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
September 29, 2016
9:22 A.M. to 9:50 A.M.
MEMBERS PRESENT:

Chari Anhouse - Department of Health & Mental Hygiene
Ernest Cavallo, Appointed Member
Fidel F. Del Valle, Esq. - Chair, OATH
Shamonda Graham - Department of Buildings
Joseph Gregory, Esq. - Fire Department
Madelynn Liguori, Esq. - Department of Sanitation
Russell Pecunies, Esq. - Dept. of Environmental Protection
Indi Savitala - Appointed Member
Matthew Smith - Police Department
Thomas D. Shpetner, Esq. - Appointed Member
Douglas S. Swann - Appointed Member

ALSO PRESENT:

Simone Salloum, Esq. - Assistant General Counsel, OATH
Frances Shine - Secretary to the Board, OATH
Rachel Amar - Special Assistant to the Commissioner, OATH
Denis Brogan, Esq. - Assistant General Counsel, OATH
John Burns - First Deputy Commissioner, OATH
Vanessa Caughman - Supervising, Computer Service Technician, OATH
Kelly Corso, Esq. - Assistant Director of Adjudications, OATH
Fana Garrick - Creative Services Coordinator, OATH
David Goldin, Esq. - Administrative Justice Coordinator, Mayor’s Office
Diana Haines, Esq. - Assistant General Counsel, OATH
Will Hughes - Office of Management & Budget
Johnathan Jacobs - Business Integrity Commission
Mark H. Leeds, Esq. - Special Senior Counsel, OATH
Maria Marchiano - Deputy Commissioner/Chief Clerk, OATH
Joanne Rattansingh, Esq. - Assistant Director of Adjudications
Tynia Richard, Esq. - Deputy Commissioner General Counsel, OATH
Peter Schulman, Esq. - Assistant Director of Adjudications, OATH
Amy Slifka, Esq. - Deputy Commissioner, OATH
Thomas Southwick, Esq. - Supervising Attorney, Appeals, OATH
Doris Stewart - Department of Transportation
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(The board meeting commenced at 9:22 A.M.)

MR. FIDEL DEL VALLE, ESQ., CHAIR, OATH:
I’d like to welcome everybody to the September 29, 2016, Board Meeting of the Environmental Control Board. Before we get started, is there a motion to accept the minutes of the last meeting? It’s unanimous.

MR. ERNEST CAVALLO, APPOINTED MEMBER: I abstain. I wasn’t here.

MR. JOSEPH GREGORY, ESQ., FIRE DEPARTMENT: I abstain also.

MR. DEL VALLE: Okay. Three abstentions and it’s adopted. Before we go any further, I want to read a letter from the Mayor. To Hari Savitala. Dear Mr. Savitala: Pursuant to the authority invested in me as Mayor by Section 1049(a) of the New York City Charter, I am pleased to appoint you to the Environmental Control Board (ECB) to serve as ECB member with a background and experience in the field of noise pollution control. Your appointment is for the remainder of the four-year term expiring on March
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5, 2019. On behalf of all New Yorkers, thank you for sharing your time and skills with the Environmental Control Board. Sincerely, Bill de Blasio, Mayor.

And here is Mr. Savitala. Thank you for being here today.

MR. INDI SAVITALA, APPOINTED MEMBER:
Thank you.

MR. DEL VALLE: Your inaugural meeting.

MR. SAVITALA: Thank you for having me.

MR. DEL VALLE: First item on the agenda is an amendment to the ECB Sanitation Penalty Schedule.

MS. SIMONE SALLOUM, ASSISTANT GENERAL COUNSEL, OATH: Good morning. This is Simone Salloum, Assistant General Counsel with OATH, and as the Commissioner said, up for adoption is the final rule which repeals certain provisions of the Sanitation Penalty Schedule related to sweep out, throw out, and those all fall under Ad. Code 16-118(1). And the reason for the repeal is that Local Law 75, which took effect August 12, 2016, modified the penalty amounts rendering our
penalty schedule inaccurate. So we're asking
that you vote to repeal those provisions out of
the penalty schedule and please let me know if
you have any questions.

MR. DEL VALLE: Any questions? Is there
a motion? It's unanimous--

MR. ERNEST CAVALLO: Oh, I'm sorry. I
apologize.

MR. DEL VALLE: --with Health Department
abstaining. That's okay. I'm sorry, Sanitation.

MS. SALLOUM: Thank you.

MR. DEL VALLE: DEP has requests for
cease and desist orders.

MR. RUSSELL PECUNIES, ESQ., DEPT. OF
ENVIRONMENTAL PROTECTION: Good morning. I'm
Russell Pecunies, Assistant Counsel with the
Department of Environmental Protection. DEP has
a number of cease and desist orders to request
from the Board this morning and since we do have
a new board member, I'll go into a little bit
more detail than normal on [unintelligible] I
think a short agenda, so a little bit more detail
than normal about what these are about.
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MR. DEL VALLE: Thank you.

MR. PECUNIES: The first group of 27 requests relate to failure to install backflow prevention devices. In each of these cases, the building owner has been ordered by DEP to install appropriate backflow prevention devices on the water services to the premises. The determination that a building requires a backflow prevention device is made by DEP after inspecting the building and that's in accordance with guidelines established by the New York State Department of Health. In each of these cases, the building owner has failed to comply with the order and has then been issued a summons which they have either defaulted on or been found in violation of. And in each of these cases, the building owner has still not complied with the requirement to install the backflow prevention device. So in each of these 27 cases, the Department is asking the Board to issue an order to cease and desist.

MR. DEL VALLE: Any questions? Is there a motion? It's adopted unanimously with one
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MR. PECUNIES: Thank you. The next one is a request from the Bureau of Wastewater Treatment. This is in the matter of 1560 Bronx River Deli Grocery Corp., 1560 East 174th Street in the Bronx. Based on an inspection that was done by DEP in January, an order was issued to the respondent, which is a restaurant or deli, to install a grease trap on their sink and to submit written proof of proper grease disposal. When they failed to comply with that order, the Department issued a series of summonses which were scheduled for hearings in April, June, August and September 1st of this year. The respondent has defaulted as to all of those summonses, has still not installed the required grease trap and failed to appear for a mandatory compliance meeting on August 24th. Due to the failure of all of this enforcement activity to get the respondent to comply, the Department is asking the Board to issue an order to cease and desist.

MR. DEL VALLE: Any questions? Is there
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a motion? Again, it's unanimous with one abstention.

MR. PECUNIES: Thank you. The next two cases involving Charles Williams and Kazi Zacharia are of a type that we have not asked the Board to issue an order to cease and desist before in, in a while, I think four or five years probably. These relate to failure to connect to the public sewer. Although it's probably not widely known outside of Staten Island, there are still a few parts of Staten Island where they don't have sewers yet and they still use septic systems. And DEP is gradually installing sewers in those remaining areas and when a sewer is installed, what the law provides is that all of the building owners, and these are usually homeowners, these are mainly residential areas -- all of the building owners on the streets where the sewers have been installed receive a notice that says that they have six months to abandon their septic system and connect to the public sewer. And in the vast majority of cases, people are anxious to connect to the sewer. Among other things, it
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increases the property value by more than the
cost of connecting to the sewer in most cases.
And, in fact, the remaining neighborhoods that
don't have sewers are usually clamoring for them.
So usually most people hook up as soon as the
sewer is available. But there are occasionally
people who do not for a variety of reasons. They
can be financial. It can be that they feel like
their septic is still in good shape and they want
to get as much use out of it as they can before
they, they hook up to the sewer. So occasionally
there are building owners who do not comply with
the order to connect. And in those cases, we do
issue a summons for failing to connect and if
people default on those summonses, we then come
to the Board for an order to cease and desist.
Again, it's probably been four or five years
since we've had any of these, but in these two
cases, people had hearings in July, which they
failed to appear for. It's been over 60 days
since they went into default and the Department
is asking the Board in these two cases to issue
orders to cease and desist.
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MR. DEL VALLE: Any questions?

MR. DOUGLAS SWANN, APPOINTED MEMBER:

Yes. Doug Swann, Citizen Member. In this, in this instance, what does cease and desist mean for the residents?

MR. PECUNIES: It will mean that they will have to come in to a cease and desist hearing and show a hearing officer that they have started the process to connect and ultimately that they connect. Connecting requires you to get a permit from DEP, a permit from the Buildings Department, and the street opening permit from DOT because you have to obviously open the street to hook up. So there are three permits that are involved. So they would have to come in, show the hearing officer that they've hired a plumber and that the plumber is in the process of getting all the paperwork together and then ultimately do the work.

MR. DEL VALLE: And if they fail?

MR. PECUNIES: Well, I mean, theoretically, as the request says, the water supply to the premises could be terminated if
they fail. Obviously, since these are residential locations, you know, I mean, we've already given them repeated notices and, you know, they would get every opportunity before we would, we would do anything like that so hopefully, it's only two cases and hopefully neither of them will come to that.

MR. DEL VALLE: Any other questions?

MS. TYNIA RICHARD, DEPUTY COMMISSIONER, GENERAL COUNSEL, OATH: How much does the process cost?

MR. PECUNIES: Depending on the length of the connection, my recollection is approximately $2500 in most cases. If it's a longer distance to the sewer, if people have a bigger front yard and it's a longer distance to the sewer, then it can cost a little bit more, but my recollection is about $2500, $3000.

MR. DEL VALLE: Any other questions? Is there a motion? It's unanimous with one abstention.

MR. PECUNIES: Thank you. We now have a request for a cease and desist order under the
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Air Code. This one is also a little bit unusual because it involves a concrete plant. This is Advanced Ready Mix Corp. and the reason that there are two premises addresses is that their establishment goes through the entire block so it fronts on both Johnson Avenue and Ingram Street. And so some of the tickets were issued for the Johnson Avenue address, some were issued for the other address, but it's a silo that is in the middle of the block and it's all one facility. The silo has a certificate of operation from DEP for a dust control device that the silo was equipped with which keeps dust in the silo and out of the surrounding neighborhood. This has apparently been malfunctioning at least going back to 2014, in the case of the first violation, and then we've been receiving frequent complaints this year about dust from this facility. They've been issued four summonses for not renewing the certificate of operation and at this point, due to the repeated violations and the repeated failure to renew the certificate of operation and for them to get a renewed certificate of
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operation, they would have to repair the dust
control device and it would have to pass an
inspection so it will solve the problem that is
plaguing the surrounding neighborhood. So based
on that, DEP is asking the Board to issue an
order to cease and desist.

MR. DEL VALLE: Any questions? Is there
a motion? Again, it's unanimous with one
abstention.

MR. PECUNIES: And finally, we have Cody
Car Park, which is located at 555 11th Street in
Brooklyn. This is a noise situation, but again,
it's a little bit out of the ordinary because the
source of the noise -- this is a parking garage
-- the source of the noise is the elevator that
brings the cars up and down. Apparently it makes
a very loud noise when the doors open and close,
which has been cited by DEP as unnecessary or
unreasonable noise is actually the correct term,
three times this year, in March, in June, and
earlier this month. The respondent stipulated to
the first violation, defaulted on the second one,
and the third one is coming up next month. We
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are still getting frequent complaints about the very loud noise from these doors and since the respondent has been cited repeatedly at this point and failed to correct the problem, the Department is asking the Board to issue an order to cease and desist.

MR. DEL VALLE: Questions? Motion?

Unanimous--

MR. PECUNIES: Thank you.

MR. DEL VALLE: --with one abstention.

Thank you. We'll have a report on pre-sealing orders from Kelly Corso.

MS. KELLY CORSO, ESQ., ASSISTANT DIRECTOR OF ADJUDICATIONS, OATH: Good morning. I'm Kelly Corso, Assistant Director for OATH, and I'm just going to give our new member a little background on what the pre-sealing reports are. As Mr. Pecunies was saying, the issuance of a C&D order will require the respondent to appear at a special hearing and the hearing is for the purpose of the respondent to show why their equipment should not be sealed. And after the hearing, the hearing officer will issue a report,
which includes a recommendation to the Board, and that report is going to recommend such things as no further action, for example, if the respondent has come into compliance with the Code that they were cited of violating or that the order should be discontinued. For example, if DEP has determined that the device that they needed, it's no longer needed at the premises, maybe the premises has been demolished or something like that. Other example would be, of a recommendation, would be monitoring and further reinspection by DEP, those are common in Noise Code cases. And rarely, what we can see of the hearing officers recommend is sealing of the equipment. And usually, we only see that when the respondent either has not appeared for the hearings for a period of time or if they have appeared, a representative of respondent has appeared, but has shown no attempt to comply with the order. For today, we have 17 pre-sealing reports for the Board. Nine of these cases involve backflow violations, six involve Air Code violations, and two involve Noise Code
violations. The backflow violations, in seven of these cases, the hearing officers recommend no sealing or other action based on the respondent's compliance that was presented at the hearings. In one of the remaining two backflow cases, the hearing officer recommended no sealing or other action because the cited equipment is being demolished. And in the final backflow case, the hearing officer recommended no sealing or other action based on a recent DEP inspection showing that no backflow prevention device is required at this time. For the Air Code cases, in three of them, the hearing officers recommend no further action based on the respondent's proof at the hearings that they have obtained valid operating certificates for the site of boilers and burners. In the remaining three Air Code cases, respondents did not appear at the hearings. However, the hearing officers agreed with DEP's recommendation that the C&D orders be discontinued in these cases because the respondents have either obtained renewed operating certificates bringing them into
compliance or they have removed the cited equipment from the premises. And the final cases are two Noise Code cases. In these cases the respondents presented evidence at the hearings that work had been done to bring the cited premises into compliance with the Noise Code and in each case, the hearing officers recommend that DEP reinspect the equipment which were kitchen exhaust fans and that the equipment remain unsealed only if DEP's initial reinspection and further reinspection for a period of 180 days show no violations. That's it

MR. DEL VALLE: Any questions? Is there a motion to adopt the recommendations? It's unanimous--

MR. PECUNIES: One abstention.

MR. DEL VALLE: --with one abstention.

Thank you. The public officers' law provides that when a board is considering questions of the judicial nature or disciplinary nature and may involve litigation, we can retire to Executive Session to do just that. And is there a motion to retire to Executive Session for that purpose?
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It's unanimous. And I'll ask anyone who is not ECB/OATH to step outside.

MR. DEL VALLE: Are there any questions? Anyone? Is there a motion to adjourn? We're adjourned.

(The board meeting concluded at 9:50 A.M.)
I, Julia Zappi, certify that the foregoing transcript of Environmental Control Board Board Meeting on September 29, 2016 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

[Signature]

Date: September 30, 2016