

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

February 23, 2017

9:20 A.M. to 10:12 A.M.

February 23, 2017

## MEMBERS PRESENT:

Katherine Byrns - Police Department  
Fidel F. Del Valle, Esq. - Chair, OATH  
Shamonda Graham - Department of Buildings  
Joseph Gregory, Esq. - Fire Department  
Elizabeth Knauer - Appointed Member  
Madelynn Liguori, Esq. - Department of Sanitation  
Jorge Martinez - Dept. of Health & Mental Hygiene  
**Russell Pecunies, Esq. - Department of Environmental  
Protection**  
Indi Savitala - Appointed Member

## ALSO PRESENT:

John Castelli, Esq. - Asst. Commissioner, Legislative  
Affairs, OATH  
Kevin Chan - 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  
Jonathan Jacobs - Business Integrity Commission  
Susan Kassapian - Deputy Commissioner/Hearings Division  
Hani Kfourri - Office of Management and Budget, OMB  
Mark Leeds - Special Senior Counsel, OATH  
Joanne Rattansingh - Assistant Director of  
Adjudications, OATH  
Tynia Richard - Deputy Commissioner/General Counsel, OATH  
Simone Salloum - Assistant General Counsel, OATH  
Peter Schulman, Esq. - Assistant Director of  
Adjudications, OATH  
Frances Shine - Secretary to the Board, OATH  
Amy Slifka, Esq. - Deputy Commissioner/Executive Director,  
OATH

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2 (The Board Meeting commenced at 9:20  
3 A.M.)

4 MR. FIDEL F. DEL VALLE, ESQ.,  
5 CHAIRPERSON, COMMISSIONER & CHIEF ADMINISTRATIVE  
6 LAW JUDGE, OATH: Good morning everyone. This is a  
7 meeting of the Environmental Control Board,  
8 February 23, 2017. Is there a motion to accept  
9 the minutes of the last meeting? Yeah, they are  
10 accepted. We have a point of clarification on a  
11 question of procedure from our General Counsel.

12 MS. TYNIA RICHARD, DEPUTY COMMISSIONER &  
13 GENERAL COUNSEL, OATH: Good morning. My name is  
14 Tynia Richards and I'm Deputy Commissioner and  
15 General Counsel at OATH. We have before you as a  
16 second matter of business a proposed rule which  
17 came before the Board in December. I'm before you  
18 because the rule was voted on and six votes were  
19 in favor. There were three abstentions. There was  
20 one vote against. And upon review of that vote,  
21 we realized that it was insufficient, that a  
22 majority of the Board has to vote in favor of a  
23 matter in order for the Board to act upon it.  
24 That means seven votes in favor and we were short

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2 one vote on that day.

3 So that proposed rule is before you  
4 again today. I noticed that there were three  
5 abstentions on that particular day. And so I  
6 wanted to look into the matter of abstentions,  
7 what an abstention is and just to give you a  
8 little bit of information about it. Because I'm  
9 not sure how people are choosing -- what they  
10 mean by abstaining. So basically I looked at  
11 Robert's Rules, which indicates that you should  
12 abstain from voting whenever you have an interest  
13 in the outcome that directly affects you  
14 personally or monetarily in a manner that's not  
15 shared by the other members of your group.

16 So that's a general sort of description  
17 and I wanted something a little more specific so  
18 I asked Simone to call the Conflict of Interest  
19 Board to find out from them specifically what  
20 they thought an abstention meant for a government  
21 board, a City board. And they basically agreed  
22 with that description, that an abstention is for  
23 purposes of abstaining when you have a personal  
24 interest or monetary interest in what's being

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2 voted on at the moment.

3 And as an example, he gave for example  
4 since we vote on rules all the time and  
5 penalties: if a Board member voted to lower a  
6 penalty for a summons that they had been issued.  
7 Alright? So that would be a personal interest in  
8 that particular thing. I get a sense that the  
9 member agencies of this Board think that if a  
10 matter affects their agency they shouldn't be  
11 voting for some reason. I don't think that's a  
12 proper basis for abstaining. In fact, the Charter  
13 put the agency members on the Board for purposes  
14 of doing the business of the agencies and of the  
15 Environmental Control Board. And I can see,  
16 Elizabeth, I'm almost finished Elizabeth. I know  
17 you have a question.

18 MS. ELIZABETH KNAUER, APPOINTED MEMBER:  
19 Right.

20 MS. RICHARD: So I just wanted to, you  
21 know, I'm not here to give you legal advice. I do  
22 want to pass on that information because three  
23 abstentions is a large number for the group and I  
24 just want to make sure that when you all are

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2 abstaining, you're doing that for a reason. The  
3 responsibility of the Board members is to conduct  
4 the business of the Board. You move forward with  
5 the business of the Board by voting yes. And if  
6 you don't want to, you vote no. That's the  
7 general rule. Abstaining is for something else.  
8 And so, Elizabeth, you have a question?

9 MS. KNAUER: I do. I don't see -- it  
10 doesn't really apply to this particular context  
11 but it's going to come up for me later in the  
12 meeting.

13 MS. RICHARD: Okay.

14 MS. KNAUER: So, I'm Elizabeth Knauer,  
15 Citizen Member. So, when I was appointed I had to  
16 go through a conflict of interest review by the  
17 Conflict of Interest Board. I'm an attorney that  
18 my firm represents private clients, some of whom  
19 appear before ECB. And it was made clear to me  
20 that I should recuse myself from any decision-  
21 making which affected a client. Before I think it  
22 was somewhat limited to where the client is  
23 appearing before ECB.

24 However, in a number of instances I have

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2 recused myself from decisions that affected  
3 clients even if I wasn't directly representing  
4 them before ECB just because I felt that it was  
5 appropriate to do so. So, the way that you  
6 presented it now was whether I have a personal  
7 interest in the outcome of something. I would  
8 expand that to include clients of my firm.

9 MS. RICHARD: But that is a personal  
10 interest, right?

11 MS. KNAUER: Okay.

12 MS. RICHARD: Yeah.

13 MS. KNAUER: Well, it's as directly --

14 MS. RICHARD: Your clients are paying  
15 your firm.

16 MS. KNAUER: Right.

17 MS. RICHARDS: And you benefit from that  
18 payment.

19 MS. KNAUER: Well, the clients pay our  
20 firm but, you know, that payment isn't really;  
21 it's not as direct as you just presented.

22 MS. RICHARD: Okay.

23 MS. KNAUER: So, I just wanted to make  
24 it clear that in some instances if I need to



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2 abstain it's because it may affect a client, not  
3 because it directly affects me.

4 MS. RICHARDS: Yeah. Thank you.

5 MS. KNAUER: Okay.

6 MR. DEL VALLE: And expanding on what  
7 Elizabeth just said, my understanding is also  
8 that the Law Department is of the opinion that  
9 for an item to pass, it requires a majority of  
10 the Board, regardless of any vacancies or  
11 absences. In other words, if the Charter  
12 envisions the Board composed of 13 people, then  
13 you need a majority of the 13, even though all 13  
14 may not be present at that particular meeting.

15 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT  
16 OF ENVIRONMENTAL PROTECTION: I have a question  
17 about that. Russell Pecunies, Department of  
18 Environmental Protection. What is the quorum for  
19 the Board to conduct business? What is the  
20 quorum?

21 MR. DEL VALLE: It's a weird formula.  
22 What's the formula?

23 MS. RICHARD: It's two appointed  
24 members.

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2 MR. PECUNIES: Yeah.

3 MS. RICHARD: And three ex officio  
4 members.

5 MR. PECUNIES: So if five is a quorum  
6 but you need seven votes to do anything, then how  
7 is five a quorum?

8 MS. RICHARD: Well, I --

9 MR. PECUNIES: It doesn't make any  
10 sense.

11 MR. DEL VALLE: Well, I guess we can  
12 meet and we can discuss things and make function  
13 dates and like that --

14 MR. PECUNIES: But we can't do anything.

15 MR. DEL VALLE: -- but we really can't  
16 take any action. We can discuss litigation stuff  
17 and like that but you're right, we can't take any  
18 action.

19 MR. PECUNIES: Okay.

20 MR. DEL VALLE: We would be effectively  
21 paralyzed.

22 MS. RICHARD: And believe me, we've had  
23 these discussions for a long period of time.

24 MR. DEL VALLE: I have to tell you that

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2 there's similar weird things like that for the  
3 TLC, which I chaired for four years and was  
4 counsel to for six years before that; which  
5 creates sometimes a lot of aggravation and  
6 particularly when you have a bunch of vacancies.

7 I mean, there were times when in the  
8 case of the TLC, you just had enough bodies  
9 appointed to the Board to take action because  
10 there were so many vacancies. It's hard to get  
11 people to get on the TLC thing because members  
12 get a lot of abuse. They don't even get per diems  
13 or a parking placard or a MetroCard of anything,  
14 that they're just purely volunteer citizens for  
15 all practical purposes. At least here we get a  
16 per diem stipend. They just get beaten up.

17 Anyway, back to business. There is that  
18 proposed rule and the Counsel's office will  
19 enlighten us as to it.

20 MS. SIMONE SALLOUM, ASSISTANT GENERAL  
21 COUNSEL, OATH: I am Simone Salloum, Assistant  
22 General Counsel with OATH. And as was previously  
23 mentioned, this is the same rule essentially that  
24 came before you in December. But this is a

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2 proposed rule repealing the Building's penalty  
3 schedule from OATH's rules, which is currently  
4 located in Section 3-103 of Subchapter G of  
5 Chapter 3 of Title 48 of the Rules of the City of  
6 New York. And the Department of Buildings is  
7 promulgating their own penalty schedule. They  
8 just received certification for that, so we're  
9 ready to move forward with CAPA and hold a public  
10 hearing based on your vote today. Does anyone  
11 have any questions?

12 MR. DEL VALLE: Okay. Thank you,  
13 Elizabeth. I was disappointed.

14 MS. KNAUER: Elizabeth Knauer. So, I  
15 just, you know, I think that there had been  
16 certain concerns that have been raised by other  
17 citizen board members about the whole process of  
18 repealing the penalty schedules from our rules  
19 and having them only promulgated by the agencies,  
20 which I share those concerns. The reason that I  
21 have abstained rather than voted no on these  
22 repeals is that I felt that we were sort of  
23 between a rock and a hard place and that the  
24 agencies were promulgating their penalty

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2           schedules and that there wouldn't be any further  
3           penalties that would be introduced to reflect,  
4           you know, changes in local laws, etcetera,  
5           etcetera, in the OATH rules. So I guess my  
6           question is: If we don't vote, if the Board does  
7           not vote in favor of this repeal, what is the  
8           outcome?

9                   MS. RICHARD: The outcome is disastrous,  
10           can I just say. The Law Department will not allow  
11           there to be two penalties in place, right. So  
12           that means the Department of Buildings, which has  
13           now a new penalty schedule, would not be able to  
14           put theirs in place.

15                   MR. DEL VALLE: Or vice versa.

16                   MS. RICHARD: Right. So we're basically  
17           stuck. The Law Department is requiring the new  
18           penalty schedule and the repeal of the old  
19           penalty schedule to occur simultaneously. So in  
20           order for the City to continue to conduct  
21           business, and my understanding is that there are  
22           new penalties that are put in this new schedule  
23           that the Buildings Department has, there's  
24           business to be done.

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2 MR. DEL VALLE: I want to clarify  
3 something because I'm not sure if it was made  
4 clear. Any changes in penalties, regardless of  
5 where they're situated, has to go through the  
6 CAPA process. Any change, for example if there's  
7 a legislative change and depending on the  
8 legislation, any legislation overrules any rule  
9 or regulation. But say for example the City  
10 Council in its wisdom decides that the penalty  
11 for recycling should now be between \$10,000 and  
12 \$20,000. I mean, I'm just saying that as a weird  
13 thing. And it then behooves the Sanitation  
14 Department or whomever to adjust their penalty  
15 schedule accordingly.

16 Before they can do that, they have to go  
17 through the CAPA process. Which means they have  
18 to do a draft, which has to be approved by the  
19 Law Department and by Operations of the Law  
20 Department for whether it's ultra vires or not  
21 and Operations as to whether it's understandable  
22 in plain English. They have to publish it in  
23 advance, at least 30 days in advance before  
24 there's a public hearing on it. And they have to

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2 take written comments and testimonial comments at  
3 the public hearing, deliberate on it, and after  
4 that a report is made to the agency head, who has  
5 to review it. And then it is approved. And then  
6 has to be again published before it can be in  
7 effect, for I think 30 days, which for all  
8 practical purposes is really 35 days because it  
9 takes five days to get the thing published  
10 anyway. The process is virtually identical,  
11 except it's not duplicated.

12 One of the driving reasons for what  
13 we're doing is twofold. Well, actually there's  
14 two-fold reasons: One is as has been the practice  
15 historically, it takes instead of two or three  
16 months for a rule change, it can take as long as  
17 nine months for a rule change. Because you have  
18 first one agency going through the CAPA process  
19 and then you have ECB going through the CAPA  
20 process and it's duplicative of efforts, apart  
21 from the fact that we're locked into, we can't  
22 take any action except in 30-day increments  
23 because we meet basically every 30 days, which  
24 extends the process.

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2 The other being that laws and rules are  
3 a matter of public policy. And the public policy  
4 with respect to sanitation or environmental  
5 protection are within those agencies. And having  
6 once upon a time being a regulator, when you do  
7 regulation, if you try to do it intelligently,  
8 you do it in a holistic manner. In other words,  
9 this particular rule here has a collateral impact  
10 on this other rule and that rule and that public  
11 policy. And the only entities that are really in  
12 a position to balance that out are the regulatory  
13 agencies. We are in, I don't want to say in a  
14 total vacuum, but we're essentially almost being  
15 asked to rubberstamp work, sometimes a year or  
16 two worth of work that was done by another  
17 agency.

18 You know, the public criticizes us  
19 constantly for being overly bureaucratic and  
20 inefficient and just plain dumb in many cases and  
21 sometimes they're right and sometimes they're  
22 wrong. They like to say: Look at private industry  
23 and how wonderful and efficient it is. And I was  
24 disabused of that the other day when I tried to



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2 make a complaint to the telephone company and  
3 nowhere on my phone bill could I find a phone  
4 number for the phone company, which drove me  
5 nuts. But that's pretty much where the world is  
6 now.

7 MS. RICHARD: Can I add just to address  
8 I think your concern, because I respect a great  
9 deal the concern about government transparency.

10 MR. DEL VALLE: And it's an important  
11 discussion to have.

12 MS. RICHARDS: It is a very important  
13 discussion. But a part of CAPA is a public  
14 hearing. You can submit comments, objections. You  
15 can appear at the hearing and be put on the  
16 record to make an objection or to state concerns  
17 about things and those things are things that we  
18 take very seriously. We rarely have anyone appear  
19 at the public hearings. Now, when we redid our  
20 procedural rules last year, there was much more  
21 interest and we received comments from -- I know  
22 a large set of comments from the Department of  
23 Buildings. We went through each one meticulously.  
24 We got maybe a handful of different submissions,

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2 but in general nobody appears, but that is the  
3 opportunity to be involved and that's what CAPA  
4 provides. So, it's not exactly true that there  
5 won't be any opportunity for that in the future.

6 MS. KNAUER: Elizabeth Knauer, Citizen  
7 Member. So, of course I think we've had this  
8 discussion back and forth before. I'll just, you  
9 know, for the record say once again that while  
10 there is a CAPA process that provides an  
11 opportunity for citizens to comment; they don't  
12 comment I think largely because it's really not  
13 common knowledge of where to look to get the  
14 notices of these public hearings. And I think  
15 very few people and entities actually know that  
16 they're even happening.

17 I do think that we have had a role and  
18 especially the citizen members have had a role in  
19 having context for these penalties. I don't think  
20 we're in a vacuum because I think we've looked at  
21 them. We get the information from the agencies  
22 when they present their proposed penalties. So I  
23 don't think we're totally in a vacuum and we're  
24 not rubberstamping. And we often have during my

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2 tenure on this Board, we often have asked  
3 questions and raised concerns about certain  
4 penalties, particularly ones that may affect  
5 individuals and tenants that are very high, that  
6 are more directed towards landlords and  
7 corporations but could affect individuals based  
8 on the face of the regulations, and we have  
9 raised concerns about those things.

10 So I don't think we're rubberstamping.  
11 And I also think that we do play a role that the  
12 public doesn't really have a functional  
13 opportunity to play. I mean, just because the way  
14 CAPA works, it doesn't really provide a lot of  
15 notice to people that's very accessible in terms  
16 of when rulemaking hearings are happening. I  
17 think CAPA has an important role to play and it's  
18 useful for entities like National Grid and that  
19 have consultants or lobbyists or just internal  
20 staff that are aware of rulemakings that may  
21 affect them. But for the general public, I don't  
22 think they have the knowledge and I actually  
23 don't think that particular individuals have much  
24 of a motivation to comment, even though these

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2 penalties can end up affecting them greatly in  
3 the long run.

4 So, I guess, sort of in the process  
5 issue, I guess what I'm hearing is that if we  
6 don't approve the repeal, then the Buildings  
7 Department's new penalty schedule will not be  
8 effectuated. I guess technically that could mean  
9 that it would be, if we as a Board continue not  
10 to approve a repeal and I don't think that's  
11 probably going to be the outcome, but if we  
12 didn't, then theoretically it could be the  
13 Buildings penalty schedule could be proposed to  
14 us to approve and we'd just sort of be back in  
15 the position that we have been over time. It  
16 doesn't seem like there's anything legally  
17 preventing us from reviewing and approving the  
18 penalty schedule that the Buildings Department  
19 has promulgated now and that can't be effectuated  
20 until we repeal our penalty schedule.

21 So, I don't think it presents an issue  
22 that business can't be done. It just might take a  
23 little bit more time for that penalty schedule to  
24 be finally in place. So, those are my comments,

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2 more I think for the edification of our newest  
3 citizen member than anything else.

4 MR. DEL VALLE: This reminds me a lot of  
5 what is vague about voter participation. The  
6 President of the United States was elected with  
7 only 49 percent of the people eligible to vote,  
8 bothering to vote. When whether it's OATH/ECB,  
9 Buildings, or whatever, start the CAPA process,  
10 the list of entities to whom is sent a notice of  
11 the hearing and copies of the rules is pages  
12 long. Apart from just about every news media  
13 outlet known to mankind getting it, they get a  
14 notice and they get a copy. In addition,  
15 community boards get copies and notices of these  
16 proceedings and a whole bunch of other community  
17 outlets and The City Record.

18 The City Record seems to be the only  
19 entity that religiously publishes everything. I  
20 don't remember the last time I saw the New York  
21 Times publish it or the Daily News or the Post,  
22 unless it's some sexy matter at TLC having to do  
23 with Uber or whatever. But it's not for lack of  
24 proactive attempt to inform the public of what's

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2 going on. In fact, I'm not sure but I think  
3 Channel -- what is it? -- 21 or whatever, may  
4 list that and certainly it's on the websites.

5 The City also has New York City Rules  
6 bulletins that go out if you subscribe online  
7 that you want to know what new New York City  
8 rules are being proposed or changed or whatever,  
9 you'll get an email every week telling you what  
10 agencies are proposing this, that or the other  
11 thing. The sad commentary is that most of our  
12 inhabitants don't appear to give a damn until  
13 they wind up having to deal with a summons or a  
14 Buildings Department summons or a Sanitation  
15 summons or a whatever summons. And it's kind of  
16 like, well, where were you when this was being  
17 proposed? That's human nature unfortunately.

18 MS. KNAUER: I mean, I just want to  
19 clarify that I did not mean to suggest any  
20 malfeasance or --

21 MR. DEL VALLE: Oh, I know that.

22 MS. KNAUER: -- lack of effort on the  
23 part of the City to inform people. I do think  
24 that it's not surprising and maybe it really

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2 doesn't reflect badly on the citizenry that they  
3 don't, you know, take time out of their day to  
4 comment on a rule they have no idea may ever  
5 affect them.

6 I think that's what the role of the  
7 citizen members has been because it has been part  
8 of our role to do that and to be, sort of,  
9 representing citizens in that regard. Because  
10 there are good reasons that individuals aren't  
11 really going to be that interested in  
12 participating, you know, in advance, with respect  
13 to a rule that very well may never affect them.  
14 And also I think as you've noted that while there  
15 may be efforts to get the word out, it's really  
16 not going to be taken up by the news media on a  
17 regular basis because it's not that exciting.

18 MR. DEL VALLE: Not that sexy.

19 MS. KNAUER: Exactly. So, I don't think  
20 it reflects poorly on the efforts of the City,  
21 but I just think it's a fact that we all  
22 recognize and that that's part of the reason I  
23 believe that there are citizen members on this  
24 Board and that historically the Board has been

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2 charged with promulgating the penalty schedules,  
3 because the penalties are really at the end of  
4 the day what affect people the most.

5 MR. DEL VALLE: Well, historically  
6 that's been the practice, even after the various  
7 agencies were peeled away from the Environmental  
8 Control Board. As you know, the Environmental  
9 Control Board was created in 1971. And all of the  
10 agencies here present were subordinate to the  
11 Environmental Control Board. The Environmental  
12 Control Board set the regulations for Sanitation  
13 Department, DEP, and everybody else. And in fact,  
14 the Executive Director of the Environmental  
15 Control Board was basically the Super  
16 Commissioner with the Commissioners of those  
17 agencies subordinate to him or her.

18 And as time went by or they figured out  
19 that that didn't work very well, different pieces  
20 were peeled off. And ultimately the last agency  
21 to be peeled off was DEP, which actually consists  
22 of three of the original agencies back in 1971.  
23 But there was a lot of legacy stuff that was left  
24 behind. Most of which is -- by the way if you



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2 look at the Charter right now, I've got more  
3 power theoretically than Vladimir Putin, but in  
4 reality that doesn't exist. It's been totally  
5 eviscerated for all practical purposes.

6 There's a lot of historical anomalies.  
7 And I understand what you are saying and I know  
8 you weren't impugning anything. Part of the  
9 reason that I said what I said was because about  
10 150 years from now when somebody is doing a PhD  
11 dissertation and digging up some of these things,  
12 I just wanted it to be on the record. They won't  
13 know the whole context. And I'm not saying that  
14 facetiously. I'm serious. Having done historical  
15 research, I know how difficult it could be to  
16 find the context of things happening. I think Ms.  
17 Graham had a comment?

18 SHAMONDA GRAHAM, DEPARTMENT OF  
19 BUILDINGS: Yes. Shamonda Graham, Department of  
20 Buildings. So, one thing I'd just like to add is  
21 that before we began repealing the penalty  
22 schedules, we discussed it as a Board that  
23 whether or not it would be feasible to repeal  
24 from the agencies. So, I think at that point we

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2 decided that it would be okay.

3 So, since we've already repealed some,  
4 not all but some, I think it's important that  
5 everything happen cohesively, where you don't  
6 have some penalty schedules under the  
7 Environmental Control Board and the others that  
8 are within the agencies. So at this point since  
9 we've already repealed some of them, I think we  
10 should just go forward and finish the process.  
11 That's just my two cents.

12 MR. DEL VALLE: Anybody have any more  
13 cents?

14 MS. KNAUER: Well, just to respond to  
15 that. I mean, I think, yes, the Board, you know,  
16 in terms of its votes has repealed a number of  
17 penalty schedules but they have not been  
18 unanimous votes.

19 MS. GRAHAM: Mm-hmm.

20 MS. KNAUER: So, it's not the case that  
21 every board member has agreed with that. Not  
22 having this sort of information that we received  
23 today about when it's appropriate to abstain, I  
24 have abstained on all of those votes because

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2 frankly, I could see both sides of the issue. I  
3 think on balance, if abstention isn't an option,  
4 then I'm planning to vote no on this because of  
5 the concerns that have been raised before by the  
6 other citizen members, and since they're not here  
7 today, I sort of feel obligated to toe that line.  
8 So I just wanted to note that the entire Board  
9 hasn't been in agreement on that issue and the  
10 votes have gone in favor of repeal but it hasn't  
11 been unanimous.

12 MS. GRAHAM: So, Shamonda Graham,  
13 Department of Buildings. Just to make clear what  
14 I was referring to, I was actually referring to  
15 the resolution we set, not necessarily the  
16 individual repeals for our agencies. Before we  
17 started the repeals, we did have just an open  
18 discussion about the repeals as a Board.

19 MS. KNAUER: Right. We did have a  
20 discussion and not everybody was in agreement  
21 with the concept. But I agree with that, yes.

22 MR. DEL VALLE: Well, as a democrat with  
23 a small D, I would think it'd be very, very weird  
24 for any deliberative body to always unanimously

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2 vote on something, including the Supreme Court. I  
3 think the only outfit that did that was the  
4 Politburo back in the good old USSR, and that was  
5 a matter of literally survival of the members.  
6 But everything just can't be, shouldn't be  
7 totally unanimous all the time. It would be  
8 really, really weird.

9 MS. GRAHAM: That's true.

10 MR. DEL VALLE: And actually rather  
11 disturbing. That said, any other further  
12 observations, comments or whatever?

13 MS. SALLOUM: Not to belabor this  
14 discussion, but I just wanted to mention that  
15 this is part of the Mayor's Office review. So  
16 they did a review of every single agency's rules  
17 and tried to look for inefficiencies and  
18 regulatory burdens, and part of that was, for  
19 OATH, to repeal out our penalty schedules and put  
20 it with the agencies -- the regulatory agencies.  
21 So that was, you know, it's not just an OATH  
22 initiative alone. The Mayor's Office is  
23 supporting and recommending this to us.

24 MR. DEL VALLE: Okay. Anything else? All

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2 those in favor? And opposed? One opposed. And it  
3 carries.

4 MS. SALLOUM: Thank you.

5 MR. DEL VALLE: To be continued. Thank  
6 you very much. I mean, this was a good discussion  
7 I think. Now we have the lovely cease and desist  
8 orders requests from DEP, formerly part of the  
9 Environmental Control Board.

10 MR. PECUNIES: Good morning. Russell  
11 Pecunies with the Bureau of Legal Affairs at the  
12 Department of Environmental Protection. This  
13 month, DEP is asking the Board to approve one  
14 request for a cease and desist order under the  
15 Sewer Code. The respondent is Two Lizards, Inc.,  
16 which is located at 35-02 Ditmars Boulevard in  
17 Queens.

18 MR. DEL VALLE: You didn't make that up,  
19 did you?

20 MR. PECUNIES: Two Lizards? That's not  
21 the strangest name we've had actually. But, so an  
22 inspection last year determined that this  
23 restaurant required grease interceptors to be  
24 installed on a variety of equipment and drains.

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2 And accordingly a Commissioner's Order was issued  
3 directing them to do that. As they failed to  
4 comply with that Commissioner's Order, a series  
5 of summonses were issued for their failure to  
6 comply with the Commissioner's Order, continuing  
7 up until January. And they defaulted on all of  
8 those, I believe.

9 They were notified that they were  
10 required to attend a mandatory compliance meeting  
11 on December 21st, which they also failed to  
12 appear for. And since they continued to be out of  
13 compliance with the Commissioner's Order  
14 requiring the installation of these grease  
15 interceptors, the Department is asking the Board  
16 to approve an order to cease and desist.

17 MR. DEL VALLE: Any questions? Motion?  
18 It looks like it's approved.

19 MR. PECUNIES: DEP is also requesting  
20 that the Board approve two cease and desist  
21 orders under the Noise Code. One is for 326  
22 Bleecker Bakery, LLC. And they have been cited on  
23 three occasions for noise from their kitchen  
24 exhaust, most recently on January 5th. And due to

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2 their continuing failure to comply and the  
3 continuing excessive noise from the kitchen  
4 exhaust, the Department is asking the Board to  
5 issue an order to cease and desist.

6 MR. DEL VALLE: Questions? Motion?

7 Unanimous.

8 MR. PECUNIES: The second one under the  
9 Noise Code is for Village Eats 10-11, LLC, which  
10 is located at 432 Sixth Avenue. Again, a  
11 restaurant. Again, the noise is from a kitchen  
12 exhaust. Again, they have been cited three times  
13 for excessive noise from the equipment, most  
14 recently on January 10th. And due to the  
15 continuing failure to comply, the Department is  
16 asking the Board to issue an order to cease and  
17 desist.

18 MR. DEL VALLE: Questions? Motion?

19 Again, it passes.

20 MR. PECUNIES: And finally, there are 28  
21 requests for cease and desist orders for building  
22 owners who have been ordered to install backflow  
23 prevention devices. In each of these cases, the  
24 order has not been complied with. A summons has

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2 been issued for that failure to comply. The  
3 respondent has been adjudicated in violation. And  
4 in each of these cases, they are still out of  
5 compliance. So the Department is asking the Board  
6 to issue an order to cease and desist.

7 MR. DEL VALLE: Questions? Motion? IT  
8 passes.

9 MR. PECUNIES: Thank you.

10 MR. DEL VALLE: I'm almost afraid to ask  
11 but I really wonder what that menu looks like at  
12 Two Lizards. We're now going to have requests for  
13 pre-sealing reports.

14 MS. KELLY CORSO, ESQ., ASSISTANT  
15 DIRECTOR OF ADJUDICATIONS, OATH: Good morning.  
16 I'm Kelly Corso, Assistant Director for  
17 Adjudications, OATH Hearings Division. We have 14  
18 pre-sealing reports for today's Board; 11 involve  
19 backflow violations and three involve Noise Code  
20 violations. In all of the backflow cases, the  
21 hearing officers recommend no sealing or other  
22 action based on the respondent's evidence of  
23 compliance that was presented at the hearing.

24 In the Noise Code cases, in two of these



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2 cases the respondents presented evidence of work  
3 that was done on the cited equipment, which was  
4 an air conditioner and a generator, to bring the  
5 equipment into compliance with the Noise Code. In  
6 both cases, the hearing officers agreed with  
7 DEP's recommendation that the equipment remain  
8 unsealed provided that DEP's initial re-  
9 inspection and further re-inspections for a  
10 period of 180 days show no violation.

11 And in the final Noise Code case, the  
12 hearing officer agreed with DEP's recommendation  
13 that the C&D proceeding be discontinued. The  
14 recommendation is based on the respondent's  
15 evidence that the respondent company has been out  
16 of business since December 31, 2016, and is in  
17 the process of being dissolved and the premises  
18 being vacated. And that is it.

19 MR. DEL VALLE: Any questions? Motion?  
20 Approved.

21 MS. KNAUER: I need to abstain, with  
22 respect to one of the --

23 MR. DEL VALLE: Yeah, you explained that  
24 already.

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2 MS. KNAUER: Right, right.

3 MR. DEL VALLE: Thank you. And before I  
4 ask for a motion to adjourn to Executive Session,  
5 for the benefit of the PhD student who's going to  
6 be looking at this and reviewing this in 150  
7 years from now, there is a provision in the  
8 Charter that when boards discuss either personnel  
9 issues or litigation issues, they can do so and  
10 do, in fact, do so in Executive Session. And the  
11 nature of ECB is that we are often listed as a  
12 defendant in appeals from administrative  
13 decisions at the hearings level or even at the  
14 board level, with respect to actions taken by the  
15 Board.

16 And part of our responsibilities include  
17 being briefed on the status of that litigation or  
18 of those items in litigation, and that's  
19 essentially what we're doing, and that's why I,  
20 at this period in every meeting, ask for a motion  
21 to go into Executive Session to review those  
22 matters. Is there a motion to go into Executive  
23 Session? We're going into Executive Session in  
24 two seconds.

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[OFF THE RECORD]

[ON THE RECORD]

MR. DEL VALLE: Having returned from Executive Session, is there a motion to adjourn? I think it's unanimous. Thank you.

(The Board Meeting concluded at approximately 10:26 A.M.)

CERTIFICATE OF ACCURACY

I, Fei Deng, certify that the foregoing transcript of Environmental Control Board on February 23, 2017 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

  

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Date: February 24, 2017

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