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 26, 2015
9:31 a.m. to 10:23 a.m.
MEMBERS PRESENT:

Lt. Dan Albano, Esq. - Police Department
Robert Carver, Esq.- Citizen Member
Fidel F. Del Valle, Esq. - Chair, OATH
Joseph Gregory, Esq. - Fire Department
Renaldo Hylton - Executive Director, Department of Buildings
Emily S. Lally- Citizen Member
Madelynn Liguori, Esq. - Department of Sanitation
Jorge Martinez, Esq. - Department of Health and Mental Hygiene
Russell Pecunies, Esq. - Department of Environmental Protection
Thomas D. Shpetner - Citizen Member
Douglas Swann - Citizen Member

ALSO PRESENT:

James Armstrong - Law School Fellow, OATH
Kelly Corso, Esq. - Assistant Director of Adjudications, ECB
Helanie Balsam, Esq. - Deputy General Counsel, OATH
Denis Brogan - Assistant General Counsel, OATH
John Burns - First Deputy Commissioner, OATH
John Castelli - Assistant Commissioner for Legislative Affairs, OATH
Laura Carraher - Staff Attorney, Appeals, OATH/ECB
Arisleyda Fernandez - Facilities Assistant, OATH/ECB
Fana Garrick - Public Affairs Assistant, OATH/ECB
David Goldin, Esq. - Administrative Justice Coordinator
Diana Haines - Assistant General Counsel, OATH/GC
Vivienne Kahng - Staff Attorney, Appeals, OATH/ECB
Peggy Kuo - Deputy Commissioner and General Counsel, OATH
Mark H. Leeds, Esq. - Special Senior Counsel, ECB
Jim Macron, Esq. - Counsel to the Board, ECB
Maria Marchiano - Senior Counsel/Assistant Commissioner, OATH
Denise Ortega - IT Support, OATH
Peter Schulman, Esq. - Deputy Supervising Attorney, Appeals, ECB
Frances Shine - Secretary to the Board, ECB
Amy Slifka Esq. - Deputy Commissioner/ Executive Director, ECB
Thomas Southwick, Esq. - Supervising Attorney, Appeals, ECB
Paul Westrick - City Council
February 26, 2015

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[All names are listed in order in which they speak]

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(The board meeting commenced at 9:31 A.M.)

MR. FIDEL F. DEL VALLE, Esq. - CHAIR,

OATH: Good morning everyone.

UNIDENTIFIED MALE 1: Good morning.

UNIDENTIFIED MALE 2: Good morning.

CHAIRMAN DEL VALLE: This is a meeting of the Environmental Control Board. We are now calling it to order. Is -- has everyone seen the minutes of the last meeting?

UNIDENTIFIED MALE 3: Yes.

CHAIR: Any comments or corrections? Is there a motion to accept them? I think that's unanimous. They're accepted. I would like to ask James Armstrong to do a presentation on proposed rules to amend ECB's building penalty schedule, Buildings Department.

MR. JAMES ARMSTRONG - LAW SCHOOL FELLOW,

OATH: Good morning, ladies and gentleman of the board. My name is James Armstrong. I'm a Law Fellow with the General Counsel's Office.

Today I begin by presenting ECB's proposed rule to amend its building's penalty
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schedule. This proposal is in response to the Department of Building's proposal from last month. Today ECB proposes a rule to modify its building's penalty schedule in order to adequately enforce existing laws and rules and to reflect the changes brought about by Local Law 141, which went into effect on December 31, 2014.

Local Law 141 amended many sections of laws, many codes, and it made several such amendments. It amended existing requirements, added new requirements and renumbered existing sections of the affected codes.

ECB also seeks to amend its building penalty schedule in order to reflect efforts by the Department of Buildings to update existing violations in the Department of Building rules by amending the sections of laws in violation descriptions.

Today's proposal has been certified by both the New York City Law Department and the Mayor's O- Office of Operations. Are there any questions?

CHAIRMAN DEL VALLE: Any questions? Is
there a motion? I think since everyone raised their hand, except Emily Lelly [phonetic].

MS. LALLY: Lally.

CHAIRMAN DEL VALLE: Sorry.

MS. LALLY: It's okay.

CHAIRMAN DEL VALLE: There's a cup of coffee in front of your name.

THOMAS SHPETNER: That's her real name.

CHAIRMAN: With one negative vote, it is passed.

MS. PEGGY KUO, DEPUTY COMMISSIONER AND GENERAL COUNSEL, OATH: It's an abstention. It's an abstention.

MR. RENALDO HYLTON, EXECUTIVE DIRECTOR, DEPARTMENT OF BUILDINGS: I don't need to abstain, I vote. I vote.

CHAIRMAN DEL VALLE: Okay. I believe there's another one.

MR. ARMSTRONG: Yes, that's correct, sir. Alright. Next, I will present ECB's proposed rule to amend its sanitation penalty schedule. Today's proposal is in response to two Department of Sanitation proposals from last
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month. And accordingly today's proposal will have two parts. Therefore, I will go through the first part and see if there are any questions at that point. Then I will continue with the second part.

So, first, ECB proposes to amend its sanitation penalty schedule to create penalties for violations of local Law 67 of 2014. Local Law 67 has already been enacted. It will become effective -- effective March 14, 2015. Local Law 67 relates to the regulation of publicly accessible collection bins. Publicly accessible collection bins may not be placed on city property, on property maintained by the city, or on public sidewalks or roadways. However, such bins may be placed lawfully on private property where the bin owner receives a written permission of the property owner and the bin owner will list his or her name, address and telephone number on the side of the bin. When Local Law 67 takes effect, once again on March 14, 2015, the Department of Sanitation will be authorized to immediately remove any publically accessible
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collection biN based on public property and to
issue violations to the bin owners.

Further where bins are placed lawfully
on private property, bin owners must register and
file an annual report with the Department of
Sanitation. Further the bin owner and the
property owner will each be responsible for
maintaining the bin in a clean and neat
condition, and bin owners who fail to comply with
these requirements will be liable for civil
penalties. That concludes the first part of the
proposal. Are there any questions at this
juncture?

CHAIRMAN DEL VALLE: No question? Is
there a motion?

MR SHPETNER: Are we doing them
together?

CHAIRMAN DEL VALLE: Are we doing them
together or are you doing them individually?

MR. ARMSTRONG: If it's possible I would
just continue on to the second part.

CHAIRMAN DEL VALLE: Okay.

MR. ARMSTRONG: If that's alright? Just
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so everyone can hear it.

CHAIRMAN DEL VALLE: Alright.

MR. ARMSTRONG: Because it's all part of the same proposal.

CHAIRMAN DEL VALLE: Alright.

MR. ARMSTRONG: Thank you. Next I will go into the second part of the proposal. So, ECB proposes to amend its sanitation penalty schedule to create a penalty for violations of 16 RCNY 1-04.2. So this prohibits the placement of electronic waste out for solid waste or recycling collection.

So, as of January 1st of this year, 2015, the New York State Electronic Equipment Recycling and Reuse Act prohibits disposal of electronic waste, solid waste in the state of New York. So, the act prohibits electronic waste from being placed or disposed of in any solid waste management facility or being placed out for collection for disposal at a solid waste management facility or hazardous waste management facility in the state of New York.

Pursuant to the charter, the Department
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of Sanitation is responsible for the operation functions of waste disposal. In further, under the administrative code, the Department of Sanitation is authorized to issue violations. Accordingly in response to the new act, the Department of Sanitation promulgated 16 RCNY 1-04.2 in order to create a violation for placing electronic waste out for solid waste or recycling collection.

So, this proposal in full has been certified by both the New York City Law Department and by the Mayor's Office of Operations. Are there any questions?

CHAIRMAN DEL VALLE: No questions. Is there a motion? Then it's approved.

MR. ARMSTRONG: Thank you very much.

CHAIRMAN DEL VALLE: Russell Pecunies. DEP’s request for a cease-and-desist orders.

MR. RUSSELL PECUNIES, ESQ. - DEPARTMENT OF ENVIRONMENTAL PROTECTION: Okay. Good morning. This month, the DEP has requests for four different types of cease-and-desist orders. First, the Bureau of Waste Water Treatment is
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asking the board to issue a cease-and-desist order to Silver Crust West Indian Restaurant and Grill, at 1695 President Street in Brooklyn. The establishment has disregarded a series of Commissioner's Orders and violations for first failing to provide access to their existing grease trap for inspection. And second, to install and maintain a 35 gallon per minute 70 pound capacity grease trap on their three compartment sink. Based on the establishment’s continuing failure to comply, the DEP is requesting an order to cease-and-desist. I think each type of order, vote on separately or...

CHAIRMAN DEL VALLE: We can vote on each one separately.

MR. PECUNIES: Yeah.

CHAIRMAN DEL VALLE: Any questions?

UNIDENTIFIED MALE 5: No.

CHAIRMAN: Motion? It's unanimous.

MR. PECUNIES: Okay. Next --

CHAIRMAN DEL VALLE: And one, and I'm assuming--

MR. PECUNIES: Yes.
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CHAIRMAN DEL VALLE: Abstention.

MR. PECUNIES: Abstention. Thank you.

Next, the Bureau of Environmental Compliance is asking for cease-and-desist orders with regard to three locations under the noise code. The first is at 150 Victory Boulevard in Staten Island, where the exhaust fan has been cited on five occasions over a period going back to November of 2013. The second location is at 5114 13th Avenue in Brooklyn where the kitchen exhaust has been cited for excessive noise three times going back to May of last year. And the third location is 228 West 18th Street where the kitchen exhaust has been cited on four occasions going back to August of 2013.

So, in each of these cases, the DEP is asking that the board issue an order cease-and-desist since the responsible parties have failed to comply despite the series of violations that have been issued.

CHAIRMAN DEL VALLE: Questions? Motion?

And I think it's unanimous with the --

MR. PECUNIES: Yeah.
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CHAIRMAN DEL VALLE: One abstention. Is that it?


The next group is 15 requests for cease-and-desist orders under the Air Code. These all pertain to locations that have expired certificates of operation for using number six fuel oil. We’re getting very close now or somewhat close to the June 30th deadline for all boilers to be off number six. So, this is the largest group of these requests that we’ve brought so far, and I’m not sure but the, there may be even more of these coming over the next couple of months.

There is one location 5 Riverside Drive where there are two separate requests because there are two boilers using number six at that location. In each of these cases, the respondent has been issued a notice of violation, been adjudicated and they have failed to respond by converting. So in each of these 15 cases, the DEP is requesting an order to cease-and-desist.

CHAIRMAN DEL VALLE: Questions? Motion.
Again it's unanimous with the one abstention.

MR. PECUNIES: Correct. And finally, we have 28 requests for cease-and-desist orders for failing to install backflow prevention devices. In each of these cases, the building owner has been ordered to install the device, has been cited with a notice of violation for not doing so. The notice of violation has been adjudicated there is still no compliance, and so the department is requesting an order to cease-and-desist.


MR. PECUNIES: Thank you.

CHAIRMAN DEL VALLE: Kelly Corso will now give us a presentation on pre-sealing reports.

MS. KELLY CORSO, ESQ. - ASSISTANT DIRECTOR OF ADJUDICATIONS, ECB: Good morning. I'm Kelly Corso, Assistant Director of Adjudications for ECB. And I'm here to discuss the pre-sealing reports for today's board. We have 26 today. Twenty of the reports pertain to
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backflow violations.

So, I'm going to discuss the backflow violations first. Fourteen of the backflow cases, the hearing officers recommend that there be no sealing or other action given the respondent's compliance or because DEP has determined that the site of premises had no active water service. In five of the cases, the hearing officers recommend that the c and d orders be discontinued because DEP has determined that the respondents no longer own the premises. Or because DEP has determined that the site of premises does not have its own water supply. In the final backflow case, the hearing officer recommended that the c and d order be discontinued because DEP has determined that no backflow prevention device is required at this time at the premises. Any questions on the backflow cases? Okay.

Next, I'm going to go move on to the Air Code cases. We have four those. I'm sorry, we have five of those today. Four of those cases pertain to failure to comply with the Air Code in
connection with the respondent's boiler burners. In three of those cases, the respondent's representatives provided proof of a valid operating certificate, bringing the boiler burners into compliance with the Air Code. In those three cases, the hearing officers recommended no further action is necessary given the respondent's compliance.

In the remaining case, the hearing officer recommended that the c and d order be discontinued because the respondent's representative provided proof that the address on the order did not correspond with the respondent's address. A new order has been approved by the board with the correct address.

Any questions on the Air Code cases? Okay.

And the final cases are two noise code cases. These cases are in connection with the respondents' kitchen exhaust systems. In both cases, the respondent's representative provided proof of work done on each -- to bring it into compliance with the noise code. Based on the evidence of compliance, the hearing officers in
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both cases recommend that DEP re-inspect the equipment, and that their equipment remained unsealed if the initial re-inspections show no violation and further re-inspections show no violations for a period of 180 days. And any questions?

CHAIRMAN DEL VALLE: That's it?

MS. CORSO: That's it.

CHAIRMAN DEL VALLE: Is there a motion to accept the report? It's unanimous.

MR. PECUNIES: One abstention.

CHAIRMAN DEL VALLE: The DEP abstains. I'll ask for a motion for us to proceed with a, executive session to discuss the judicial reports and appeals. Unanimous? I will ask now that non-ECB and/or OATH personnel to please leave the room.

[OFF THE RECORD]

[ON THE RECORD]

CHAIRMAN DEL VALLE: I’ll wait a second for anybody who may still be outside to come in. Nobody? Okay. We are now back from executive session. And we have four votes to take on the
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appeals. First one has to do with 110 -- the
recommendation made on 110 appeals from the
February 5 and February 19 appeals panel that was
presented. Is there a motion on those? Okay.
They're approved unanimously, I believe.

We now come to three individual appeals
that were discussed in executive session. One is
in the matter of Cleve Brian Carter [phonetic].
There are two alternatives. I'll, first call for
a vote on one, and if that does not have a
majority, I'll call for a vote on a second one.
Those in favor of the alternative granting the
petitioner this, that would be the Parks
Department, request for a superseding appeal
decision and finding that the respondent was
violation of Section 1-05B of Title 56 of the
rules City of New York for unauthorized vending.
This finds that the expressive matter, the
exception in 56 rules of the City of New York
Section 1-0, 1-05B does not apply to that
respondent's vending of tickets for bus and boat
rides. All those in favor?

LT. DAN ALBANO, ESQ. POLICE DEPARTMENT:
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Chairman, I got to abstain.

CHAIRMAN DEL VALLE: Okay. With one abstention by Lieutenant Albano, it is otherwise unanimous.

The two other appeals are the subject matter is related -- the legal subject matter that is. One is the matter of Anthony Phillips [phonetic]. Reversing the hearing officer's recommendation, recommended decision rather and order and finding that the respondent was in violation for unauthorized vending under Section 1-05B of Title 56 of the rules of City of New York for unauthorized vending. This finds that the expressive matter exception in section 1-05B does not apply to respondent's vending of tickets for bus and boat rides. All those in favor?

Opposed? One abstention. It passes.

And finally, the matter of Donnell Dinkins [phonetic]. Reversing a hearing officer's recommended decision and order and finding the respondent in violation for unauthorized vending under Section 1-05B of the Title 56 of the rules of the City of New York for
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Unauthorized vending. This finds that the expressive matter exception, in Section 1-05B does not apply to that respondent’s vending of tickets for bus and boat rides in the park. All those in favor? Opposed? One abstention.

Alright. It carries.

I'll ask -- I'll just remind everyone to please sign in the sign in sheet so we have a full record of everyone who was here in attendance. I thank you all very much, and we are adjourned.

(The board meeting concluded at 10:23 a.m.)
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CERTIFICATE OF ACCURACY

I, Andrew Slawsky, certify that the foregoing transcript of the Board Meeting of the Environmental Control Board on February 26, 2015 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

________________________________________

Date: February 27, 2015

GENEVAWORLDWIDE, INC
256 West 38th Street - 10th Floor
New York, NY 10018