

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

January 30, 2017

9:25 A.M. to 10:00 A.M.

January 30, 2017

MEMBERS PRESENT:

Fidel F. Del Valle, Esq. - Chair, OATH
Michele DeFreitas-Withim, Esq. - Dept. of Health and
Mental Hygiene, DOHMH
Shamonda Graham - Department of Buildings
Joseph Gregory, Esq. - Fire Department, FDNY
Elizabeth Knauer, Esq. - Appointed Member
Madelynn Liguori, Esq. - Department of Sanitation
Russell Pecunies, Esq. - Dept. of Environmental Protection
Matthew Smith, Esq. - Police Department
Douglas Swann - Appointed Member

ALSO PRESENT:

Rachel Amar - Special Assistant to Commissioner
Josetta Christian - Dept. of Health & Mental Hygiene
**Kelly Corso, Esq. - Assistant Director of Adjudications,
OATH**
David Goldin, Esq. - Administrative Justice Coordinator,
Mayor's Office
Diana Haines, Esq. - Assistant General Counsel, OATH
Susan Kassapian, Esq. - Deputy Commissioner/Hearings
Division,
OATH
Hani Kfoury - Office of Management and Budget
Mark Leeds, Esq. - Special Attorney, OATH
Mariko Matsuyoshi - Community Coordinator, OATH
Ashford Morgan - Computer Service Technician, OATH
Tynia Richard, Esq. - Deputy Commissioner/General Counsel,
OATH
Simone Salloum, Esq. - Assistant General Counsel, OATH
Peter Schulman, Esq. - Assistant Director of
Adjudications, OATH
Carmena Schwecke, Esq. - Assistant Commissioner, OATH
Hearings Division
Frances Shine - Secretary to the Board, OATH
**Amy Slifka, Esq. - Deputy Commissioner/Executive Director,
OATH**
Thomas Southwick, Esq. - Supervising Attorney, Appeals,
OATH

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2 (The Board Meeting commenced at 9:25
3 A.M.)

4 MR. FIDEL F. DEL VALLE, ESQ.,
5 CHAIRPERSON, COMMISSIONER & CHIEF ADMINISTRATIVE
6 LAW JUDGE, OATH: Good morning folks.

7 ALL: Good morning.

8 MR. DEL VALLE: Is there a motion to
9 accept the minutes of the last meeting? Unanimous
10 with one abstention. You're abstaining?

11 MS. MICHELE DEFREITAS-WITHIM, ESQ.,

12 DOHMH: I wasn't here actually.

13 MR. DEL VALLE: Right.

14 MR. DOUGLAS SWANN, APPOINTED MEMBER:
15 Did you get my abstention?

16 MR. DEL VALLE: Thank you. I'll ask
17 Deputy Commissioner Slifka to give us a quarterly
18 review of stats at Hearings.

19 MS. AMY SLIFKA, ESQ., DEPUTY
20 COMMISSIONER/EXECUTIVE DIRECTOR, OATH: Good
21 morning. I think most of you are aware of what
22 the quarterly report is. There's someone new in
23 the room, so I'll just review what it is. So
24 basically we look at the summonses received and

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2 this time is for the fourth quarter of 2016; a
3 comparison of the fourth quarter of 2015 to 2016
4 of decisions rendered, summonses received, and
5 summonses heard. And I'll look at the percentage
6 of in violation versus dismissed for each agency
7 and the most commonly issued summonses by agency.

8 So, let's begin. Okay. So, summonses
9 received, Hearing Division, for each of the
10 designated cases, we kind of now call them AIMS
11 designated cases. And this is the fourth quarter
12 of 2016. So for DSNY, you can see there's a three
13 percent decrease from 122,784 to 119,537. DOB,
14 there's been a decrease from -- this is the third
15 quarter to the fourth quarter; so 15,487 to
16 14,133. DOT, there's been a five percent
17 increase: 12,702 to 13,381. FDNY, a decrease,
18 seven percent: 11,945 to 11,083. DEP, a two
19 percent decrease: 4,087 to 4,025. And DOHMH, a 21
20 percent decrease: 10,000 to 7,929.

21 Okay. For Parks, there's been a 20
22 percent decrease. That's often weather related.
23 And it's 2,439 to 1,955. NYPD, there's been a 20
24 percent increase from 4,378 to 5,264. DoITT, 81

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2 percent increase from 32 to 58. And BIC, a 44
3 percent decrease from 18 to 10. Landmarks, a 58
4 percent decrease from 24 to 10.

5 Okay. Alright, and now we're going to
6 look at the summonses received, comparing the
7 fourth quarter 2015 with the fourth quarter of
8 2016. So for DSNY, overall there's been an eight
9 percent increase: 111,005 to 119,537. For DOB,
10 comparing fourth quarter of '15 to fourth quarter
11 '16, an increase of ten percent: 12,875 to
12 14,133. DOT, interestingly enough it's a 31
13 percent decrease, from 19,516 to 13,381. FDNY,
14 it's a minor decrease of two percent. DOHMH, it's
15 an increase of 12 percent. NYPD, it's an increase
16 of 33 percent from 3,954 to 5,264. And for DEP,
17 there's an increase too of 28 percent: 3,139 to
18 4,025. Parks, a decrease: 2,311 to 1,955. DoITT,
19 a 68 percent decrease: 183 to 58. BIC, 74 percent
20 decrease: 39 to 10. Landmarks: 35 to 10. And
21 overall there's been an increase of 171,714 to
22 177,618. Okay.

23 Now we have total summonses heard, a
24 quarterly comparison of 2015 to 2016. So for

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2 DSNY, it's been a 24 percent increase: 16,338 to
3 20,212. For DOB, there's been a 32 percent
4 increase: 11,269 to 14,889. For DOHMH, it's a
5 nine percent decrease: 4,562 to 4,159. FDNY,
6 there's been an increase: 4,085 to 4,726 -- 16
7 percent. DEP, it's a two percent increase: 3,652
8 to 3,715. For DOT, it's a 20 percent decrease:
9 3,446 to 2,770. NYPD, it's an increase: 2,188 to
10 2,796; it's a 28 percent increase. DoITT, there
11 was an 88 percent decrease: 760 to 92. Parks, a
12 17 percent decrease: 690 to 575. BIC, a 68
13 percent decrease: 19 to 6. And Landmarks, a 47
14 percent decrease from 17 to 9. But overall, the
15 total summonses heard has increased 14.9 percent
16 from 47,507 to 54,573. So that's decisions heard.

17 And decisions rendered: DSNY is up six
18 percent: 15,809 to 16,832. DOB is up 13 percent:
19 7,213 to 8,147. DOHMH is down 3,877 to 3,353.
20 FDNY is up 11 percent: 3,493 to 3,885. DOT is
21 down 16 percent: 2,488 to 2,083. DEP is up eight
22 percent: 2,356 to 2,535. NYPD is up 19 percent:
23 2,271 to 2,697. Parks is down: 629 to 540 -- 14
24 percent. And DoITT is down 89 percent: 475 to 53.

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2 BIC is down of course: 16 to 5 -- 69 percent. And
3 Landmarks is down 30 percent: 10 to 7. Overall
4 decisions rendered has increased 3.9 percent:
5 38,710 to 40,231. Okay. So, as for number of days
6 to get the decisions done: 82 percent of our
7 cases are being decided within 20 days of the
8 hearing date. Okay?

9 Okay, in violation and dismissal; so
10 with comparing the fourth quarter 2015 to the
11 fourth quarter 2016. It's so funny because Tom
12 asked for this comparison and he's missed both
13 quarterly presentations on this. But anyway, it's
14 pretty much the same. So, total violation: 57.7
15 percent in 2015 and 56.4 percent in 2016.

16 So DSNY, again they're kind of close: 42
17 percent in violation in 2015; 38 percent in
18 violation in 2016. DOB, 80 percent in violation
19 in 2015; 75 percent in violation in 2016. DOT: 56
20 percent in violation in '15; 57 percent in
21 violation in '16. FDNY: 90 percent in violation
22 in 2015; 90 percent in 2016 -- pretty amazing.
23 DEP: 81 percent in violation in 2015; 86 percent
24 in 2016. And NYPD: in violation 48 percent in

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2 2015; 38 percent in 2016. For Health: 48 percent
3 in violation in 2015; 60 percent in 2016. Parks:
4 59 percent in violation in 2015; 43 percent in
5 2016. And DoITT: 52 percent in violation in '15;
6 45 percent in violation in 2016. BIC: 56 percent
7 in violation in 2015; 40 percent in 2016. And
8 Landmarks: 80 percent in violation in 2015; 57
9 percent in 2016. Okay.

10 So the most commonly issued summonses by
11 agency pretty much stayed the same. For DOT:
12 failure to comply with the terms and conditions
13 of the DOT permits; failure to permanently
14 restore the cut -- your cut within the required
15 time; and construction material stored on the
16 street without a permit. For NYPD, it's changed a
17 little bit, right of way - failure to yield,
18 physical injury; vending in a bus stop; and
19 operation of a motorized scooter within the City
20 of New York. For DOB: it's failure to maintain
21 building in a code compliant manner; failure to
22 maintain the elevator or conveying system; and
23 failure to comply with the Commissioner's Order.

24 For DSNY: it's failure to clean 18

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2 inches into the street; dirty sidewalk area; and
3 dirty area. For DEP: it's failure to submit an
4 annual test report for a backflow preventer;
5 failure to adopt or implement a noise mitigation
6 plan; and failure to keep and have a mitigation
7 plan available for inspection. For FDNY: it's
8 failure to prevent unnecessary or unwanted alarm;
9 inspections and testing, not having the reports;
10 certificate of fitness and certificates of
11 qualification.

12 Health: it's failure to eliminate rodent
13 infestation shown by active rodent first offense;
14 failure to eliminate conditions conducive to
15 rodent first offense; and failure to eliminate
16 conditions conducive to pests, garbage, cans and
17 spillage. For Landmarks: it's work without or a
18 violation of a certificate of approval for an
19 alt.; work without or a violation of a
20 certificate of approval for a flag or sign or
21 banner or an awning; and work without a
22 certificate of approval for a storefront Type A
23 violation.

24 For DoITT: it's failure to provide

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2 working public pay telephone and operator
3 services; required sign missing or impermissible,
4 as per the requirements of the subsection; and
5 install, operate, and maintain a public pay
6 telephone without a permit. For Parks, it's:
7 failure to comply with the corrections,
8 prohibitions on a sign; unauthorized vending and
9 failure to comply with the pedicab restrictions.
10 And BIC: it's just basically idling; leaving your
11 engine idling for three minutes first offense.

12 So for your appeals, you can see DOB has
13 had the most in the fourth quarter of 2016: 299.
14 DSNY follows with 143. These are the respondent
15 appeals. FDNY: 107. Health: 55. DEP: 13. DOT: 33.
16 NYPD: 15. And Parks: 8. So, and --

17 MS. SHAMONDA GRAHAM, DEPARTMENT OF
18 BUILDINGS: Amy?

19 MS. SLIFKA: Yes.

20 MS. GRAHAM: Shamonda Graham, DOB.

21 MS. SLIFKA: Yes.

22 MS. GRAHAM: Are those only respondent
23 appeals or a combo?

24 MS. SLIFKA: No, I think they're only

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2 respondent appeals with DOB. I think they're only
3 respondent appeals.

4 MR. PETER SCHULMAN, ESQ., ASSISTANT
5 DIRECTOR OF ADJUDICATIONS, OATH: I think they're
6 probably all.

7 MS. SLIFKA: You think they're all?
8 Okay. They're all. I misspoke, thank you.

9 MR. DEL VALLE: They should be all.

10 MS. SLIFKA: They are all: 299 for DOB.
11 That's all, yeah. Okay, thank you for clarifying
12 that, Peter. Okay.

13 And defaults. For DSNY: 65,702. DOT:
14 6,815. Health: 5,496. And DOB: 4,659. DSNY: 72.4
15 percent. And that's it. Any other questions?
16 Okay, thank you.

17 MR. DEL VALLE: The General Counsel's
18 Office will now give us a full review on some
19 rule changes.

20 MS. SIMONE SALLOUM, ESQ., ASSISTANT
21 GENERAL COUNSEL, OATH: I'm Simone Salloum. I'm
22 Assistant General Counsel with OATH. So we have
23 three rules for your consideration today: two
24 final rules and one proposal. So, I'm going to

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2 start with the proposed rule. This is a repeal of
3 the 16-118 violations, Administrative Code 16-
4 118, from the Sanitation penalty schedule.

5 I handed out a more updated copy this
6 morning. We had some last minute changes on
7 Friday afternoon from the Law Department that
8 essentially take out from the headnotes, that
9 kind of explain how to apply the penalty
10 schedule, the repeat violations applicable to 16-
11 118.2 and 16-122. Madelynn brought up that DSNY
12 isn't charging those violations as repeats, so we
13 just took it out to clean up the penalty
14 schedules. So this isn't a wholesale repeal of
15 the Sanitation penalty schedule. It's only of the
16 16-118 violations. Does anyone have any
17 questions? Yes?

18 MS. ELIZABETH KNAUER, APPOINTED MEMBER:
19 Elizabeth Knauer, Citizen Member. I'm just
20 wondering why it's being done in this piecemeal
21 way?

22 MS. SALLOUM: Go ahead, Madelynn.

23 MS. MADELYNN LIGUORI, ESQ., DEPARTMENT
24 OF SANITATION: We have to justify every single

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2 penalty in the penalty schedule. And if you
3 looked at the number of violations we issue, we
4 issue many violations. So we have to do it
5 section by section.

6 MS. KNAUER: So we'll be asked to --
7 we'll be reviewing --

8 MS. LIGUORI: Well, you'll be asked at a
9 later date to do other provisions. Hopefully, we
10 can combine some of the provisions. But because
11 this 16-118 is involved in the Criminal Justice
12 Reform Act and the repeat violators theme has to
13 be in place by June for NYPD to begin
14 enforcement; we needed to do 16-118 first.

15 MS. SALLOUM: So one of the local laws
16 changed the penalty amounts for littering, sweep
17 out and throw out, and we repealed -- well, you
18 voted to repeal those several months ago. I think
19 it was back in August. So this is taking out the
20 rest of those violations and DSNY is working on
21 promulgating their penalty schedule for those
22 violations.

23 MS. LIGUORI: Which will include repeat
24 violations for littering, spitting and public

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2 urination, again. So, the Law Department has that
3 currently.

4 MR. DEL VALLE: So as I understand it,
5 this set is ahead of everybody -- all the other
6 sets, because of the changes in the law that have
7 to be in effect by the summer.

8 MS. LIGUORI: Right. So this one had to
9 be given priority. And otherwise the Law
10 Department would never be able to approve any
11 rule involving our penalty schedule before it
12 would have to be in effect for June. There's just
13 too many violations in our schedule.

14 MR. DEL VALLE: Okay. Any other
15 questions? Is there a motion? And a vote, I
16 assume that it's the same?

17 MS. LIGUORI: And I abstain.

18 MR. DEL VALLE: But obviously Sanitation
19 is abstaining.

20 MS. KNAUER: But I'll abstain too.

21 MR. DEL VALLE: And Elizabeth Knauer
22 abstains as well. So it passes.

23 MS. SALLOUM: The second rule for your
24 consideration is the final rule. This is the

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2 repeal of the Department of Parks and Recreation
3 penalty schedule. So, you already voted on the
4 proposal. We published the rule in the City
5 Record on December 22, 2016, and a public hearing
6 was held on January 24, 2017. One member of the
7 public attended but did not provide any
8 testimony. We didn't receive any written comments
9 on this rule.

10 So this is a repeal of the penalty
11 schedule as found in 3-116 of Subchapter G of
12 Chapter 3 of Title 48 of the Rules of the City of
13 New York. Parks is in the process of promulgating
14 their penalty schedule. So, we're just asking
15 that you vote on it now and we'll wait to
16 publish it in the City Record as final until
17 they've had a chance to have a public hearing on
18 their penalty schedule and follow CAPA. Does
19 anyone have any questions?

20 MS. KNAUER: I'm sorry, can you --
21 Elizabeth Knauer; can you just explain that
22 sequence again? So will there be a penalty
23 schedule in effect at all times?

24 MS. SALLOUM: Yeah. We're not going to

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2 -- it doesn't become final until we publish it in
3 the City Record and 30 days passes.

4 MS. KNAUER: Right.

5 MS. SALLOUM: So, we're not going to
6 publish it until they're ready to publish theirs.
7 But we're asking that you vote on it now so that
8 we don't get held up by the timeline of the Board
9 Meetings. So they're going to submit theirs to
10 the Law Department and go through their process.
11 But we're trying to -- because it's also part of
12 the Criminal Justice Reform Act that some of
13 their penalty amounts are changing. So, we're
14 trying to just stay on top of that by having the
15 vote on the repeal now. And then we'll wait to
16 publish and we're coordinating with them.

17 MR. DEL VALLE: Any other questions? Is
18 there a motion? It's unanimous with one
19 abstention or one no?

20 MR. DOUGLAS SWANN, APPOINTED MEMBER:
21 No.

22 MS. KNAUER: Two -- I'm going to
23 abstain.

24 MR. SWANN: No.

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2 MR. DEL VALLE: One no and one
3 abstention.

4 MS. SALLOUM: Okay, the last rule we
5 have for your consideration is another final
6 rule. It's the repeal of the Noise Code penalty
7 schedule. You voted to propose this rule. We
8 published it in the City Record on December 23,
9 2016. We held a public hearing on January 26,
10 2017. No one attended. We didn't receive any
11 written comments. And this is the rule that would
12 repeal out the Noise Code penalty schedule from
13 Section 3-115 of Subchapter G of Chapter 3 of
14 Title 48 of the Rules of the City of New York.
15 And like all of these rules that I'm presenting,
16 DEP is working on their promulgation. I think
17 you're having a public hearing on February 6th.

18 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT
19 OF ENVIRONMENTAL PROTECTION: Yeah, the public
20 hearing is a week from today.

21 MS. SALLOUM: So, we'll be coordinating
22 with them and not publishing this for final
23 adoption until DEP is ready to publish their new
24 penalty schedule. Does anyone have any questions?

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2 MR. DEL VALLE: Motion? Which I assume
3 is a positive vote with -- nay?

4 MR. SWANN: Nay.

5 MR. DEL VALLE: And --

6 MS. KNAUER: Abstain.

7 MR. DEL VALLE: Thank you.

8 MS. SALLOUM: Thank you.

9 MR. DEL VALLE: Russell Pecunies, you're
10 on.

11 MR. PECUNIES: Thank you. Okay, good
12 morning. My name is Russell Pecunies. I'm in the
13 Bureau of Legal Affairs at the Department of
14 Environmental Protection. This month DEP is
15 making one request for a cease and desist order
16 under the sewer code. This pertains to Rolso
17 Incorporated at 343 West Broadway in Manhattan. I
18 believe this is a steakhouse, if I remember
19 correctly. They have been issued a Commissioner's
20 Order requiring them to install properly sized
21 grease interceptors on a variety of sinks and
22 drains. That was issued in November of 2015.

23 During all of last year, they were
24 issued a series of summonses for failing to

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2 comply with that Commissioner's Order. They
3 appeared on some them. They defaulted on others.
4 They continue to be in non-compliance with the
5 Commissioner's Order. And due to that continuing
6 noncompliance, DEP is asking the Board to issue
7 an order to cease and desist.

8 MR. DEL VALLE: Any questions?

9 MS. KNAUER: I'm Elizabeth Knauer,
10 Citizen Member. I just -- I think the materials
11 indicated that the premise is nonresidential. But
12 the cease and desist would involve sealing. I
13 mean, if they don't -- you know, if they don't
14 show up at the hearing and show that they comply,
15 that it would be involve sealing the water
16 service?

17 MR. PECUNIES: Yes.

18 MS. KNAUER: So, I just wanted to know:
19 is the entire premises nonresidential or just the
20 business?

21 MR. PECUNIES: That I actually --

22 MS. KNAUER: And would sealing the water
23 service affect any, you know, residential --

24 MR. PECUNIES: That I'm actually not

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2 aware of. Basically what would happen if they
3 defaulted would be that we could implement a
4 water shutoff immediately. However, we've been
5 doing this for a long time with the backflow
6 cases. And it's basically the same thing. The
7 remedy would be shutting off the water. But we --
8 if they default, we generally will send an
9 inspector to the premises with a warning notice
10 first, saying: Your water is going to be
11 terminated unless you get in contact. They'll get
12 in touch with OATH and reschedule the hearing.

13 And then what happens after that is
14 before the water would be turned off, a crew
15 would be sent out to mark. They paint the street
16 and the sidewalk. And generally when people see
17 that taking place outside their building, they
18 immediately take measures to keep that from
19 happening. Whether we would ever go forward and
20 turn off the water in the building that had
21 residential occupancy, it's highly doubtful
22 because the building would have to be evacuated.
23 And it wouldn't be habitable without water
24 service. But in this particular case, I'm not

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2 aware whether there's any residential in the
3 building or not.

4 MS. KNAUER: But you -- I mean, but you
5 don't think that this would ever like resolve
6 with any --

7 MR. PECUNIES: I doubt the Commissioner
8 would ever go forward with a water shutoff on a
9 building that would have to be evacuated as a
10 result. I mean, we'd have to bring in HPD and
11 whoever else would be involved in terms of
12 finding places for people to live. You know, and
13 over grease traps, I mean, it's important but I
14 doubt if it's an apartment building that we're
15 going to throw 300 people out of the building
16 because they don't have grease traps.

17 MR. DEL VALLE: Just for our education,
18 if you have a building with, say, multiple
19 storefronts and residences up above, do the
20 individual storefronts and the residential part
21 of the building have separate water meters?

22 MR. PECUNIES: It depends. It could be
23 possible in some of these cases if we really did
24 want to turn the water off. If there's a separate

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2 service with a commercial, which sometimes there
3 is, then that can be sealed without affecting the
4 residential. It depends on the way. There's all
5 different kinds of plumbing setups. So it depends
6 on the way the individual building is set up.

7 MS. KNAUER: I mean, the reason I ask
8 was because this seems such an egregious case,
9 where it's just like going on for so long,
10 failure to comply and defaulting. So, I just felt
11 like this would be maybe one of those instances
12 where sealing might be a more likely outcome than
13 some of the other ones.

14 MR. PECUNIES: It's possible, given the
15 number of times that they've defaulted on the
16 tickets. Sometimes when people see this and it's
17 not just a ticket and hopefully we'll get a
18 response.

19 MR. DEL VALLE: I think the concern is
20 that they may be using human shields basically to
21 violate the law.

22 MR. PECUNIES: Yeah.

23 MS. MICHELE DEFREITAS-WITHIM, DEPARTMENT
24 OF HEALTH AND MENTAL HYGIENE, DOHMH: I'm Michele

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2 DeFreitas-Withim from the Department of Health.
3 Just for education purposes: so your inspectors
4 are going there and observing them doing these
5 violations because there are several summonses
6 here, so?

7 MR. PECUNIES: Yeah. Yeah, once the
8 initial inspection determines what type of
9 equipment is required and that all goes into the
10 original Commissioner's Order. And then there are
11 just periodic checks to see if they've installed
12 the equipment. And each time, it looks like every
13 few weeks last year, they still had not complied.
14 So, yeah, an inspector goes back.

15 MS. DEFREITAS: So, this company is
16 still in business there too.

17 MR. DEL VALLE: We did a review recently
18 of these types of cases. And generally it's
19 almost three years of property owner or landlord
20 or business jerking off the City before the City
21 finally moves to seal the property -- seal the
22 equipment. There's multiple summonses, notices,
23 orders, whatever, which apparently wind up in the
24 trash, and they don't take the City seriously

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2 until we padlock them or shut them off, or are
3 about to. The interesting thing is that
4 miraculously when, as the Assistant Commissioner
5 pointed out, miraculously when they show up with
6 a wrench to shut off the water, they fix the
7 thing within a month or so.

8 MR. PECUNIES: Yeah, we've found that
9 the appearance of the crew with the tools and the
10 paint and they start to paint lines on the
11 sidewalk usually causes panic in the building and
12 then there's compliance.

13 MR. DEL VALLE: Yeah, then they figure
14 out the City's serious. Any other questions?
15 Motion? It's unanimous with one abstention.

16 MR. PECUNIES: Thank you. We also have
17 29 requests for cease and desist orders this
18 month pertaining to locations that have failed to
19 install backflow prevention devices in accordance
20 with orders issued by DEP. In each of these
21 cases, the Department has determined that because
22 of either the use of the building or the
23 equipment located in the building, that a
24 backflow prevention device is required. In each

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2 of these cases, the owner of the building has
3 been ordered to install such devices.

4 In each of these cases, the building
5 owner has been given a summons for failing to do
6 so. And in each of these cases, they have either
7 defaulted on that summons or been found in
8 violation after a hearing. And as in each of
9 these cases there is still no compliance with the
10 Commissioner's Order. The Department is
11 requesting that the Board issue orders to cease
12 and desist.

13 MR. DEL VALLE: Questions? Motion?
14 Again, it's unanimous with one abstention.

15 MR. PECUNIES: Okay.

16 MR. DEL VALLE: Thank you.

17 MR. PECUNIES: Thank you.

18 MR. DEL VALLE: And Kelly Corso will
19 give us pre-sealing reports.

20 MS. KELLY CORSO, ESQ., ASSISTANT
21 DIRECTOR OF ADJUDICATIONS, OATH: Good morning.
22 I'm Kelly Corso, Assistant Director for
23 Adjudications, OATH. We have 11 pre-sealing
24 reports today for the Board; ten of them involve

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2 backflow violations and one involves a Sewer Code
3 violation. In nine of the backflow cases, the
4 hearing officers recommended no sealing or other
5 action, based on the respondent's evidence of
6 compliance that was presented at the hearings. In
7 the remaining backflow case, the hearing officer
8 agreed with DEP's recommendation that the C&D be
9 discontinued because DEP had determined that a
10 backflow device is no longer required at the
11 premises.

12 For the Sewer Code case, the hearing
13 officer agreed with DEP's recommendation that the
14 C&D be discontinued because DEP had determined
15 that the respondent had complied with the
16 Commissioner's Order to comply with the terms of
17 this wastewater discharge permit. And that's it.

18 MR. DEL VALLE: That's it. If we can get
19 a motion? It's unanimous with one abstention.
20 Thank you. Is there a motion to retire to
21 executive session? And that seems to be
22 unanimous.

23 [OFF THE RECORD]

24 [ON THE RECORD]

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January 30, 2017

MR. DEL VALLE: Return to public session. Is anybody coming back in? No? Thank you very much. Is there a motion to adjourn? We are adjourned.

(The Board Meeting concluded at approximately 10:00 A.M.)

CERTIFICATE OF ACCURACY

I, Fei Deng, certify that the foregoing transcript of Environmental Control Board on January 30, 2017 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Fei Deng

Date: February 2, 2017

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