Training Room 143, 12th Floor  
100 Church Street, New York, New York  
May 29, 2014  
9:18 A.M. to 9:41 A.M.
MEMBERS PRESENT:

Lt. Dan Albano, Esq. - Police Department
Robert Carver, Esq. - Citizen Member
Hon. Ernest J. Cavallo - Citizen Member
Renaldo Hylton - Exec. Dir., Dept. of Buildings
Elizabeth Knauer, Esq. - Citizen Member
Tayo Kurzman, Esq. - Fire Department
Emily Lally - Citizen Member
Madelynn Liguori, Esq. - Dept. of Sanitation
Jorge Martinez, Esq., - Dept. of Health & Mental Hygiene
Douglas Swann - Citizen Member

ALSO PRESENT:

Helaine Balsam, Esq. - Deputy General Counsel, OATH
Denis Brogan - Assistant General Counsel, OATH
Kelly Corso, Esq. - Assistant Dir. of Adjudications, ECB
Jesse DeSalvo - Administrative Justice Coordinator
Aris Fernandez - Facilities Assistant, ECB
Fana Garrick - Public Affairs Assistant, ECB
David Goldin, Esq. - Administrative Justice Coordinator
Shamonda Graham - Department of Buildings
Gerry Kelpin - Department of Environmental Protection
Elias Kwon - Intern, OATH
Mark H. Leeds, Esq. - Special Counsel, ECB
Jim Macron, Esq. - Counsel to the Board, ECB
Peter Schulman, Esq. - Deputy Supervising Attorney, Appeals, ECB
Marisa Senigo - Assistant Commissioner for Public Affairs & Communications
Amy Slifka, Esq. - Deputy Commissioner/Executive Director, ECB
Thomas Southwick, Esq. - Supervising Attorney, Appeals, ECB
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(The public hearing commenced at 9:18 A.M.)

MS. AMY SLIFKA, ESQ., DEPUTY COMMISSIONER/EXECUTIVE DIRECTOR, ECB, OATH: Okay, the meeting is called to order. Is there a motion to adopt the minutes from the April 24, 2014 meeting? Okay. Alright. Any no's? Okay, good. Okay, so now we're going to have a presentation of the final rules. The first one will be regarding amendments to the ECB Sanitation Penalty Schedule and Helaine Balsam will be presenting.

MS. HELAINE BALSAM, ESQ., DEPUTY GENERAL COUNSEL, OATH: Good morning.

ALL: Good morning.

MS. BALSAM: I'm Helaine Balsam, Deputy General Counsel for OATH. We have three final rules today. The first final rule that we're asking you to approve is regarding the redemption of recyclables. The law prohibits the use of motor vehicles to accept, receive or collect recyclable containers and restricts the transfer of recyclable containers in bulk from more than
one vehicle to another, etc. So, we had the public hearing. There are no changes to the rule from the proposed to the final rule.

MS. SLIFKA: Okay. Any questions? Dan Albano?

LT. DAN ALBANO, ESQ., POLICE DEPARTMENT: Dan Albano from the Police Department. Is this for the people who collect the cans?

MS. BALSAM: It's actually for cars.

LT. ALBANO: For cars?

MS. BALSAM: Madelynn Liguori from Sanitation?

MS. SLIFKA: Go ahead, Madelynn Liguori.

MS. MADELYNN LIGUORI, ESQ., DEPARTMENT OF SANITATION: The mobile redemption law is actually for the owners of vans that you might see them in Chinatown on the corners.

LT. ALBANO: Right.

MS. LIGUORI: For one example, on the corner with lines of people lined up and they're collecting all the cans. That could be at the moment what the mobile redemption legislation is for.
LT. ALBANO: Okay. And that's prohibited now?

MS. LIGUORI: It's prohibited on a City street.

LT. ALBANO: Okay.

MS. LIGUORI: It's not prohibited on private property if they register with the Department.

LT. ALBANO: Okay.


MS. BALSAM: So this final rule involves the addition of penalties for a law that limits carpets, the emissions of volatile organic compounds or VOCs from carpets and carpet cushions and is primarily designed to -- for enforcement against carpet sellers and stores.

MS. SLIFKA: Okay. Any questions? Okay,
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on that. Is there a motion to approve? Okay. All in favor? Could you keep you hands up? Anybody opposed? One. And any abstentions? Two. But we have the right to go forward, right? Okay, very good. Okay. And now we have a presentation of the final rule regarding cure period for certain violations on sanitation air code and noise code penalties imposed. Helaine Balsam?

MS. BALSAM: So again there was no change between the final rule and the proposed rule and the final rule. And this rule provides for cure periods for four different sections of law, which are returnable to ECB. The first involves sanitation tickets that are issued for private carter decals. Then there are two air code sections regarding the use and operation of air contaminant detectors in oil burning equipment. And finally the fourth cure period would be pertaining to excessive noise from air circulation devices. Any questions?

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MS. LIGUORI: I should abstain from this one.

MS. SLIFKA: You have an abstention, okay.

MS. BALSAM: Thank you.

MS. SLIFKA: Okay. Next up we have DEP's request for cease and desist orders. And this time Gerry Kelpin is going to be presenting.

MS. GERRY KELPIN, DEPARTMENT OF ENVIRONMENTAL PROTECTION: Good morning.

ALL: Good morning.

MS. SLIFKA: Gerry, why don't we do the backflows first?

MS. KELPIN: Sure. We have 28 requests for C&D orders for failure to install backflow devices. We'd like the Board to approve them. If you have any questions, I'd be happy to try to answer them.

MS. SLIFKA: Okay. So, Gerry, you said 24?

MS. KELPIN: Twenty-eight.

MS. SLIFKA: Twenty-eight, okay. Are there any questions on these? Okay.
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LT. ALBANO: No.

MS. SLIFKA: Okay. Is there a motion to approve? Okay. All in favor? And no abstentions. Okay. This looks like everybody. Okay, good. Okay. And you want to do the other C&Ds?

MS. KELPIN: We also have 14 requests for C&Ds related to the boilers permits that have either expired or are needed for different buildings. This goes back to what the Board approved for us so that we could move forward on changing out the fuel type to the cleaner fuel for the City.


ALL: Doug.

MS. SLIFKA: Oh, Doug, I'm sorry. I missed that. Sorry. Okay. Alright. And thank you, Gerry.

MS. KELPIN: And actually there were two more that were late arrivals.

MS. SLIFKA: Okay.
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MS. KELPIN: For again, two C&D requests for failure to comply with the City's grease trap requirements. If there are any questions?

MS. SLIFKA: Just which ones were those?

MS. KEPLIN: There are two for failure to comply with the grease trap requirements.

MS. SLIFKA: Okay.

MS. KEPLIN: And for restaurants.

LT. ALBANO: You said that last night I think, right?


MS. KELPIN: Thank you very much.

MS. SLIFKA: Thank you, Gerry. Alright.

Next up we have a presentation of the pre-sealing reports by Kelly Corso.

MS. KELLY CORSO, ESQ., ASSISTANT DIRECTOR OF ADJUDICATIONS, ECB: Good morning. We had 26 pre-sealing reports for today's Board, all of which were issued after live hearings. But we
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have one pre-sealing report that pertains to a violation of the air code and this is 2014F. At the May 20, 2014 pre-sealing hearing, Russell Pecunies on behalf of DEP stated that the respondent -- excuse me, the respondent is the former managing agent for the property; that respondent that no longer has any relationship with the cited property. And in that case, the ALJ recommended that the C&D proceeding be discontinued. So that was the first of the 26.

The remaining 25 pre-sealing reports, of those three of them pertain to violations of the noise code which I'll discuss in more detail in a minute, and 22 of the reports pertain to failure to install backflow device violations, and 21 of those recommend that there be no sealing or other action given respondents' compliance; the remaining backflow pre-sealing order I will discuss in more detail because the ALJ recommended the water shut-off.

So first, Amy, unless you want me to do it in a different order, I'll discuss the noise code cases?
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MS. SLIFKA: Okay.

MS. CORSO: Alright. So there was three noise code cases. The first one is for C&D order 2014N. This is for the respondent 265 Lafayette Restaurant, LLC. The premises is a restaurant at 265 Lafayette Street in Manhattan. And in this case a predicate violation was issued in January 2014 for noise from the respondent's kitchen exhaust unit. A default judgment order was issued for the predicate violation in March of 2014, imposing a penalty and ordering compliance with the noise code. A subsequent NOV for noise from the cited equipment was issued in January, February and March of 2014. The Board approved the cease and desist order in April. At the May 20, 2014 pre-sealing hearing, the respondent's representative presented evidence of acoustical roof remediation and a follow-up noise survey conducted at the premises showing that the noise levels from the kitchen exhaust fan are now in compliance with current requirements.

In the pre-sealing report, ALJ Jaffee recommended that DEP inspect and monitor the
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equipment and confirm that the equipment does in fact operate in compliance with the noise code; and that the equipment remain unsealed only if the initial re-inspection shows no violation and a further re-inspection for a period of 180 days shows no violation. Any questions on that one? Okay.

The second pre-sealing report is for C&D order 2013H. This respondent is Tower Owner's Inc. The premises is 25 Seacoast Terrace Brooklyn. It's a commercial premises and the equipment is a bathroom exhaust fan on the roof. In this case the predicate violation was issued in October 2012. Following a hearing December 2012, a decision and order was issued sustaining the violation and imposing a penalty and ordering compliance with the noise code. Subsequent NOVs for noise from the cited equipment were issued in May, August and November of 2013. And subsequently, the Board approved a cease and desist order on December 19, 2013.

At the May 20, 2014 pre-sealing hearing, the respondent's representative submitted
evidence to show the respondent had installed a new exhaust system and had disconnected the old system. Based on that, the ALJ recommended that DEP re-inspect the equipment to confirm that the old equipment isn't operable and that the new equipment has been installed. Any question on that?

MS. SLIFKA: No.

MS. CORSO: Okay. And the last noise code violation C&D is for C&D order 2014C. This respondent is Le Petit Puppy. The premises is 18 Christopher Street in Manhattan. In this case, the predicate violation was issued in September 2012 for the respondent permitting unreasonable noise at its kennel facility. Following a hearing -- excuse me, in November of 2012 a decision and order was issued sustaining the violation and imposing a penalty and ordering compliance with the noise code. Subsequent NOVs -- sorry, subsequent violations for noise from the cited equipment -- sorry, not the cited equipment; from the cited kennel were issued in October 2013 and January 2014. Subsequently, the Board approved
the cease and desist order on January 30, 2014.

At the May 20, 2014 pre-sealing hearing, the respondent's counsel stated that soundproofing materials have been installed and that the respondent believes that the work is sufficient to comply with the noise code. Russell Pecunies on behalf of DEP recommended that the order to close Le Petit Puppy be stayed, pending a re-inspection of the premises during a 180-day period to confirm that the noise problem no longer exists. Mr. Pecunies recommended that if a noise violation is found within the 180-day inspection period, the order to close the kennel be carried out. In the pre-sealing report, the ALJ recommended that DEP re-inspect the premises and that the premises remain open only if the initial re-inspection shows no violation and further re-inspection for a period of 180 days shows no violation.

MS. SLIFKA: Okay. Any questions? Emily Lally, Citizen Member?

MS. EMILY LALLY, CITIZEN MEMBER: I just have one question about this. I thought I
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remembered that it was, that they were required
to cease the kennel operations but not -- but the
place had to be closed; is that a fair assessment
of the situation?

MS. CORSO: I think that's correct but
I'm not a hundred percent sure.

MS. LALLY: But I'm just wondering what
happens on the cease and desist. They don't have
to shut down their business but they can't have
the kennel? I'm just thinking of they sell like
toys or whatever they get to go do that but they
can't do a kennel operation. And I was just
wondering if there's a distinction on what they
would be required to cease and desist?

MS. SLIFKA: But it's the noise that
they have to cease and desist.

MS. LALLY: Right.

MS. SLIFKA: So if there's no noise; if
they're just selling, you know, puppy toys or
whatever, it wouldn't be the noise.

MS. LALLY: Right. I'm just wondering,
they're not going to get locked out of the
premises or anything until they can't have a
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kennel operation?

MS. SLIFKA: I don't think so. There's going to be a re-inspection. If there's no noise, there won't anything going on. And then they have 180 days where they'll be going back. But I think if they, if they're only boarding dogs and there is a noise, it could result in shutting down the premises. If they're doing more and they don't have the boarding of the dogs, I think they'll be alright.

MR. RENALDO HYLTON, EXECUTIVE DIRECTOR, DEPARTMENT OF BUILDINGS: But that's a question. Is it the premises that gets shut or just the kennel operations? Renaldo Hylton.

MS. SLIFKA: Okay, Renaldo Hylton. I believe it's the premises -- I mean, the kennel operation that they would be shutting down, not the whole premises. So, they'd be closing down the business is what would be happening.

MS. TAYO KURZMAN, ESQ., FIRE DEPARTMENT: Tayo Kurzman from the Fire Department.

MS. SLIFKA: Sure.

MS. KURZMAN: Could Gerry Kelpin maybe?
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MS. SLIFKA: I don't know, do you have anything to add on that?

MS. KELPIN: The intent would be that the dogs would be taken out of the premises. But they could continue to do the business, the regular business they actually do or whatever.

MS. SLIFKA: Right. And Gerry, they would be shutting down just the business if the noise continued?

MS. KELPIN: Well, they would have the option. If they can't remove the dogs, we would, you know, we'd have to close down the premises and that would force them to remove the dogs.

MS. SLIFKA: Okay. So that's what -- they would close down the whole premises. Any other questions? Okay. I'm sorry, do you have a question, Renaldo? Okay. Why don't we take a vote on these three? Is there a motion to approve? Okay. All in favor? All in favor? Everyone. Any abstentions? No. Okay. Why don't we now go to the backflow?

MS. CORSO: Okay. So the last pre-sealing report for today is C&D order number
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2013-064. This one was issued to Sylvia Gloria Brown Trust for the failure to install a backflow device at the -- at an office building at 109 West 27th Street in Manhattan. In this case, the ALJ has recommended a water shut-off. The history of this case is that in September 2011, there was a Commissioner's order ordering the respondent to install backflow prevention devices in its water pipes at the premises within 30 days. The Commissioner's order warned that failure to do so may result in enforcement action, including shut-off of the water supply to the building.

On July 25, 2012, DEP issued a violation to the respondent for failing to install the backflow devices as required by the order. Respondent failed to appear for the August 10, 2012 hearing on this violation and the penalty has not been paid. An April 15, 2013 official inspection of the Bureau of Water and Service Operations records show that respondent has still not complied with the Commissioner's order.

On April 25, 2013 the Board issued a cease and desist order directing the respondent...
to appear for a pre-sealing hearing to show good cause why the water supply to the respondent's building should not be terminated and/or the violating devices be sealed. At the initial June 4, 2013 pre-sealing hearing, the case was adjourned for the respondent to submit plans to DEP. Subsequently, the case was adjourned approximately 13 more times for the respondent. Several of the adjournments for the respondent to submit plans to DEP and subsequently, to resubmit plans that were rejected by DEP.

On at least five occasions, the ALJ's orders contained a warning that the building's water may be shut off if the respondent did not submit plans to DEP. In addition, at several prehearing conferences, the respondent's representative made untrue representations that plans had been submitted to DEP, when in fact no plans had been submitted. Respondent's representative's explanation for this was that they were simply relaying what they had been told by the respondent.

At the last four pre-sealing hearing
conferences, the ALJ ordered the respondent to obtain a limited alteration application express permit from DOB. At the pre-sealing hearing on May 20, 2014, the respondent's representative stated that he had no information as to when the respondent would have a limited alteration application express permit and that he did not think that the respondent would be communicating with him any time soon.

Erin Callahan, the DEP representative at the hearing, recommended a sealing and water shut-off and stated that DEP had concluded that no other businesses or residences would be affected. In the pre-sealing report, ALJ Hort found that the respondent had not shown any basis for not shutting off the premises water and sealing it and recommended that there be a water shut-off and sealing.

MS. SLIFKA: Okay. Any questions on this one? Okay.

MR. HYLTON: I just need a -- what is the business again? I'm sorry.

MS. CORSO: It's an office building.
MS. ELIZABETH KNAUER, CITIZEN MEMBER:

Elizabeth Knauer, Citizen Member. I was just wondering what was the -- why it was a backflow prevention device needed for this building? Was it just for a sprinkler system or some other use?

MS. CORSO: It's for the water service pipes. That's all I --

MS. SLIFKA: Gerry Kelpin, do you think you can answer that question?

MS. KELPIN: Backflow prevention isn't my forte. But in order to prevent sewage from coming back up into the building, these devices control that flow if they shut it off in the street. So it's a --

MS. KNAUER: I know. But it's not -- usually when we, for example, when we get the C&D requests, it indicates what, what use is in the building that requires them.

MS. KELPIN: I'm sorry, I don't have that info.

LT. ALBANO: It might be the height of the building too, the size of the building.

MS. CORSO: It's an 11-story building.
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MS. SLIFKA: As we don't have that information right now, we could -- if you feel comfortable, we could vote on it or we could table it to the next Board meeting?

MR. HYLTON: Is this -- I'm sorry, Renaldo Hylton, DOB. Is this simply the fact that it's a mixed-use commercial and residential?

MS. KNAUER: We don't know.

MS. CORSO: It's my understanding it's only commercial.

MR. HYLTON: It's all commercial?

MS. CORSO: Mm-hmm.

MS. SLIFKA: Any comments? Do you want to table this? Let me take a vote to see if anybody wants to table this until the next meeting, until we have more information. Anybody want to table this? No. Okay. You're comfortable voting on it?

LT. ALBANO: Yes.

MS. SLIFKA: Okay. So let's vote on this one separately. All in favor? Okay. Any abstentions? No. Okay. Let's vote on the -- there were how many other ones?
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MS. CORSO: We did the 25.

MS. SLIFKA: We didn't vote on them.

MS. CORSO: We didn't vote on the 25.

MS. SLIFKA: We didn't vote on the 25.

Okay. So, we have the 25 other backflow.

MS. CORSO: Twenty-two -- I'm sorry.

MS. SLIFKA: Twenty-two.

MS. CORSO: Twenty-two.

MS. SLIFKA: Okay, 22 other backflows.

Okay. Is there a motion to approve? All in favor? And no abstentions? No one else. Okay. Very good. Thank you. Thank you, Kelly. Okay. Is there a motion to go into executive session? Okay. We'll now go into executive session. Those people who are not a member will have to leave.

[OFF THE RECORD]

[ON THE RECORD]

MS. SLIFKA: Okay. Do you want to check and see if anybody's --

MS. ARIS FERNANDEZ, FACILITIES ASSISTANT, ECB: Nobody.

MS. SLIFKA: Okay. Okay, so we're back in public session. So, all those in favor of

LT. ALBANO: Alright, thank you. Amy, if you have a minute?

MS. SLIFKA: Yeah.

(The public hearing concluded at 9:41 A.M.)
CERTIFICATE OF ACCURACY

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I, Andrew Slawsky, certify that the foregoing transcript of the Board Meeting of the Environmental Control Board on May 29, 2014 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

Date: May 30, 2014

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