

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.

September 29, 2016

## 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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2 (The board meeting commenced at 9:22  
3 A.M.)

4 MR. FIDEL DEL VALLE, ESQ., CHAIR, OATH:  
5 I'd like to welcome everybody to the September  
6 29, 2016, Board Meeting of the Environmental  
7 Control Board. Before we get started, is there a  
8 motion to accept the minutes of the last meeting?  
9 It's unanimous.

10 MR. ERNEST CAVALLO, APPOINTED MEMBER: I  
11 abstain. I wasn't here.

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

14 MR. DEL VALLE: Okay. Three abstentions  
15 and it's adopted. Before we go any further, I  
16 want to read a letter from the Mayor. To Hari  
17 Savitala. Dear Mr. Savitala: Pursuant to the  
18 authority invested in me as Mayor by Section  
19 1049(a) of the New York City Charter, I am  
20 pleased to appoint you to the Environmental  
21 Control Board (ECB) to serve as ECB member with a  
22 background and experience in the field of noise  
23 pollution control. Your appointment is for the  
24 remainder of the four-year term expiring on March

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2           5, 2019. On behalf of all New Yorkers, thank you  
3           for sharing your time and skills with the  
4           Environmental Control Board. Sincerely, Bill de  
5           Blasio, Mayor.

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

8                        MR. INDI SAVITALA, APPOINTED MEMBER:

9           Thank you.

10                      MR. DEL VALLE: Your inaugural meeting.

11                      MR. SAVITALA: Thank you for having me.

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

15                      MS. SIMONE SALLOUM, ASSISTANT GENERAL  
16           COUNSEL, OATH: Good morning. This is Simone  
17           Salloum, Assistant General Counsel with OATH, and  
18           as the Commissioner said, up for adoption is the  
19           final rule which repeals certain provisions of  
20           the Sanitation Penalty Schedule related to sweep  
21           out, throw out, and those all fall under Ad. Code  
22           16-118(1). And the reason for the repeal is that  
23           Local Law 75, which took effect August 12, 2016,  
24           modified the penalty amounts rendering our

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2 penalty schedule inaccurate. So we're asking  
3 that you vote to repeal those provisions out of  
4 the penalty schedule and please let me know if  
5 you have any questions.

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

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

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

12 MS. SALLOUM: Thank you.

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

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

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2 MR. DEL VALLE: Thank you.

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

23 MR. DEL VALLE: Any questions? Is there  
24 a motion? It's adopted unanimously with one

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2           abstention.

3                   MR. PECUNIES: Thank you. The next one  
4           is a request from the Bureau of Wastewater  
5           Treatment. This is in the matter of 1560 Bronx  
6           River Deli Grocery Corp., 1560 East 174th Street  
7           in the Bronx. Based on an inspection that was  
8           done by DEP in January, an order was issued to  
9           the respondent, which is a restaurant or deli, to  
10          install a grease trap on their sink and to submit  
11          written proof of proper grease disposal. When  
12          they failed to comply with that order, the  
13          Department issued a series of summonses which  
14          were scheduled for hearings in April, June,  
15          August and September 1st of this year. The  
16          respondent has defaulted as to all of those  
17          summonses, has still not installed the required  
18          grease trap and failed to appear for a mandatory  
19          compliance meeting on August 24th. Due to the  
20          failure of all of this enforcement activity to  
21          get the respondent to comply, the Department is  
22          asking the Board to issue an order to cease and  
23          desist.

24                   MR. DEL VALLE: Any questions? Is there



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2 a motion? Again, it's unanimous with one  
3 abstention.

4 MR. PECUNIES: Thank you. The next two  
5 cases involving Charles Williams and Kazi Zachria  
6 are of a type that we have not asked the Board to  
7 issue an order to cease and desist before in, in  
8 a while, I think four or five years probably.  
9 These relate to failure to connect to the public  
10 sewer. Although it's probably not widely known  
11 outside of Staten Island, there are still a few  
12 parts of Staten Island where they don't have  
13 sewers yet and they still use septic systems.  
14 And DEP is gradually installing sewers in those  
15 remaining areas and when a sewer is installed,  
16 what the law provides is that all of the building  
17 owners, and these are usually homeowners, these  
18 are mainly residential areas -- all of the  
19 building owners on the streets where the sewers  
20 have been installed receive a notice that says  
21 that they have six months to abandon their septic  
22 system and connect to the public sewer. And in  
23 the vast majority of cases, people are anxious to  
24 connect to the sewer. Among other things, it

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2           increases the property value by more than the

3           cost of connecting to the sewer in most cases.

4           And, in fact, the remaining neighborhoods that

5           don't have sewers are usually clamoring for them.

6           So usually most people hook up as soon as the

7           sewer is available. But there are occasionally

8           people who do not for a variety of reasons. They

9           can be financial. It can be that they feel like

10          their septic is still in good shape and they want

11          to get as much use out of it as they can before

12          they, they hook up to the sewer. So occasionally

13          there are building owners who do not comply with

14          the order to connect. And in those cases, we do

15          issue a summons for failing to connect and if

16          people default on those summonses, we then come

17          to the Board for an order to cease and desist.

18          Again, it's probably been four or five years

19          since we've had any of these, but in these two

20          cases, people had hearings in July, which they

21          failed to appear for. It's been over 60 days

22          since they went into default and the Department

23          is asking the Board in these two cases to issue

24          orders to cease and desist.

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2 MR. DEL VALLE: Any questions?

3 MR. DOUGLAS SWANN, APPOINTED MEMBER:

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

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

21 MR. DEL VALLE: And if they fail?

22 MR. PECUNIES: Well, I mean,  
23 theoretically, as the request says, the water  
24 supply to the premises could be terminated if

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2 they fail. Obviously, since these are  
3 residential locations, you know, I mean, we've  
4 already given them repeated notices and, you  
5 know, they would get every opportunity before we  
6 would, we would do anything like that so  
7 hopefully, it's only two cases and hopefully  
8 neither of them will come to that.

9 MR. DEL VALLE: Any other questions?

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

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

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

23 MR. PECUNIES: Thank you. We now have a  
24 request for a cease and desist order under the

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2           Air Code. This one is also a little bit unusual

3           because it involves a concrete plant. This is

4           Advanced Ready Mix Corp. and the reason that

5           there are two premises addresses is that their

6           establishment goes through the entire block so it

7           fronts on both Johnson Avenue and Ingram Street.

8           And so some of the tickets were issued for the

9           Johnson Avenue address, some were issued for the

10          other address, but it's a silo that is in the

11          middle of the block and it's all one facility.

12          The silo has a certificate of operation from DEP

13          for a dust control device that the silo was

14          equipped with which keeps dust in the silo and

15          out of the surrounding neighborhood. This has

16          apparently been malfunctioning at least going

17          back to 2014, in the case of the first violation,

18          and then we've been receiving frequent complaints

19          this year about dust from this facility. They've

20          been issued four summonses for not renewing the

21          certificate of operation and at this point, due

22          to the repeated violations and the repeated

23          failure to renew the certificate of operation and

24          for them to get a renewed certificate of

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2           operation, they would have to repair the dust  
3           control device and it would have to pass an  
4           inspection so it will solve the problem that is  
5           plaguing the surrounding neighborhood. So based  
6           on that, DEP is asking the Board to issue an  
7           order to cease and desist.

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

11                   MR. PECUNIES: And finally, we have Cody  
12          Car Park, which is located at 555 11th Street in  
13          Brooklyn. This is a noise situation, but again,  
14          it's a little bit out of the ordinary because the  
15          source of the noise -- this is a parking garage  
16          -- the source of the noise is the elevator that  
17          brings the cars up and down. Apparently it makes  
18          a very loud noise when the doors open and close,  
19          which has been cited by DEP as unnecessary or  
20          unreasonable noise is actually the correct term,  
21          three times this year, in March, in June, and  
22          earlier this month. The respondent stipulated to  
23          the first violation, defaulted on the second one,  
24          and the third one is coming up next month. We

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2 are still getting frequent complaints about the  
3 very loud noise from these doors and since the  
4 respondent has been cited repeatedly at this  
5 point and failed to correct the problem, the  
6 Department is asking the Board to issue an order  
7 to cease and desist.

8 MR. DEL VALLE: Questions? Motion?

9 Unanimous--

10 MR. PECUNIES: Thank you.

11 MR. DEL VALLE: --with one abstention.  
12 Thank you. We'll have a report on pre-sealing  
13 orders from Kelly Corso.

14 MS. KELLY CORSO, ESQ., ASSISTANT  
15 DIRECTOR OF ADJUDICATIONS, OATH: Good morning.  
16 I'm Kelly Corso, Assistant Director for OATH, and  
17 I'm just going to give our new member a little  
18 background on what the pre-sealing reports are.  
19 As Mr. Pecunies was saying, the issuance of a C&D  
20 order will require the respondent to appear at a  
21 special hearing and the hearing is for the  
22 purpose of the respondent to show why their  
23 equipment should not be sealed. And after the  
24 hearing, the hearing officer will issue a report,

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2           which includes a recommendation to the Board, and

3           that report is going to recommend such things as

4           no further action, for example, if the respondent

5           has come into compliance with the Code that they

6           were cited of violating or that the order should

7           be discontinued. For example, if DEP has

8           determined that the device that they needed, it's

9           no longer needed at the premises, maybe the

10          premises has been demolished or something like

11          that. Other example would be, of a

12          recommendation, would be monitoring and further

13          reinspection by DEP, those are common in Noise

14          Code cases. And rarely, what we can see of the

15          hearing officers recommend is sealing of the

16          equipment. And usually, we only see that when

17          the respondent either has not appeared for the

18          hearings for a period of time or if they have

19          appeared, a representative of respondent has

20          appeared, but has shown no attempt to comply with

21          the order. For today, we have 17 pre-sealing

22          reports for the Board. Nine of these cases

23          involve backflow violations, six involve Air Code

24          violations, and two involve Noise Code



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2           violations. The backflow violations, in seven of  
3           these cases, the hearing officers recommend no  
4           sealing or other action based on the respondent's  
5           compliance that was presented at the hearings.

6           In one of the remaining two backflow cases, the  
7           hearing officer recommended no sealing or other  
8           action because the cited equipment is being  
9           demolished. And in the final backflow case, the  
10          hearing officer recommended no sealing or other  
11          action based on a recent DEP inspection showing  
12          that no backflow prevention device is required at  
13          this time. For the Air Code cases, in three of  
14          them, the hearing officers recommend no further  
15          action based on the respondent's proof at the  
16          hearings that they have obtained valid operating  
17          certificates for the site of boilers and burners.

18          In the remaining three Air Code cases,  
19          respondents did not appear at the hearings.

20          However, the hearing officers agreed with DEP's  
21          recommendation that the C&D orders be  
22          discontinued in these cases because the  
23          respondents have either obtained renewed  
24          operating certificates bringing them into

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2 compliance or they have removed the cited  
3 equipment from the premises. And the final cases  
4 are two Noise Code cases. In these cases the  
5 respondents presented evidence at the hearings  
6 that work had been done to bring the cited  
7 premises into compliance with the Noise Code and  
8 in each case, the hearing officers recommend that  
9 DEP reinspect the equipment which were kitchen  
10 exhaust fans and that the equipment remain  
11 unsealed only if DEP's initial reinspection and  
12 further reinspection for a period of 180 days  
13 show no violations. That's it

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

17 MR. PECUNIES: One abstention.

18 MR. DEL VALLE: --with one abstention.  
19 Thank you. The public officers' law provides  
20 that when a board is considering questions of the  
21 judicial nature or disciplinary nature and may  
22 involve litigation, we can retire to Executive  
23 Session to do just that. And is there a motion  
24 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.)

Environmental Control Board, 9/29/2016

CERTIFICATE OF ACCURACY

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



Handwritten signature of Julia Zappi in cursive script, positioned above a horizontal line.

Date: September 30, 2016

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