

NEW YORK CITY
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
ENVIRONMENTAL CONTROL BOARD

HEARING
BOARD MEETING

Training Room 143, 12th Floor
100 Church Street, New York, New York

March 26, 2015

9:25 A.M. to 10:26 A.M.

March 26, 2015

MEMBERS PRESENT:

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

ALSO PRESENT:

James Armstrong - Law School Fellow, OATH
Kelly Corso, Esq. - Assist. Director of Adjudications, ECB
Ellen Cooper, Esq. - Department of Sanitation
Denis Brogan, Esq. - Assistant General Counsel, OATH
John Burns, Esq. - First Deputy Commissioner, OATH/ECB
John Castelli, Esq. - Assist. Commissioner for Legislative
Affairs, OATH
Arisleyda Fernandez - Facilities Assist. OATH/ECB
David Goldin, Esq. - Administrative Justice Coordinator
Diana Haines, Esq. - Assistant General Counsel, OATH
Vivienne Kahng, Esq. - Staff Attorney, Appeals, OATH/ECB
Peggy Kuo, Esq. - Deputy Commissioner and General Counsel,
OATH
Shamonda Graham - Department of Transportation
Mark H. Leeds, Esq. - Special Senior Counsel, ECB
Jim Macron, Esq. - Counsel to the Board, ECB
Peter Schulman, Esq. - Deputy Supervising Attorney,
Appeals, ECB
Marisa Senigo - Assist. Commissioner/Public Affairs &
Communication, OATH
Amy Slifka, Esq. - Deputy Commissioner/Executive Director,
ECB
Maria Marchiano, Esq. - Senior Counsel/Assist.
Commissioner, OATH
Kevin Lawner, Esq. - Staff Attorney, Appeals, OATH/ECB
Bonda Lee-Cunningham - Senior Advisor, Mayor's Office of
Operations

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Rebecca Woods - Baltimore City, ECB

April Chenier - Baltimore City, ECB

Hunter Gradie - Police Advisor, Mayor's Office of
Operation

Laura Carraher, Esq. - Staff Attorney, Appeals, OATH/ECB

Ann Biebel, Esq.- Staff Attorney, Appeals, OATH/ECB

Philip Sturges, Esq. - Hearing Officer, OATH/ECB

Rachel Amar - Administrative Manager, OATH

Frances Shine - Secretary to the Board, OATH/ECB

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2 (The public hearing commenced at 9:25
3 A.M.)

4 Commissioner FIDEL F. DEL VALLE, ESQ.,
5 CHAIRPERSON, COMMISSIONER & CHIEF ADMINISTRATION
6 LAW JUDGE, OATH: I believe we have a quorum; so
7 the camera is rolling. So we're official and I
8 call this meeting in session. I assume everyone
9 has received the minutes of the last meeting. If
10 there are no comments, corrections or additions
11 to be made to it, I ask for a motion to accept
12 the minutes. And I think it's unanimous.

13 MR. ERNEST CAVALLO, CITIZEN MEMBER: I
14 abstain. I wasn't here.

15 MS. ELIZABETH KNAUER, ESQ., CITIZEN
16 MEMBER: I abstain.

17 Commissioner DEL VALLE: Mr. Cavallo
18 abstains.

19 MS. KNAUER: And Ms. Knauer.

20 Commissioner DEL VALLE: And it was
21 written out. And I still sound weird on this
22 microphone.

23 MR. CAVALLO: Not to us.

24 Commissioner DEL VALLE: Oh, okay. I'm

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2 just getting weird feedback over here.

3 MR. Dan Albano, ESQ., POLICE DEPARTMENT:
4 You sound fine down here, right. Yeah, you sound
5 fine.

6 MR. RENALDO HYLTON, EXECUTIVE DIRECTOR,
7 DEPARTMENT OF BUILDINGS: No problem.

8 Commissioner DEL VALLE: Why are you all
9 the way down there? The other meeting you'd been
10 up here. You're trying to get me confused.

11 MR. DAN ALBANO: I don't want to sit
12 next to you anymore.

13 Commissioner DEL VALLE: Oh, they told
14 you about me in the Legal Bureau. There is a
15 Department of Sanitation proposal concerning
16 recovery of refrigerants from appliances. Is Ms.
17 Cooper here?

18 MS. COOPER, DEPARTMENT OF SANITATION:
19 Good morning. The Department of Sanitation is
20 requesting a change to its penalty schedule to
21 allow us to issue violations pursuant to Local
22 Law 69 of 2015. In August of 2013, Local Law 69
23 was enacted, making manufacturers or brand owners
24 of refrigerant containing appliances responsible

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2 for the lawful recovery of refrigerants from
3 their appliances when such appliances are
4 discarded by City residents. These appliances are
5 things like refrigerators, air conditions, water
6 coolers.

7 While manufacturers and brand owners
8 defined as responsible parties in Section 1701 of
9 Chapter 17 of Title 16 of the Rules of the City
10 of New York will be responsible for the recovery
11 of refrigerants from their appliances; DSNY will
12 continue to provide its own refrigerant removal
13 program in which DSNY will charge a fee to the
14 manufacturer or brand owner for every appliance
15 from which it removes refrigerants.

16 It's important to note that this law
17 does not change the way homeowners dispose of
18 their appliances. Homeowners dispose of their
19 appliances. Homeowners can choose to avail
20 themselves of DSNY's program by calling 311 or
21 making an appointment for refrigerant recovery on
22 DSNY's website. If a responsible party creates
23 its own program, such program will be listed on
24 DSNY's website and a homeowner may choose to use

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2 that program instead. There are no penalties for
3 homeowners associated with this law or the rules
4 promulgated under this law.

5 Local Law 69 of 2013 granted DSNY broad
6 authority to promulgate rules as necessary to
7 implement the provisions of the law; including
8 but not limited to rules regulating to
9 registration and annual reporting by
10 manufacturers or brand owners and establishing
11 penalties for violations of the law and rules.

12 Pursuant to this authority, DSNY
13 promulgated rules that establish registration and
14 annual reporting requirements for responsible
15 parties of refrigerant containing appliances. The
16 rules establish the fee at \$15 that a responsible
17 party must pay if a refrigerant is removed from
18 its appliance by DSNY. And the rules establish
19 violations and fines for failure to comply with
20 the rules and the law.

21 The rules set forth the fine amounts as
22 follows. Responsible parties that fail to submit
23 a registration or annual report will be subject
24 to a fine of \$250. Responsible parties or their

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2 agents will be subject to a fine of \$500 for
3 improperly releasing refrigerants into the air.
4 Responsible parties or their agents will be
5 subject to a fine of \$500 if they dispose of any
6 appliances solid waste in the City without making
7 arrangements for the lawful recovery of
8 refrigerants. And I'll be happy to answer any
9 questions you might have.

10 MS. EMILY S. LALLY, CITIZEN MEMBER: I
11 have one. In the schedule, the penalty and the
12 default are the same amount.

13 MS. COOPER: Yes.

14 MS. LALLY: Is that because the law
15 doesn't allow for a range or it just seems like
16 that was not necessarily encouraging people not
17 to default. Like, how come the default's not
18 higher?

19 MS. MADELYNN LIGUORI, ESQ., DEPARTMENT
20 OF SANITATION: Madelynn Liguori, Sanitation. The
21 default penalties don't necessarily need to be
22 higher than the initial penalty. And because
23 we've promulgated the penalties in the rules, we
24 felt we needed to have a fixed amount.

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2 MS. LALLY: Okay, you're not worried
3 that people are going to just default on them
4 maybe?

5 MS. LIGUORI: Well, these are
6 manufacturers. These aren't just normal citizens.
7 This is a cost of doing business for a
8 manufacturers and the responsible parties.

9 MS. COOPER: And the manufacturers are
10 being very involved in every step of the process
11 from the enactment of the law to the creation of
12 the rules. So they're aware of the fine amounts.
13 And they've been very involved in working with
14 us. So I don't expect that we should have
15 problems getting them to pay if they're issued a
16 violation.

17 MR. MARTINEZ: Jorge Martinez, DOH. For
18 the violation description of 16RCNY 17-06B, it
19 says: Responsible party failure to comply with
20 federal regulations when recovering refrigerants.
21 What federal regulations are being referred to
22 here?

23 MS. COOPER: It's the Clean Air Act.

24 MR. MARTINEZ: The Clean Air Act?

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2 MS. COOPER: So the Department of
3 Sanitation is under an EPA consent order to make
4 sure that they don't vent refrigerants into the
5 air when we dispose of refrigerants. That's why
6 we've run our refrigerant recovery program. We
7 are responsible to ensure that it doesn't happen.
8 And so we are holding the manufacturers to the
9 same requirements we're held to.

10 LT. DAN ALBANO, ESQ., POLICE DEPARTMENT:
11 What about automobiles? Or is it the new, the
12 stuff that they're using in automobiles now
13 different than what's used in the refrigerators?
14 You know, we're covered-, refrigerators.

15 MS. COOPER: The Department doesn't pick
16 up automobiles.

17 MR. HYLTON: These are appliances.

18 MS. LIGUORI: Right, correct.

19 MS. COOPER: This is just appliances.
20 This is just -- these are just appliances that
21 the Department picks up for residents.

22 LT. ALBANO: So it's just what you pick
23 up?

24 MS. LIGUORI: Yeah.

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2 LT. ALBANO: Alright.

3 MR. HYLTON: Yeah, I just had a quick
4 question. I just want to understand what --
5 understand it a little bit. If I have a
6 refrigerator now --

7 MS. COOPER: Mm-hmm.

8 LT. ALBANO: Right.

9 MR. HYLTON: A regular resident's --

10 MS. COOPER: Yup.

11 MR. HYLTON: And I want to put this out
12 on the street. I must -- I want to get rid of it.
13 I must first either contact the manufacturer,
14 Frigidaire or whoever, and they would come and
15 drain the refrigerator? Or I may use DSNY's for
16 \$15 and pay them?

17 MS. COOPER: No. The homeowner is not
18 paying anything.

19 MR. HYLTON: Okay.

20 MS. COOPER: The manufacturer or the
21 brand owner.

22 MR. HYLTON: Oh, is paying --

23 MS. COOPER: So Frigidaire would pay us

24 --

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2 MR. HYLTON: Oh, I see.

3 MS. COOPER: -- if we recovered the
4 refrigerant from your appliance. But right now if
5 you put the refrigerator out, you have to call
6 311.

7 MR. HYLTON: Before.

8 MS. COOPER: Or go on the Department's
9 website to make an appointment. That's been a
10 requirement for at least ten years.

11 MR. HYLTON: Okay. So the violation is
12 not for calling you?

13 MS. COOPER: No, the violation has
14 nothing to do with the homeowner or the resident.
15 It is only pertaining to manufacturer or brand
16 owner.

17 MR. HYLTON: I got you.

18 LT. ALBANO: You know, you have to -- I
19 think you have to do that anyway, right?

20 MS. COOPER: Correct.

21 LT. ALBANO: If you throw a refrigerator
22 away, you have to call Sanitation to bring a
23 special truck. Yeah.

24 MS. COOPER: Correct.

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2 MR. MARTINEZ: And you guys are only
3 changing them \$15 to do this?

4 MS. COOPER: \$15 per appliance. So if
5 they have a thousand appliances

6 MR. MARTINEZ: That's all you're
7 charging?

8 MS. COOPER: -- appliances.

9 MR. MARTINEZ: But they would never come
10 and do it themselves, right?

11 MS. COOPER: They may if they create
12 their own program.

13 MR. MARTINEZ: Okay.

14 MS. COOPER: And many -- we expect many
15 manufacturers will partner with retailers. For
16 example, PC Richards has a program now where
17 they'll take your appliance away if you buy a new
18 one.

19 MR. Hylton: Okay, I got you. Thank you.

20 Commissioner DEL VALLE: Any other
21 questions? Is there a motion to direct the staff
22 to publish under the CAPA? It's unanimous. Thank
23 you.

24 MS. LIGUORI: I abstain.

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2 Commissioner DEL VALLE: Sanitation of
3 course abstains. We have a proposal concerning
4 changes to ECB procedural rules. James?

5 MR. JAMES ARMSTRONG, LAW SCHOOL FELLOW,
6 OATH: Good morning everyone. James Armstrong,
7 Law Fellow with the General Counsel's Office. And
8 today I am presenting an ECB proposal in two
9 parts. So I will go through each part in turn and
10 then see if there are any questions at the end.

11 First, ECB proposes to amend Sections
12 48RCNY3-57, 3-71 and 3-73 of its rules of
13 procedure. These proposed changes would allow ECB
14 to serve Hearing Officer decisions and orders
15 either by mail or by hand delivery. The current
16 rule, 48RCNY3-57 requires ECB to serve decisions
17 and orders on all parties. However, the rule is
18 silent as to how they are to be served.

19 Currently, ECB serves by mail. However, to
20 promote efficiency and flexibility, ECB proposes
21 that the rule be amended to allow both mailing
22 and hand delivery of the decisions and orders.

23 So the amendment to 48RCNY3-57 also
24 requires amending two other sections: 3-71,

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2 regarding exceptions to decisions and orders and
3 3-73, regarding payment of penalties related to
4 decisions and orders; because both of these
5 sections currently only refer to mailing. That
6 concludes the first part of the proposal.

7 I continue now with the second. ECB
8 proposes to amend 48RCNY3-91 to allow for service
9 of cease and desist orders, to notices of special
10 hearing by regular mail. So since the DEP also
11 serves these orders on respondents at addresses
12 where the equipment is located, certified mail
13 service is not necessary. ECB records also show
14 that many of these mailings actually are returned
15 to ECB because respondents don't go to the post
16 office to pick them up. And finally, if equipment
17 is sealed due to failure to appear at a pre-
18 sealing hearing, then ECB rules provide for a
19 prompt post-sealing special hearing. Now that
20 concludes the proposal. Are there any questions?

21 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT
22 OF ENVIRONMENTAL PROTECTION: Yes. Russell
23 Pecunies, Department of Environmental Protection.
24 So right now I get a number of times a week a big

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2 envelope in my mailbox full of decisions. And I'm
3 assuming that for the respondents, they will
4 continue to get the decisions by mail. I mean,
5 you're not proposing to send somebody to the
6 respondent and serve them personally with the
7 decision?

8 MS. AMY SLIFKA, ESQ., DEPUTY

9 COMMISSIONER/EXECUTIVE DIRECTOR, ECB: The way it
10 would work is after the hearing --

11 Commissioner DEL VALLE: Amy Slifka.

12 MS. SLIFKA: Yes, Amy Slifka. After the
13 hear-, after the hearing the hearing officer will
14 ask if they want to wait for their decision. So
15 instead of having to wait for the mail, they'll
16 have the opportunity to get their decision right
17 away after the hearing.

18 MR. PECUNIES: Oh, so people will now be
19 able to opt to get the decision on the spot?

20 MS. SLIFKA: Correct.

21 MR. PECUNIES: Oh, okay. And, and so
22 will that change the way the agencies get the
23 decisions? Or --

24 MS. SLIFKA: The agencies are still

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2 going to be getting it by mail.

3 MR. PECUNIES: We'll still get it by
4 mail?

5 MS. SLIFKA: Yes.

6 MR. PECUNIES: Oh, okay. So this is a
7 change that affects the respondents, not the
8 agencies?

9 MS. SLIFKA: Right, to assist the
10 respondents, more user-friendly.

11 MR. PECUNIES: Okay.

12 COMMISSIONER DEL VALLE: The, the idea
13 behind the rule is to eliminate the incongruity
14 that someone could come to a hearing and we
15 didn't tell them what the decision of the hearing
16 was and tell them to go home and wait for the
17 mail to come.

18 MR. PECUNIES: Right.

19 COMMISSIONER DEL VALLE: Where we could
20 have told them just as easily right there.

21 MR. PECUNIES: Okay.

22 ALJ DEL VALLE: Not to mention the fact
23 that we would save an immense amount of money on
24 postage. Our postage budget is \$1.1 million

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2 dollars a year.

3 MR. CAVALLO: When it says hand
4 delivery, how -- what is the standard to show
5 that it was actually delivered? Is it going to be
6 like service or --

7 MS. SLIFKA: Yeah, it will be service.

8 MR. CAVALLO: Same as service?

9 MS. SLIFKA: Correct. And we will have
10 an affidavit, you know, that the clerk will fill
11 out; the customer service person will fill out
12 when they hand it to assure that it has in fact
13 been handed to the respondent.

14 MR. CAVALLO: And if no one is there to
15 accept it by hand? Are we going to have --

16 MS. SLIFKA: They will be mailed.

17 MR. CAVALLO: Then we just go to a fall
18 back.

19 MS. SLIFKA: Right. I mean, so some
20 people might not want to stay for their decision.
21 Maybe they have to get back; their child is being
22 taken care of [unintelligible] [00:13:00]. We're
23 not going to force them to stay. But they have
24 that option.

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2 MR. CAVALLO: Sorry. I forgot to say my
3 name. Ernest Cavallo, citizen member.

4 COMMISSIONER DEL VALLE: Mr. Hylton?

5 MR. HYLTON: It's Renaldo Hylton,
6 Department of Buildings. I have a quick question
7 about logistically how this would work. I mean,
8 is this going to be for all cases, first of all?

9 MS. SLIFKA: It would -- why don't you
10 --

11 COMMISSIONER DEL VALLE: Essentially,
12 yes. This is the same thing that's been done at
13 the Taxi and Limousine tribunals since forever. A
14 hearing officer renders a decision. The
15 respondent waits outside. And usually within 15
16 minutes they get their decision hypothetically.

17 MR. HYLTON: Understand and thanks for
18 sharing. Because I know --

19 MS. SLIFKA: Just for your information,
20 we started to pilot it and we've piloted it in
21 three boroughs right now; basically just
22 Sanitation at this point in time. And it has had
23 very little if no impact on the waiting time, if
24 you're concerned with those issues.

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2 MR. HYLTON: Yeah. Yes, I was going to
3 bring that up. Because I know in particular in my
4 agency, our cases are a little bit more in depth
5 sometimes on building cases. It may take some,
6 some research that the Judge may want to do and
7 so on. So I'm wondering how long -- how that's
8 going to push the calendar? Into infinity I mean?
9 It seems sometimes we have a very crowded waiting
10 area for buildings cases and on buildings days
11 and ECB. And wait times are already up to I think
12 maybe over two hours sometimes; so just to hear
13 the cases.

14 COMMISSIONER DEL VALLE: Well, if that's
15 the case then that's, that's, that's a different
16 issue we have to look at because it shouldn't be
17 taking that long. There's a scheduling issue
18 there. But we can -- we can talk about that.
19 Because if there are people are waiting two hours
20 past the time that a hearing was supposed to
21 start, that's not right.

22 MR. PECUNIES: Russ Pecunies again, DEP.
23 Would that be -- would this be something that the
24 Judge would have the option to not offer if it's

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2 a particularly busy day or if it was a
3 particularly complex matter? That they felt like
4 they couldn't -- like the person might have to
5 wait four hours until they write the decision?
6 Could the Judge -- would the Judge have the
7 option to not offer this in certain situations?

8 COMMISSIONER DEL VALLE: The hearing
9 officer can always reserve decision.

10 MR. PECUNIES: Okay. Okay.

11 MS. KNAUER: Elizabeth Knauer, citizen
12 member. I actually have a question about the
13 rule, not the amendment. So if it's alright, I
14 just -- in terms of mailing where the, the, I
15 guess the, the respondent declines to wait or, or
16 if the option isn't available or for reasons that
17 Russ just suggested; I think that the rule says
18 that it's mailed to an authorized representative
19 or the respondent. Does the authorized
20 representative include the Secretary of State?

21 MS. SLIFKA: No. By authorized
22 representative, they mean the person who comes in
23 on behalf of the respondent.

24 MS. KNAUER: Okay. So it's always mailed

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2 to --

3 MS. SLIFKA: Yeah.

4 MS. KNAUER: -- an actual person
5 connected?

6 MS. SLIFKA: Correct.

7 MS. KNAUER: Okay. I just wanted to make
8 sure that was --

9 COMMISSIONER DEL VALLE: Secretary of
10 State, you can only mail it to them for the
11 initial service that initiates a process.

12 MS. LALLY: I had a question about the
13 other half of the cease and desist. For the
14 service, I think we talked about this last time;
15 you guys personally deliver the cease and desist
16 order. And I think the option of certified mail
17 before was if you didn't personally serve it.
18 From what we talked about, you did both and that
19 was why we were looking for regular mail. But
20 here, this is now saying that you could do
21 personal service or regular mail. And I feel like
22 the gravity of the cease and desist, either
23 warrants certified mail or personal service or if
24 you're going to do personal service and regular

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2 mail. I, I don't know if I'm making myself very
3 clear. Like regular mail would is the only point
4 of serv-, like point of getting this to somebody
5 doesn't seem sufficient to me for a cease and
6 desist order. Anybody else?

7 MR. PECUNIES: I mean, I, I -- the, the
8 --

9 MS. LALLY: I thought that was actually
10 what we discussed last time. Because I thought
11 this was put before us on a larger amendment to
12 the rules. And then this was deferred for further
13 review because we talked about having it say
14 regular mail and personal --

15 MS. SLIFKA: I know there were other
16 issues. I don't remember this particular because
17 the focus; I was focused on other issues --

18 MS. Knauer: Mm-hmm.

19 MS. SLIFKA: -- and [unintelligible]
20 [00:17:47] which were not brought here. You do
21 always --

22 MR. PECUNIES: Yeah, the, the standard
23 policy has always been that when we get the
24 orders from ECB that they're given to inspectors

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2 and that we have inspectors serve them and that
3 you also mail them.

4 MS. SLIFKA: Right.

5 MR. ALBANO: Sort of doing a nail and
6 mail.

7 MS. SLIFKA: It's not a mail.

8 MR. PECUNIES: Yeah. We, I mean, you
9 know, we serve them the same way we would -- we
10 would attempt to serve any other, you know,
11 process. I, I just think the point here and DEP,
12 since we, we're the only one that have cease and
13 desist orders; I mean, we're, we're not opposed
14 to this. We understand that certified mail is
15 very expensive and also is not necessarily more
16 effective in getting the thing through to people.
17 Because if they're not there to sign for it, then
18 they get a little card and half the time people
19 don't go to the post office. Whereas regular
20 mail, it gets left in the mailbox whether
21 anybody's there or not. So --

22 MS. LALLY: I just feel that the gravity
23 of the order, that it should either be personal
24 service and regular mail or it should remain

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2 personal service or certified. It just -- because
3 at least there's a record of you having attempted
4 to send this to them.

5 COMMISSIONER DEL VALLE: The value of --
6 the only value of certified mail is that you have
7 proof of --

8 MR. CAVALLO: Mail.

9 MR. PECUNIES: Receipt.

10 COMMISSIONER DEL VALLE: -- some kind of
11 proof of mailing. And if the person bothered to
12 pick it up, you have proof of receipt. Legally
13 service is good the moment you mail it or within
14 five days after you mail it; regardless of
15 whether the person in fact got it. That's,
16 that's, that's what the law says. We want to be
17 sure that the person actually gets it. And the
18 reality is if I send you a letter today by
19 regular mail, you'll probably get it within two
20 days. If I send it to you by certified mail,
21 it'll be lucky if somebody knocks on your door
22 within five days to deliver it.

23 And then if you're not home, then
24 whenever you have the misfortune of having to go

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2 to the post office and stand on line for a half-
3 hour to pick it up or bother to do that; then
4 you'll, you'll actually have the mailing in your
5 hands. And then we get the benefit of saying:
6 Yes, she, she got it. Here's a little card that
7 says she got the envelope. Of course that doesn't
8 mean that the envelope wasn't empty but that you
9 got an envelope.

10 MS. KNAUER: Just, just to follow up.
11 What is -- why can't we have; I mean, I thought
12 that the -- what was going to be reviewed was the
13 idea of having it say "and" rather than "or." So
14 that we would have -- it would be personally
15 served, as well as; which apparently is the
16 practice. So, is there -- is DEP opposed to
17 having the rule require what, what it in fact is,
18 is putting into practice at this time?

19 MR. PECUNIES: I mean, we do it anyway.
20 So I think we're neutral on that.

21 MS. SLIFKA: Yeah, I mean, if they do it
22 anyway and we're going to mail it also; so if
23 they put in an "and" instead of an "or"; so it's
24 going to be personally served and mailed.

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2 COMMISSIONER DEL VALLE: We're talking
3 about preclusion orders?

4 MS. SLIFKA: I think so -- yes.

5 COMMISSIONER DEL VALLE: Sealing orders.

6 MS. SLIFKA: Yes, he's correct.

7 MR. HYLTON: Cease and desist.

8 MR. PECUNIES: Cease and desist.

9 MS. SLIFKA: So I -- you know, from our
10 standpoint, we have no objections to changing it
11 to and also. So we can change it to and.

12 MR. PECUNIES: Neutral on that. We do it
13 anyway. So --

14 COMMISSIONER DEL VALLE: I -- the, the,
15 my only -- my only issue there is if the City's
16 already sent out an inspector, which costs the
17 City money to serve the document and the
18 inspector has followed essentially the CPLR
19 procedures for serving a document in person or
20 nail and mail; we're wasting a lot, a lot of
21 money.

22 MS. SLIFKA: No, it'll be regular mail
23 if we did that.

24 COMMISSIONER DEL VALLE: It's still

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2 money. I mean, it's the difference between
3 spending five dollars for certified mail and, and
4 50 cents just for the postage.

5 MS. LALLY: Well, do we want to just
6 delete the mailing then? I don't --

7 MS. KNAUER: I think the issue is making
8 sure that personal service occurs. Not --

9 MR. HYLTON: Mm-hmm.

10 COMMISSIONER DEL VALLE: The object of
11 the exercise is that the person is aware that the
12 order exists. That's, that's the object of the
13 exercise. And I can't imagine any more effective
14 way of telling somebody than to walking up to
15 them and saying: Here, here's the order. Shut it
16 down or whatever it says.

17 MS. KNAUER: So, but if the -- if the
18 rule says or, that means that it -- that it would
19 be complied with simply by a regular mailing;
20 which is I think the reason Emily was raising,
21 which I -- which I concur.

22 MS. SLIFKA: So you'd be happy to just
23 say personally -- personally period and no
24 mailing?

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2 COMMISSIONER DEL VALLE: Or personal or.
3 Personal -- yeah.

4 MS. LALLY: Personal and, or just
5 personal.

6 COMMISSIONER DEL VALLE: Yeah, per-
7 personal service is best obviously.

8 MR. PECUNIES: I mean, half the time the
9 mailing -- well, not half the time; but a lot of
10 the times the mailings come back now and that's
11 still considered that they've been validly served
12 because it was sent to the right address. And if
13 they didn't get it, if they didn't go to the post
14 office to pick it up; that it's still considered
15 validly served.

16 MR. MARTINEZ: But on the cease and --

17 MR. PECUNIES: Even if we don't send an
18 inspector, it's still considered validly served.

19 MR. HYLTON: But on the cease and desist
20 orders, because of usually the gravity of what's
21 going on; is it the normal practice to send
22 someone?

23 MR. PECUNIES: Yes.

24 MR. MARTINEZ: Okay.

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2 MR. PECUNIES: Yes.

3 ALJ DEL VALLE: Perhaps the rule should
4 simply say personal service?

5 MS. SLIFKA: Right.

6 COMMISSIONER DEL VALLE: Shall we take a
7 straw vote on that?

8 MR. TOM SHPETNER, CITIZEN MEMBER: A
9 quick question first?

10 COMMISSIONER DEL VALLE: Sure.

11 MR. TOM SHPETNER, CITIZEN MEMBER: Tom
12 Shpetner, Citizen Member. If we go to personal
13 service, does that mean nail and mail is no good?
14 I just want to clarify that before we --

15 MR. PECUNIES: Well, I -- the one thing
16 I think we would object to is if we have to get
17 in the business of mailing these things. Because
18 we don't always get them from the Board,
19 especially if there's a lot of them at a given
20 meeting. We don't always get them at the Board;
21 so that we can do like a full service thing
22 ourselves. If there's going to be mailing
23 required, I think we would take the position that
24 we would like the Board to continue doing that

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2 part of it. I, I don't think we want to be solely
3 responsible for effecting service. We're willing
4 to send an inspector to the building. But I don't
5 think we're willing to get into the business of
6 starting to be responsible for mailing these.

7 COMMISSIONER DEL VALLE: I'm just
8 thinking of the bureaucratic process. It would
9 require some kind of a feedback from, from PEP to
10 --

11 COMMISSIONER DEL VALLE: -- to ECB that
12 it has to be -- it has to be mailed. And that
13 when, when we start adding complications like
14 that, that's when mistakes starts to happen.

15 MR. SHPETNER: That handshake will get
16 challenging.

17 COMMISSIONER DEL VALLE: Things
18 sometimes fall between the cracks and like that.
19 So --

20 LT. ALBANO: Dan Albano from the Police
21 Department. Is there a way of slicing this up
22 that cease and desist orders, which apparently
23 are the most important, that they follow one
24 method and --

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2 MR. HYLTON: Yeah.

3 LT. ALBANO: -- would that satisfy you
4 guys?

5 MS. LALLY: Yeah, I think that's the way
6 it is --

7 MR. PECUNIES: This is -- yeah, this
8 only applies to cease and desist orders.

9 LT. ALBANO: It only applies to cease
10 and desist?

11 MS. KNAUER: Yeah.

12 MR. PECUNIES: Yeah.

13 LT. ALBANO: And decisions go out; if
14 the decision goes out by mail, it just goes out
15 by mail?

16 MR. PECUNIES: This is not the decision.
17 This is the order itself.

18 LT. ALBANO: Alright. Okay.

19 COMMISSIONER DEL VALLE: How about
20 changing the, the proposal to say that it be
21 personally served and sent by regular mail?

22 MS. SLIFKA: That's what you originally
23 --

24 MR. PECUNIES: Yes.

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2 MR. SHPETNER: That's what this --
3 that's where we started.

4 MR. HYLTON: Yeah.

5 MR. PECUNIES: Yeah.

6 MS. KNAUER: I think the volume is not
7 so great that the expense would be larger than --

8 MR. ALBANO: You got to strike a
9 balance.

10 MS. LALLY: Not every --

11 COMMISSIONER DEL VALLE: So -- yeah, I'm
12 sorry.

13 MR. HYLTON: Yes. I have just -- to go
14 back away from cease and desist -- to the regular
15 decisions that an original concern that I had. I
16 have another concern about, about the waiting for
17 decisions, especially when it relates to DOB
18 cases: Where I wonder how this would impact on
19 the quality of decisions written if the judges
20 felt that they had to rush to get a decision out?
21 I wonder how much could be overlooked, where they
22 didn't have time to really sit down and, and
23 contemplate their decision before they -- or
24 write, I just --

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2 MS. SLIFKA: Oh, our hearing officers
3 will continue, you know, they're not; the
4 decisions aren't going to be less or worse
5 because they have to write them on the same day.
6 And again, the Commissioner already said they
7 will have the right to reserve decision. So if
8 it's a complicated issue, they can reserve the
9 decision. But I don't think anything will be lost
10 by it. And you know, I'd like to think that the
11 quality will remain the same.

12 COMMISSIONER DEL VALLE: Or we'll fire
13 them.

14 MR. HYLTON: Off with their heads.

15 MR. CAVALLO: Ernest Cavallo, Citizen
16 Member. It merely gives the hearing officer an
17 option.

18 MS. SLIFKA: Correct. And --

19 MR. CAVALLO: And I would think that
20 they would continue to do what they've been
21 doing. But if they know that: Okay, I know what
22 this case is at the end and frequently as a
23 judge, you do know as soon as the last witness
24 has gotten off the stand where you're going to go

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2 with it and you can just write it out. It just
3 gives them the option of handing it to them right
4 then and there; as opposed to: Hmm, I really
5 should think about this but I'll just hand it
6 out. I don't think most judges would do that. I
7 think they would continue to reserve --

8 MS. SLIFKA: And in addition --

9 MR. CAVALLO: -- and consider.

10 MS. SLIFKA: Right. And in addition,
11 there is some down time because sometimes the
12 hearing officers are waiting for reps; which is
13 why they can't go forward with a case, or an
14 inspector. So they have that time in between
15 where they can write up decisions. So I, you
16 know, I'm not too worried about that becoming an
17 issue.

18 MR. CAVALLO: That could take the
19 pressure off.

20 COMMISSIONER DEL VALLE: So shall we
21 change the draft to reflect that it shall be
22 served personally or by -- or by personally and
23 regular mail?

24 MR. HYLTON: Yes.

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2 MS. LALLY: No -- yes?

3 MR. ALBANO: And that's a considerable
4 savings, right?

5 COMMISSIONER DEL VALLE: It should be.

6 MR. SHPETNER: Because it's regular
7 mail, yeah.

8 COMMISSIONER DEL VALLE: It should be.

9 MS. SLIFKA: And time. There's a lot of
10 work going into doing the certified mail, until
11 they get the forms and all that stuff. It gets --

12 MR. SHPETNER: At least four dollars.

13 COMMISSIONER DEL VALLE: It's, it's,
14 it's a manually intensive process. You can't
15 automate it. At least Putney Bowes hasn't told us
16 how they could automate it. I'm sure if they,
17 they could; if they had a machine for it, they'd
18 be happy to sell it to us. Can I have a straw
19 vote on it? All in favor?

20 MR. CAVALLO: On the and?

21 COMMISSIONER DEL VALLE: On it saying:
22 The notice of special hearing shall be served
23 personally and by regular mail.

24 MR. PECUNIES: Yeah, that's fine.

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2 ALJ DEL VALLE: Okay. I think -- is
3 there anything else on, on this proposal? So is
4 there a motion to direct staff to publish, as we
5 have amended the draft? Second it? And I think
6 it's unanimous. Thank you. That was good. See,
7 democracy works sometimes -- kind of sort of
8 like.

9 Diana Haines will give us a presentation
10 on the final rule regarding amendment of the DOT
11 penalty schedule.

12 MS. DIANA HAINES, ASSISTANT GENERAL
13 COUNSEL, OATH: Hi, good morning.

14 MR. ALBANO: Good morning.

15 MS. HAINES: This is the DOT final
16 proposal based on a presentation originally given
17 by DOT regarding increasing the penalty for
18 failure to present a worksite from \$400 to
19 \$1,200. Which is still well within the range; the
20 maximum penalty allotted for it is \$5,000. The
21 rule has been certified by Law and OPS and was
22 published in the City Record on January 12, 2015.
23 A public hearing was held on February 11th. Two
24 members of the public attended. Neither gave any

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2 testimony regarding the rule. We also received
3 one written comment from National Grid. The
4 hearing transcript and written comment have been
5 provided to the Board for review. Are there any
6 questions?

7 MS. LALLY: I have one question about
8 the written comments. And I -- it says 109B is
9 only at \$100. Is that even a similar charging
10 section? Or is that related?

11 MS. HAINES: It is related. It's
12 Subsection B of the -- of the rule. And it's
13 regarding the actual signage; whether their signs
14 have been posted.

15 MS. LALLY: So, I mean, is there an area
16 where you might charge under one and not the
17 other? Would somebody wind up with \$100 fine
18 versus the \$1,200 fine for the same thing is what
19 I'm wondering about and how the enforcement
20 actually happens?

21 MS. SLIFKA: Could you speak up?

22 MS. LALLY: Hi. For the 109B, it's \$100.
23 And this other one's now 1,200. So could two
24 different respondents wind up with wildly

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2 different fines for the same condition or is --
3 how is the enforcement done? I guess is my
4 question.

5 MS. SHAMONDA GRAHAM, DEPARTMENT OF
6 TRANSPORTATION: No. The Department of
7 Transportation has a -- has a standard code that
8 we use. We do not use different codes for the
9 same infraction. And, and, and as a matter of
10 fact I'll review the penalty schedule to be sure
11 that we don't have two different codes.

12 MS. LALLY: Okay.

13 MS. GRAHAM: And if so come back and ask
14 you to remove them.

15 MS. SLIFKA: That was Shamonda Graham.

16 MS. GRAHAM.: I'm sorry. Shamonda
17 Graham, DOT.

18 MR. MARTINEZ: Just to follow up on the
19 comments. It says to me like -- Jorge Martinez,
20 DOH; that you could on these increase the amounts
21 and go either higher or possibly lower. How did
22 you calculate to 100 or 3,600? How did you arrive
23 at those specific amounts?

24 MS. HAINES: Shamonda?

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2 MS. GRAHAM: The -- when setting the
3 penalty; when setting the penalty amount, the
4 Department reviews the current penalty schedule
5 to find similar infractions in nature and try to
6 give it a penalty that's similar to those that
7 are already set. The default penalty is always or
8 mostly when we can, when it's within the maximum
9 allowable amount is always three times the
10 original penalty. This one was chosen based on
11 our other safety-related infractions, such as
12 failing to pin and register plates, things of
13 that nature and those fines were 400, as well as
14 stipulation violations.

15 COMMISSIONER DEL VALLE: Any other
16 questions? Comments? Is there a motion? And I
17 think it's unanimous.

18 COMMISSIONER DEL VALLE: To approve for
19 final publication. We now have an introductory
20 presentation for the final rule regarding
21 amendment of Sanitation penalty schedules for
22 recyclables.

23 MS. HAINES: And this final rule is
24 based on DSNY's initial proposal regarding bulk

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2 collection of recyclable materials by motor
3 vehicles. It's a technical change to amendments
4 made to the Sanitation penalty schedule for 2014,
5 and the purpose of this rule is to restore the
6 intended purpose of the law; to apply to all --
7 to vehicle owners, not just operators to motor
8 vehicles. Again, this rule has been certified by
9 Law and OPS and was published in the City Record
10 on February 11, 2015. A public hearing was held
11 on March 13, 2015. Nobody from the public
12 appeared or gave testimony and also no written
13 comments have been received. Are there any
14 questions on this rule?

15 COMMISSIONER DEL VALLE: Is there a
16 motion? I believe it's unanimous, except for
17 Sanitation abstains. It can be published for
18 final inclusion in the City's regulations; well,
19 actually the City's rule after the Charter was
20 amended last time. The City of New York has no
21 regulations, only rules.

22 MR. CAVALLO: Thank goodness.

23 COMMISSIONER DEL VALLE: We introduce
24 ECB requests for pre-sealing reports by --

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2 MR. PECUNIES: I think cease and desist.

3 MR. SLIFKA: Is it cease and desist?

4 ALJ DEL VALLE: I'm sorry, I missed one:
5 cease and desist orders by DEP.

6 MR. PECUNIES: Good morning. Russell
7 Pecunies, Assistant Counsel DEP. This month, DEP
8 is making one request for a cease and desist
9 order under the noise code. This is for
10 University Ten Parking, which is located at 63
11 East 9th Street in Manhattan. This is a parking
12 garage. They have been cited on three occasions
13 for excessive noise from their exhaust fan. And
14 due to the repeated violations and continuing
15 failure to come into compliance, DEP is asking
16 the Board to issue an order to cease and desist.

17 COMMISSIONER DEL VALLE: Any questions?

18 MS. LALLY: Is this going to be mailed?

19 COMMISSIONER DEL VALLE: Not yet.

20 LT. ALBANO: You got parting shot, you
21 know.

22 MS. SLIFKA: Certified.

23 MR. CAVALLO: You can't leave.

24 MR. SHPETNER: Get an injunction.

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2 COMMISSIONER DEL VALLE: That's still
3 under the existing rules.

4 LT. ALBANO: We'll issue a cease and
5 desist order, so she can --

6 MR. SHPETNER: Yeah, right.

7 COMMISSIOINER DEL VALLE: Is there a
8 motion? It's approved, with DEP abstaining of
9 course.

10 MR. PECUNIES: Next, we have 16 requests
11 for cease and desist orders for failing to renew
12 certificates of operation for boilers; which are
13 currently certified to use Number 6 fuel oil,
14 which is prohibited as of June 30th. In each of
15 these cases, the owner or managing agent has been
16 found in violation of failing to renew the
17 certificate of operation. And due to their
18 failure to comply with the order to renew, the
19 Department in each of these cases is asking the
20 Board to issue a cease and desist order.

21 MR. SHPETNER: Can I ask a question?

22 COMMISSIONER DEL VALLE: Yes.

23 MR. SHPETNER: Tom Shpetner, Citizen
24 Member. Can you just walk us through what happens

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2 procedurally after the C&D is issued? Just -- I,
3 I know it's going to be summer but, you know, the
4 ultimate result could be the shut-off of a
5 boiler. So, could you just remind us what has to
6 happen in the interim?

7 MR. PECUNIES: We, we've been asking the
8 Board for these for a little bit less than a year
9 now I think.

10 MR. SHPETNER: Right.

11 MR. PECUNIES: And in that time period,
12 there have -- there are currently a total of
13 about I think a dozen or so respondents who are
14 in default as to the cease and desist order. So
15 over all of the ones that the Board has approved
16 in the last year, it's a very small number of
17 them that are in default. We have not sealed
18 anyone yet. And in fact, we will not seal anybody
19 if an inspection shows that they have in fact
20 converted to an acceptable fuel but have just
21 failed to do the paperwork to get the cease and
22 -- to get the certificate of operation. So if we
23 know that they've converted to Number 4 and
24 Number 2; even if they've defaulted on the cease

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2 and desist order, we're not going to seal them.

3 But when the weather gets warm enough
4 this spring, for those that we know are still
5 using Number 6; for those that are in default, we
6 will make a last attempt to reach out to them by
7 sending an inspector to the building and if it's
8 a managing agent, to the managing agent's
9 offices. If all of that results in still no
10 response, then in the spring we will start
11 sealing boilers.

12 COMMISSIONER DEL VALLE: Are any of
13 these residential buildings?

14 MR. PECUNIES: Most of them are
15 residential buildings. That's why we're waiting
16 until it gets warm enough so at least it'll be an
17 issue of, of mainly no hot water instead of no
18 heat and hot water. And the building will have to
19 get a temporary boiler to provide that until the,
20 the boiler is unsealed.

21 MS. KNAUER: Elizabeth Knauer, Citizen
22 Member. We -- the Board would still have to
23 approve the sealing order before that -- before
24 that --

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2 MR. PECUNIES: If they're in default,
3 the cease and desist order says we can seal with
4 no, no further action --

5 MS. KNAUER: Oh.

6 MR. PECUNIES: -- from the Board.

7 COMMISSIONER DEL VALLE: It's self-
8 executing.

9 MR. MARTINEZ: Can the house owner or
10 building owner appeal any of these orders? Is
11 there --

12 MR. PECUNIES: Well, they've already
13 been found in violation.

14 MR. MARTINEZ: Okay, so it's after the
15 fact.

16 MR. PECUNIES: And if the decision when
17 they're found in violation includes an order from
18 the hearing officer to comply with the code
19 within, depending on which section it's issued
20 under, within either 30 days or 90 days. So if
21 they failed; the cease and desist order is based
22 on the respondent's failure to comply with that
23 order from the hearing officer; which if they
24 don't appeal it, becomes a final order of the

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2 Board. So that's what it's based on.

3 COMMISSIONER DEL VALLE: Any other
4 questions? Is there a motion? And I think it's
5 unanimous except for one abstention?

6 MR. PECUNIES: Yeah. And finally, we
7 have 27 requests for cease and desist orders for
8 failing to install backflow prevention devices.
9 And these are pursuant to the same normal
10 situation as the ones that we bring every month.

11 COMMISSIONER DEL VALLE: Any questions?
12 Is there a motion? Is Buildings voting? Then it's
13 unanimous with one abstention.

14 MR. PECUNIES: Thank you.

15 COMMISSIONER DEL VALLE: Thank you. Now
16 we're going to look at the pre-sealing reports by
17 Kelly.

18 MS. CORSO: Good morning. We have 22
19 pre-sealing reports for today's Board; 18 of
20 those pertain to backflow violations; one
21 pertains to a sewer code violation; one pertains
22 to an air code violation; and two pertain to
23 noise code violations. Regarding the backflow
24 violations, in 17 of those cases, the hearing

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2 officers recommended that there be no sealing or
3 other action given the respondent's compliance;
4 or that the C&D orders be discontinued because
5 the respondents no longer owned the cited
6 premises. In the last backflow case, the hearing
7 officer recommended that the C&D order be
8 discontinued based on the respondent's evidence
9 that the waterlines had been sealed and a
10 demolition permit had been issued at the cited
11 premise.

12 Regarding the sewer permit -- I'm sorry,
13 the pre-sealing report for the sewer equipment;
14 in this case the hearing officer recommended that
15 the C&D order be discontinued because DEP records
16 had shown that the cited restaurant is out of
17 business. The air code case, we have one sealing
18 report for an air code case. This pertains to the
19 respondent's boiler burner. Respondent's
20 representative provided proof of a valid
21 operating certificate bringing the boiler burner
22 into compliance with the air code. So the hearing
23 officer recommended -- excuse me -- no further
24 action given the respondent's compliance.

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2 And final cases are the noise code
3 cases. In both of these cases, the respondent's
4 representative provided proof that upon
5 inspection by DEP, the equipment is now in
6 compliance. Based on the evidence of that
7 compliance, the hearing officers recommended that
8 DEP re-inspect the equipment and that the
9 equipment remain unsealed if the re-inspection
10 shows no violation and further re-inspections
11 show no violations for a period of 180 days. Any
12 questions?

13 COMMISSIONER DEL VALLE: No questions?
14 Is there a vote to accept? It's unanimous.

15 MR. PECUNIES: One abstention.

16 COMMISSIONER DEL VALLE: With one
17 abstention. Thank you. Now request we -- is there
18 a motion to go into Executive Session? And it's
19 unanimous. The Board will now go into Executive
20 Session. Which means that all non-, --

21 [END 150326_003.mp3]

22 [OFF THE RECORD]

23 [ON THE RECORD]

24 [START 150326_004.mp3]

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2 COMMISSIONER DEL VALLE: Amy, are any of
3 our guests coming back in?

4 MS. SLIFKA: Yes, they are. They went to
5 get them. The two people from Baltimore are
6 coming.

7 COMMISSIONER DEL VALLE: Okay, I'll
8 wait. I'll wait a second. We have folks from the
9 Baltimore Environmental Control Board here
10 learning how we do it.

11 MR. SHPETNER: How it's done.

12 LT. ALBANO: Big Leagues.

13 MS. KNAUER: Do not knock Baltimore.

14 COMMISSIONER DEL VALLE: They arrived
15 just in time for a rainy weekend.

16 MR. SHPETNER: There's a great pie shop
17 over there.

18 MS. KNAUER: Oh really?

19 MR. SHPETNER: And there's a
20 [unintelligible] [00:00:51].

21 MS. SLIFKA: It's a long walk. I think
22 they're talking with Ria. So I think we can just
23 go back.

24 COMMISSIONER DEL VALLE: Okay. Okay.

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2 We're, we're back from Executive Session; where
3 we have reviewed some judicial decisions,
4 reviewed some appeals cases and the status of
5 some litigation. We didn't have any appeals cases
6 presented.

7 MS. KUO: No. So we just need to vote on
8 the ones that [unintelligible] [00:02:08]
9 presented.

10 COMMISSIONER DEL VALLE: Is there a
11 motion to affirm the appeals decisions from the
12 March 5 and March 19 appeals panel?

13 LT. ALBANO: James, I always ask this
14 question. I was on that panel. Do I vote?

15 MR. MACRON: Yes.

16 COMMISSIONER DEL VALLE: It's unanimous.
17 Is there a motion to adjourn? We are adjourned.
18 And for Emily, the last time.

19 (The public hearing concluded at
20 approximately 10:26 A.M.)

21

22

23

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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 March 26, 2015 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Andrew Slawsky

Date: March 27, 2015

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