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.
MEMBERS PRESENT:
Fidel F. Del Valle, Esq. - Chair, OATH
Michele DeFreitas-Within, 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 Kfouri - 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
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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(The Board Meeting commenced at 9:25 A.M.)

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

ALL: Good morning.

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

MS. MICHELE DEFREITAS-WITHIM, ESQ.,
DOHMH: I wasn’t here actually.

MR. DEL VALLE: Right.

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

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

MS. AMY SLIFKA, ESQ., DEPUTY COMMISSIONER/EXECUTIVE DIRECTOR, OATH: Good morning. I think most of you are aware of what the quarterly report is. There’s someone new in the room, so I’ll just review what it is. So basically we look at the summonses received and
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this time is for the fourth quarter of 2016; a comparison of the fourth quarter of 2015 to 2016 of decisions rendered, summonses received, and summonses heard. And I’ll look at the percentage of in violation versus dismissed for each agency and the most commonly issued summonses by agency.

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

Okay. For Parks, there’s been a 20 percent decrease. That’s often weather related. And it’s 2,439 to 1,955. NYPD, there’s been a 20 percent increase from 4,378 to 5,264. DoITT, 81
percent increase from 32 to 58. And BIC, a 44 percent decrease from 18 to 10. Landmarks, a 58 percent decrease from 24 to 10.

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

Now we have total summonses heard, a quarterly comparison of 2015 to 2016. So for
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DSNY, it’s been a 24 percent increase: 16,338 to 20,212. For DOB, there’s been a 32 percent increase: 11,269 to 14,889. For DOHMH, it’s a nine percent decrease: 4,562 to 4,159. FDNY, there’s been an increase: 4,085 to 4,726 -- 16 percent. DEP, it’s a two percent increase: 3,652 to 3,715. For DOT, it’s a 20 percent decrease: 3,446 to 2,770. NYPD, it’s an increase: 2,188 to 2,796; it’s a 28 percent increase. DoITT, there was an 88 percent decrease: 760 to 92. Parks, a 17 percent decrease: 690 to 575. BIC, a 68 percent decrease: 19 to 6. And Landmarks, a 47 percent decrease from 17 to 9. But overall, the total summonses heard has increased 14.9 percent from 47,507 to 54,573. So that’s decisions heard.

And decisions rendered: DSNY is up six percent: 15,809 to 16,832. DOB is up 13 percent: 7,213 to 8,147. DOHMH is down 3,877 to 3,353. FDNY is up 11 percent: 3,493 to 3,885. DOT is down 16 percent: 2,488 to 2,083. DEP is up eight percent: 2,356 to 2,535. NYPD is up 19 percent: 2,271 to 2,697. Parks is down: 629 to 540 -- 14 percent. And DoITT is down 89 percent: 475 to 53.
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BIC is down of course: 16 to 5 -- 69 percent. And Landmarks is down 30 percent: 10 to 7. Overall decisions rendered has increased 3.9 percent: 38,710 to 40,231. Okay. So, as for number of days to get the decisions done: 82 percent of our cases are being decided within 20 days of the hearing date. Okay?

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

So DSNY, again they’re kind of close: 42 percent in violation in 2015; 38 percent in violation in 2016. DOB, 80 percent in violation in 2015; 75 percent in violation in 2016. DOT: 56 percent in violation in ’15; 57 percent in violation in ’16. FDNY: 90 percent in violation in 2015; 90 percent in 2016 -- pretty amazing. DEP: 81 percent in violation in 2015; 86 percent in 2016. And NYPD: in violation 48 percent in
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2015; 38 percent in 2016. For Health: 48 percent
in violation in 2015; 60 percent in 2016. Parks:
59 percent in violation in 2015; 43 percent in
2016. And DoITT: 52 percent in violation in ’15;
45 percent in violation in 2016. BIC: 56 percent
in violation in 2015; 40 percent in 2016. And
Landmarks: 80 percent in violation in 2015; 57
percent in 2016. Okay.

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

For DSNY: it’s failure to clean 18
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inches into the street; dirty sidewalk area; and dirty area. For DEP: it’s failure to submit an annual test report for a backflow preventer; failure to adopt or implement a noise mitigation plan; and failure to keep and have a mitigation plan available for inspection. For FDNY: it’s failure to prevent unnecessary or unwanted alarm; inspections and testing, not having the reports; certificate of fitness and certificates of qualification.

Health: it’s failure to eliminate rodent infestation shown by active rodent first offense; failure to eliminate conditions conducive to rodent first offense; and failure to eliminate conditions conducive to pests, garbage, cans and spillage. For Landmarks: it’s work without or a violation of a certificate of approval for an alt.; work without or a violation of a certificate of approval for a flag or sign or banner or an awning; and work without a certificate of approval for a storefront Type A violation.

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

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

MS. SHAMONDA GRAHAM, DEPARTMENT OF BUILDINGS: Amy?

MS. SLIFKA: Yes.

MS. GRAHAM: Shamonda Graham, DOB.

MS. SLIFKA: Yes.

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

MS. SLIFKA: No, I think they’re only
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respondent appeals with DOB. I think they’re only respondent appeals.

MR. PETER SCHULMAN, ESQ., ASSISTANT DIRECTOR OF ADJUDICATIONS, OATH: I think they’re probably all.

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

MR. DEL VALLE: They should be all.

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

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

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

MS. SIMONE SALLOUM, ESQ., ASSISTANT GENERAL COUNSEL, OATH: I’m Simone Salloum. I’m Assistant General Counsel with OATH. So we have three rules for your consideration today: two final rules and one proposal. So, I’m going to
start with the proposed rule. This is a repeal of the 16-118 violations, Administrative Code 16-118, from the Sanitation penalty schedule.

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

MS. ELIZABETH KNAUER, APPOINTED MEMBER:

Elizabeth Knauer, Citizen Member. I’m just wondering why it’s being done in this piecemeal way?

MS. SALLOUM: Go ahead, Madelynn.

MS. MADELYNN LIGUORI, ESQ., DEPARTMENT OF SANITATION: We have to justify every single
penalty in the penalty schedule. And if you looked at the number of violations we issue, we issue many violations. So we have to do it section by section.

MS. KNAUER: So we’ll be asked to --

we’ll be reviewing --

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

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

MS. LIGUORI: Which will include repeat violations for littering, spitting and public
urination, again. So, the Law Department has that currently.

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

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

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

MS. LIGUORI: And I abstain.

MR. DEL VALLE: But obviously Sanitation is abstaining.

MS. KNAUER: But I’ll abstain too.

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

MS. SALLOUM: The second rule for your consideration is the final rule. This is the
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repeal of the Department of Parks and Recreation penalty schedule. So, you already voted on the proposal. We published the rule in the City Record on December 22, 2016, and a public hearing was held on January 24, 2017. One member of the public attended but did not provide any testimony. We didn’t receive any written comments on this rule.

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

MS. KNAUER: I’m sorry, can you --

Elizabeth Knauer; can you just explain that sequence again? So will there be a penalty schedule in effect at all times?

MS. SALLOUM: Yeah. We’re not going to
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-- it doesn’t become final until we publish it in the City Record and 30 days passes.

MS. KNAUER: Right.

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

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

MR. DOUGLAS SWANN, APPOINTED MEMBER: No.

MS. KNAUER: Two -- I’m going to abstain.

MR. SWANN: No.
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MR. DEL VALLE: One no and one abstention.

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

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

MS. SALLOUM: So, we’ll be coordinating with them and not publishing this for final adoption until DEP is ready to publish their new penalty schedule. Does anyone have any questions?
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MR. DEL VALLE: Motion? Which I assume is a positive vote with -- nay?

MR. SWANN: Nay.

MR. DEL VALLE: And --

MS. KNAUER: Abstain.

MR. DEL VALLE: Thank you.

MS. SALLOUM: Thank you.

MR. DEL VALLE: Russell Pecunies, you’re on.

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

During all of last year, they were issued a series of summonses for failing to
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comply with that Commissioner’s Order. They 
appeared on some them. They defaulted on others. 
They continue to be in non-compliance with the 
Commissioner’s Order. And due to that continuing 
noncompliance, DEP is asking the Board to issue 
an order to cease and desist.

MR. DEL VALLE: Any questions?

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

MR. PECUNIES: Yes.

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

MR. PECUNIES: That I actually --

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

MR. PECUNIES: That I’m actually not
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aware of. Basically what would happen if they defaulted would be that we could implement a water shutoff immediately. However, we’ve been doing this for a long time with the backflow cases. And it’s basically the same thing. The remedy would be shutting off the water. But we -- if they default, we generally will send an inspector to the premises with a warning notice first, saying: Your water is going to be terminated unless you get in contact. They’ll get in touch with OATH and reschedule the hearing.

And then what happens after that is before the water would be turned off, a crew would be sent out to mark. They paint the street and the sidewalk. And generally when people see that taking place outside their building, they immediately take measures to keep that from happening. Whether we would ever go forward and turn off the water in the building that had residential occupancy, it’s highly doubtful because the building would have to be evacuated. And it wouldn’t be habitable without water service. But in this particular case, I’m not
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aware whether there’s any residential in the
building or not.

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

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

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

    MR. PECUNIES: It depends. It could be
possible in some of these cases if we really did
want to turn the water off. If there’s a separate
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service with a commercial, which sometimes there is, then that can be sealed without affecting the residential. It depends on the way. There’s all different kinds of plumbing setups. So it depends on the way the individual building is set up.

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

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

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

MR. PECUNIES: Yeah.

MS. MICHELE DE FREITAS-WITHIM, DEPARTMENT OF HEALTH AND MENTAL HYGIENE, DOHMH: I’m Michele
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DeFreitas-Within from the Department of Health.

Just for education purposes: so your inspectors are going there and observing them doing these violations because there are several summonses here, so?

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

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

MR. DEL VALLE: We did a review recently of these types of cases. And generally it’s almost three years of property owner or landlord or business jerking off the City before the City finally moves to seal the property -- seal the equipment. There’s multiple summonses, notices, orders, whatever, which apparently wind up in the trash, and they don’t take the City seriously.
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until we padlock them or shut them off, or are about to. The interesting thing is that miraculously when, as the Assistant Commissioner pointed out, miraculously when they show up with a wrench to shut off the water, they fix the thing within a month or so.

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

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

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

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

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

MR. PECUNIES: Okay.
MR. DEL VALLE: Thank you.
MR. PECUNIES: Thank you.
MR. DEL VALLE: And Kelly Corso will give us pre-sealing reports.

MS. KELLY CORSO, ESQ., ASSISTANT DIRECTOR OF ADJUDICATIONS, OATH: Good morning. I’m Kelly Corso, Assistant Director for Adjudications, OATH. We have 11 pre-sealing reports today for the Board; ten of them involve
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backflow violations and one involves a Sewer Code violation. In nine of the backflow cases, the hearing officers recommended no sealing or other action, based on the respondent’s evidence of compliance that was presented at the hearings. In the remaining backflow case, the hearing officer agreed with DEP’s recommendation that the C&D be discontinued because DEP had determined that a backflow device is no longer required at the premises.

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

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

[OFF THE RECORD]

[ON THE RECORD]
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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

[Signature]

Date: February 2, 2017

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