not in favor, without
8 getting into the question? Okay.

9 [OFF THE RECORD

10 [ON THE RECORD]

11 MR. DEL VALLE: We're back in Public
12 Session after Executive Session. Is there a
13 motion on review of an appeal: NYC vs. Noble
14 Construction? There are two options: option
15 number one is to sustain the finding of the
16 hearing officer to the effect that there was
17 proper service; and option number two, that there
18 was not proper service and overturn the finding
19 of the hearing officer.

20 Those in favor of option one, which is
21 that there was proper service, please designate
22 by saying aye. That's four in favor of that.
23 Those in favor of option number two, which is
24 that there was not proper service, please

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August 24, 2017
designate by saying aye. One, two, three, four,
five. The decision is that there was not proper
service.

There being no other business, is there
a motion to adjourn? See you in September.

(The Board Meeting concluded at
approximately 10:09 A.M.)

CERTIFICATE OF ACCURACY

I, Fei Deng, certify that the foregoing transcript of Environmental Control Board on August 24, 2017 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: August 29, 2017

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