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
April 30, 2015
9:30 A.M. to 12:05 A.M.
MEMBERS PRESENT:

Robert Carver, Esq. - 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
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:

Jim Macron, Esq. - Counsel to the Board, OATH/ECB
Frances Shine - Secretary to the Board, OATH/ECB
Rachel Amar - Special Assist. to the Commissioner, OATH
James Armstrong - Law School Fellow, OATH
Helaine Balsam, Esq. - Deputy General Counsel, OATH
Chris Boyd - Dept. of Health & Mental Hygiene
John Burns, Esq. - First Deputy Commissioner, OATH
John Castelli, Esq. - Assist. Commissioner for Legislative Affairs, OATH
Brandon Chiazza - Office of Management & Budget
Kelly Corso, Esq. - Assist. Director of Adjudications, ECB
Fana Garrick - Public Affairs Assistant, OATH
David Goldin, Esq. - Administrative Justice Coordinator
Shamona Graham - Department of Transportation
Diana Haines, Esq. - Assistant General Counsel, OATH
Zhao Jalie Hu - Office of Management & Budget
Li Huang - Department of Health & Mental Hygiene
Vivienne Kahng, Esq. - Deputy Supervising Attorney, ECB
Peggy Kuo, Esq. - Deputy Commissioner/General Counsel, OATH
Mark H. Leeds, Esq. - Special Senior Counsel, ECB
Maria Marchiano, Esq. - Sr. Counsel/Assistant Commissioner, OATH
Denise Ortega - IT Support, OATH
Elizabeth Prael - Fire Department
Martha Robinson, Esq. - Department of Health & Mental Hygiene
Peter Schulman, Esq. - Assistant Director of Adjudications, ECB
Amy Slifka, Esq. - Deputy Commissioner, ECB
Thomas Southwick, Esq. - Supervising Attorney, Appeals, ECB
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COMMISSIONER FIDEL F. DEL VALLE, ESQ., CHAIRPERSON, OATH: Good morning everyone.

MS. ELIZABETH KNAUER, CITIZEN MEMBER: Good morning.

COMMISSIONER DEL VALLE: And welcome to this meeting of the Environmental Control Board. We have a pretty long agenda today and I have some comments to make after the minutes of the last meeting are adopted. I assume everyone got a copy of the minutes of the last meeting. And unless anyone has any objections or corrections or additions, I’ll ask for a motion to accept them. And I think it’s pretty much unanimous and they’re accepted.

Before we will get going, I think since you are in Environmental Control Board, there’s some stuff that you should be made aware of that’s happening right now in the background and that it’s being worked through. I’m not sure how much of the history of how the Environmental Control Board’s creation you’re aware of but it was created back in 1971. And the vision that
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existed at the time I think was quite different
than what’s going on right now, as to what we’re
doing.

I think that the thoughts at the time
were for example that things that now go to our
hearings were stuff that would be coming directly
to the Board as a whole. And we would be making
decisions on daily quality of life stuff; that
this was the generation that created things like
the community boards and the school boards and
the whole constellation of boards that exist in
the City of New York. Most of us have no idea
what they are or who they are or what they do.
And many of them don’t know who they are, what
they are or what they do either. And history has
evolved over the last 40 years or so has shown
that what was envisioned in those starry-eyed
days didn’t quite reflect reality.

As you also know, starting about five
years ago somebody found Ed Koch’s memo of 1979
which said that all administrative tribunals in
the City of New York were eventually going to be
consolidated into OATH. And the process was
reignited and the process, the way it was done
was I guess for expediency at the time to get it done quickly. The Environmental Control Board was lobbed off from DEP with a rather blunt instrument. The Taxi Tribunal was lobbed off from the TLC. The Health Tribunal was lobbed off from the Health Department. And by June we will also be doing DCA -- Department of Consumer Affairs hearings. But we will not be lobbing off their Tribunal. We’ll just be absorbing the caseload.

The point that I’m making is that as this has evolved, we now have four tribunals, four distinct tribunals with four distinct sets of procedures, policies, practices, physical locations and so forth. Which makes the City of New York from the perspective of somebody who gets a summons one day from the Health Department and another day from the Sanitation Department go crazy. The processes are different. The appeals processes are different. The deadline dates are different. The computer systems are different. They don’t talk to each other very well.

We have started a process of homogenizing I call these processes. So that eventually a citizen or anyone else who has to
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deal with the violation or an alleged violation I should say -- I have a problem with the term notice of violation I’ll get into in a minute -- has a uniform process and they can expect the same type of appeals procedure and the same type of deadlines; the same type of procedure if you fail to appear at a hearing and you needed to get it reopened, all of that process is the same and it’d be accessed equally.

So that you can go to a hearing officer and it doesn’t matter whether you have a Sanitation summons or a Buildings Department summons or a Fire Department summons or a Police Department summons; the process is going to be essentially the same and the same hearing officer can deal with all your summonses. You don’t have to make like a yo-yo going from one place to another to deal with summonses that are all theoretically under one agency.

The other little and this is something that I’ve been here since November and I’m catching up on a lot of this stuff and speaking to people and getting feedback; and get a lot of feedback that says for example: Oh, that
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Environmental Control Board, they’re horrible, they’re terrible. They’re this and that and the other thing. And I go like: What’s horrible and terrible about it? And maybe I can do something about it. Well, they gave me a summons for this and they gave me a summons for that. And their rules say I can’t do this. And then they came back and they did that.

And I said: The Environmental Control Board didn’t give you any summonses. The Environmental Control Board is the tribunal that judges the summonses. If you’ve got an issue with a Sanitation rule or Buildings Department rule or whomever rule of the 26 agencies that feed summonses to us in total; that is something that should be taken up with them. But they wind up -- they being other agencies with a nice cover of sending out a summons that says on top of it: Environmental Control Board. And people think they’re getting a summons from the Environmental Control Board.

Somehow though when they get a summons from the Police Department that takes them to criminal court and it says criminal court on top
of the summons, they don’t think criminal court issued them the summons. But magically they think Environmental Control Board issued them the summons.

So one of the things that we’re doing among other things is working to make summonses uniform. And at the top of the summons it’ll be very clear who issued the summons. It’ll very clearly say Sanitation Department as the agency or whatever and which is another piece of the puzzle. There are an insane number of summonses forms in the City of New York that come this way. We have been working very, very hard and our General Counsel has been working very hard in setting up a process where the summonses look as consistent as possible. So anybody getting a summons knows where to look at what in the summons to know what their rights are, what their responsibilities are and what it is and who’s giving it to them and what it’s all about.

And just as a point of example and this doesn’t really apply directly to ECB because it’s on the Taxi Tribunal side, 25 years ago TLC had two types of summonses: an enforcement summonses
and an administrative summons. Enforcement
summonses were issued by taxi inspectors on the
street or at the inspection facility at Woodside.
And an administrative summons was issued from TLC
headquarters generally in response to a consumer
complaint. It’s two different forms, basically
the same thing. One was 8-1/2 by 11 and the other
one was like standard little ticket form. Today,
TLC issues 35 different types of summonses.

Alright? And you multiply that by all
the agencies, it gets kind of nuts, apart from
the fun we have with data processing. Some
agencies send us the information regarding
summonses electronically, which is its own
challenge because we have computers having to
have translating programs in between computers
because, you know, one is an Apple; one is an IBM
or whatever. That’s not what they are but I’m
giving you as an example. To talk to us, some of
them give it us on paper. The guys that give it
to us on paper after they get around to sending
it to us, which may be a week or two after the
summons is written; we have to send it to
somebody else, a vendor who charges us a lot of
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money to do the data entry: scan it, data entry, put it in our system. A lot of mistakes get introduced in that process as you can imagine; particularly on how good somebody’s handwriting was. That all costs a fortune.

But the problem there is for the public is that I got a ticket this morning. I go to an ECB hearing a few days later and we have no idea what they’re talking about. We can’t help them. We can’t process it. We can’t even accept a guilty plea because we don’t have it. So they walk away thinking ECB is a bunch of idiots. ECB gave me this summons. First, they think it was an ECB summons. And then they think we don’t know what summonses we gave out. We’re working through a process to deal with that as well. And these are things that will be introduced as this year progresses. So I believe that you guys since you’re all on the Board should know about this stuff because you may be asked about it.

And finally, you probably have heard a lot of controversy in the press with people putting all kinds of spins on things lately about criminal court versus administrative hearings;
whether certain violations should go to
administrative hearings or should go to criminal
court. I can’t say a whole lot about that right
now because frankly there’s a lot of discussion
going on right now as to how to respond to those
issues. There have been a lot of stories in the
*Daily News* and *New York Post* about that. Some of
it creating a misconception spin on some of these
issues and some being very straightforward and
appropriate matters for general public debate as
to what public policy should be in regard to some
of this stuff.

Just so that you know and unfortunately
because of a death in the family, Lieutenant
Albano can’t be here today and I’m sure he’ll
acknowledge this; and the reason the Police
Department is a member of this Board is because
the Police Department does write summonses that
are returnable to ECB. And they do and it is a
substantial number. Many of those things are
stuff that have been covered in the press as
criminal court stuff. But in the context of a
number of summonses that we process it’s
miniscule. We process about 700,000 summonses a
year. From the Police Department, we get about 3,000 a year. But the point is it’s not an alien concept.

Along the lines of we process 700,000 summonses a year, there’s one more point. And this is primarily directed to City agencies. And I want to make this very clear. Just as I was very deadly serious when I talked about people trying to interfere with the impartiality and neutrality of hearing officers and ALJs; for historic reasons that I’ll gladly talk to folks later on when there’s time, many agencies see OATH or the Environmental Control Board hearing process as a service operation. Like some people see the Sanitation Department: You produce a bunch of garbage. You give it to the Sanitation Department and they’ll process it and get rid of it and it magically disappears over there somewhere. And I don’t care what happens after that because that’s Sanitation Department’s problem.

Well, what we have of the 26 or so agencies that bring cases to OATH, about 16 send them directly to the ECB tribunal. And it’s not
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unique to the ECB tribunal from other agencies that basically see themselves; they see OATH and ECB in particular as a summons processing thing.

For those of you who are lawyers here and may be aware of this, there are organizations like American Clerical. American Clerical is a private company that provides a service to attorneys. And the service is along the lines of if you have certain things that are due in court on a particular day, papers that have to be filed or submitted; American Clerical and I use American Clerical because that’s the one I used to use but there’s like two others. And this is not an endorsement of any particular company. That’s the official disclaimer there folks. They’ll pick up the motions or whatever or orders to show cause that you need filed the next morning in court; they’ll pick them up, take them to court and if necessary they’ll sit there through calendar call and stand up and go say submit and they submit it to the clerk. And at the end of the day, they’ll pick up whatever is signed by the judge and deliver it to your office by 5:30; very neat, very lovely.
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If the judge says I want to take oral argument on this today on second call, then they’ll call you at the office and say: You got to get your butt down here because the judge wants to have an oral hearing. Fine, and you do that. That is how a lot of agencies view us. They write summonses and they expect us to process them through like it was just clerical paperwork. And that may come from maybe that’s how they did it when these tribunals were in-house for some of them. I don’t know. I frankly don’t care. But we are an independent neutral tribunal. And we are going to stick to that very jealously. We are not going to provide collateral services to agencies.

Some agencies want us to have our hearing officers for example go into their computers and determine what the violation history is of a particular respondent. That is the function of the prosecutor. That is not the function of the judge or the function of the hearing officer and that is being brought to a stop. And there’s a lot, a lot, a lot of pushback from certain agencies. And that’s just too bad.

My marching orders when I got appointed
to this job by the Mayor of the City of New York was to protect the integrity of this system.

That’s what I’m going to do. And it’s going to be done very harshly if necessary. Most agencies understand that, particularly those and I hate to sound elitist, that are run by lawyers. They get it right away. They understand that the adjudicatory process has to be neutral. Some can’t wrap their brains around it. They simply can’t. To them it’s just a bureaucratic function, you know, that’s just another step in the chain.

And those will eventually be brought around.

I do not want at the end of the exercise to be for this entity to be perceived as some sort of de facto tax operation. We’re not the Sheriff of Nottingham. Alright? And if there’s anybody who doesn’t know who the Sheriff of Nottingham is, I suggest you go and read about Robin Hood. Nor am I Robin Hood either. But the purpose of and this may come up in the context of some of the stuff we’ll be discussing today, the purpose of a fine or penalty is to change unacceptable behavior. It is not to raise revenue. And we will be as much as possible
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divorcing our processes from revenue as possible. And if that isn’t working as far as changing inappropriate behavior, then it is for the enforcement agency to figure out how to do it better. Not for us. Someone had suggested that I come up with suggestions for enforcement agencies how to do it better. I am certainly capable of doing that. It is totally inappropriate for me to do that because I would be then telling the enforcement agency how to do their jobs. And my job is not to tell them how to do their job. My job is to adjudicate whether the cases that they bring before the various tribunals are done fairly, impartially and in a neutral manner. And some of them are having a lot of problem getting over the neutral part but that’s the way it is. So that said, because you may get after tomorrow some questions from people you know, is where we’re at and to be continued. Is Amy here?

MS. AMY SLIFKA, ESQ., DEPUTY COMMISSIONER, ECB: Yes.

COMMISSIONER DEL VALLE: Amy Slifka, Deputy Commissioner for ECB, is going to tell us all of the exciting things that have happened in
the last quarter. Am I blocking anybody?

MS. SLIFKA: Okay. A lot of you have
been through this before. But for those of you
who are new here, what I’m going to be reporting
on is the number of violations received by ECB,
broken down by issuing agency; and a quarterly
comparison of the violations received, the
violations heard and the decisions rendered; a
look at the elapsed time from hearing to decision
date and a look at the decision results for each
of the issuing agencies. Also, we’ll look at the
most commonly issued violations.

So again, let’s see if I do this right.
Okay, good. Alright, so violations received by
ECB for the first quarter of 2015. For DSNY, it’s
93,071, which is an eight percent decrease. DOB,
it’s 13,457, which is a five percent increase.
DOT is a 26 percent decrease, 7,277. FDNY, six
percent increase. DEP, 14 percent increase. DOHMH
is a 33 percent decrease to 4,590. And Department
of Parks and Recreation is a 39 percent decrease
to 740. NYPD was a 46 percent decrease to 2,268.
DoITT was a 29 percent decrease to 240. And BIC,
43 percent decrease 3 to 7 to 4, it looks like.
And Landmarks, it was a 29 percent increase from 42 to 54. A lot of this could be weather related. We’re dealing with the first quarter. The weather wasn’t so great the first quarter.

COMMISSIONER DEL VALLE: Well, historically when weather is bad people are nicer for some reason.

MS. SLIFKA: Right. Or they can’t get out to issue the violations. So --

COMMISSIONER DEL VALLE: Well, fewer people get shot too.

MS. SLIFKA: So -- okay, and comparing first quarter 2014 with first quarter 2015, you can see for DSNY there actually is a 19 percent increase. For DOB it’s an 18 percent increase. FDNY actually is a ten percent decrease. DOT is a seven percent decrease. DOHMH is a three percent increase. DEP is a 19 percent increase. NYPD is 4,726 to 2,268. It’s a 52 percent decrease. But there’s been a controversial time. So I think that has to do with some of the decrease.

Department of Parks and Recreation is a 45 percent decrease. Again, I think that’s weather related: 1,356 to 740. DoITT is a six percent
decrease. Landmarks is from 61 to 54. It’s an 11 percent decrease. BIC from eight to four, it’s a 50 percent decrease. Agency code missing, 133 to 104; it’s a 22 percent decrease. And miscellaneous from 24 to 62. That actually went up and it’s a 158. Overall though it’s been a ten percent increase from the violations received in the first quarter of 2014 to the first quarter of 2015.

Okay. So for the total violations heard, quarterly comparison again, 2014 first quarter, 2015 first quarter. So DSNY, you could see it went up. It went up 16 percent. DOB went up one percent. FDNY actually went down to eight percent. DEP went down two percent. DOHMH went up two percent. DOT went up 27 percent from 1,889 to 2,408. NYPD obviously went down 49 percent: 3,976 to 2,042. DoITT went down 909 to 400, a 56 percent. Department of Parks and Recreation is down 49 percent. Landmarks is up 69 percent. BIC, one to eight; it went up 700 percent. Agency code missing is down 45 percent. And miscellaneous is down 27 percent. But basically the violations heard, like zero percent difference: 44,502 to
Okay. And decisions rendered, quarterly comparison. Well, DSNY is up 26 percent: 11,091 to 13,933. DOB is up 22 percent. FDNY is up two percent. DOHMH is up five percent. DEP is up ten percent: 1,937 to 2,127. Again, NYPD down: 2,095 to 1,840. It’s a 37 percent decrease. DOT is up 36 percent. Department of Parks is down 38 percent. DoITT is down 53 percent: 244 to 114. Landmarks is up 100 percent from nine to 18. Again, BIC, winner: one to five, 400 percent increase. And then agency code missing: 38 percent down. And miscellaneous down 25 percent. But overall the number of hearings decisions rendered is up 12 percent.

Okay. So here is the decision first quarter. We’re getting approximately 85 percent done less than ten days. And we’re certainly getting 98 percent done in less than 20 days. So decisions rendered after hearings, this is the percentage of dismissals versus in violations. So you have overall 60.2 percent found in violation; 38.7 dismissed in 2014 first quarter. It’s pretty much the same in 2015: 60.6 percent in violation;
38.6 percent dismissed. So, it’s kind of running the same.

Okay. And broken down by agency, you can see that for DSNY, 57 percent are dismissed; 43 percent are in violation. For DOB, where the issuing agency is present, you have 78 percent in violation; 21 percent dismissed. And DOT, 60 percent in violation; 40 percent dismissed. FDNY, 90 percent in violation; eight percent dismissed. DEP, 75 percent in violation; 15 percent dismissed and you have ten percent stip. NYPD, you have 49 percent in violation; 51 percent dismissed. Okay. DOHMH, you got 58 percent in violation; 42 percent dismissed. Department of Parks, you got 46 percent in violation; 44 percent dismissed. DoITT, 52 percent in violation; 48 percent dismissed. BIC, they’re really doing well: 80 percent in violation; 20 percent dismissed. And Landmarks, you have 100 percent have been found in violation.

So, the most commonly issued violations have pretty much stayed the same from quarter to quarter, year to year. DOT, it’s opening street without a permit or failure to permanently
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restore your curb cover in required time or your cut. Failure to comply with the terms and conditions of a permit. NYPD, basically they’re vendor violations. You’re vending in a bus stop or next to a hospital. You failed to display your license or items not in or under the cart. Those are all vendor violations.

DOB is failure to comply with an order of the Commissioner. Failure to comply with an order to file a certificate of correction. And then you have miscellaneous violations. DSNY, it will make sense this time of year. Snow and ice is your number one and dirt and sidewalks. And you have dirty sidewalk area and then you have dirty area. DEP, you have failure to submit your annual test report for your backflow preventer. Operating without renewing and expired operating certificate. Failure to install a backflow preventer.

FDNY, inspection and testing. Failure to conduct it. This is an unwarranted, unnecessary alarm. And failure to post permits and have recordkeeping. For DOHMH, it’s failure to eliminate your rodents, shown by active rodent
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signs first. Failure to eliminate conditions conducive to rodent. And failure to eliminate conditions conducive to pests with garbage cans and spillages and such. For Landmarks, it’s basically they’re all kind of the same. It’s work without having a certificate of approval or no certificate. For miscellaneous violations, for your flag signs or banners and for architectural changes. And DoITT, it’s failure to provide a working public payphone, telephone and operator service. Failure to clean, maintain public pay telephone. Who uses these public pay telephones?

COMMISSIONER DEL VALLE: Where are they?

MS. SLIFKA: And install, operate, maintain public pay telephone without having a permit. For Parks, it’s unleashed or uncontrolled animals. It’s failure to comply with directions or signs. And it’s failure to comply with Pedicab restrictions. And for BIC, it’s idling of your motor vehicles over three minutes and operating a wholesale operation without a registration. And that’s it. Okay?

COMMISSIONER DEL VALLE: I hate to throw a question out of left field but --
MS. SLIFKA: On the spot.

COMMISSIONER DEL VALLE: Where it says that the issuing agency is unknown or illegible, does the hearing; I’m assuming that’s a data entry matter. Does the hearing officer know who is prosecuting that summons?

MS. SLIFKA: Not if the issuing agency; so there’s a level where you put down the issuing agencies. For example, it’ll say: 836 is Sanitation. For example, I can’t think of another one. So if that’s missing, you don’t really know who issued it. But if the section of law is something we have jurisdiction over, we conduct a hearing on that. So, that’s where nothing is missing. Miscellaneous could be Peter Cooper Village, Stuyvesant Town. So they don’t fall within any of the categories. But they do have the right; they’ve been authorized by NYPD, for example, to issue pooper scooper. I happen to know because I live in Peter Cooper and they issue those violations. So that’s a miscellaneous type of agency. So, one’s an agency code missing and one’s a miscellaneous agency.

COMMISSIONER DEL VALLE: Okay. A pop
quiz. How many people know that 836 is a
Sanitation Department? The Sanitation Department
knows. Okay, one person.

MS. SLIFKA: Move over there, we got two
of you. He used to be, you know, so they know.

COMMISSIONER DEL VALLE: That goes back
to what I was talking about before. People think
they’re getting these summonses from
Environmental Control Board. And unless they work
for the particular agency and happen to know what
their code is or are some very intense nerd, they
have no idea that --

MS. SLIFKA: I should know more of them.
But you just put me on the spot, so I can’t think
of more right away.

COMMISSIONER DEL VALLE: But I think you
get my point.

MS. SLIFKA: Okay, thank you.

COMMISSIONER DEL VALLE: The Department
of Health and Mental Hygiene has some proposed
rules concerning water tank inspections and
reporting.

MR. CHRIS BOYD, DEPARTMENT OF HEALTH AND
MENTAL HYGIENE: Hi, I’m Chris Boyd. I’m the
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Assistant Commissioner for Environmental Sciences and Engineering at the New York City Department of Health. And I’m with our Counsel and the Director of Public Health Engineering for questions.

We’re coming today before the Board to request concurrence with allowing us to send violations for failure to inspect water tanks to ECB. So a little background, so you understand the purpose of the inspection process and the violations that will be issued. There are about 10,000 roof tanks in residential and commercial buildings in the City of New York. Generally those are in buildings that are over six-stories tall. Water pressure from the street can generally bring water to the sixth floor without any assistance. Above the sixth floor, depending on where you are in the City, you need a water tank or a pump. So, the requirement is for an inspection of drinking water tanks. That can be a combined tank; both where some of the water is used for firefighting purposes, some of the water is used only for drinking water.

So the public health concern is the
prevention of waterborne illness due to contamination of the water tank and failure of structural integrity of the water tank that presents a risk if a water tank, as in the picture, falls off the roof. So we are concerned about sediment, biological growth, floatable debris that gets into the tank, harborage if there’s openings, rodent and bird activity in or around the tank.

Right now building owners are required to annually conduct an inspection of the interior and exterior of the tank. They need to sample the water to verify that it’s meeting water quality standards. And they need to repair and clean the tank as needed. So, what does our inspection process look like? What are the requirements there? The City Council required the Department of Health to do an annual review. So we did about a hundred spot inspections. There isn’t an active inspection program prior to that point. It was in response to a complaint.

The results of that survey, that kind of audit process that continues today, found that most of the buildings failed to post their notice
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to the public that they are able to review and confirm that water tank inspections occurred. And we found 27 percent of the buildings in noncompliance with their annual inspection requirement; 58 percent had failed to take the required sample. And the vast majority were not posting the notice to the public, at 73 percent. Right now the violations are returnable to the health tribunal, subject to financial penalties there. We’re requesting to move those to ECB.

So, the owner is required to inspect the general conditions of the tank, the exterior, structural integrity, access ladders, piping, hatches, things like that, as well as the interior. Those are pittings, scalings or corrosion and rust that needs to be addressed. Is it going to create a risk in the future? And then there needs to be a sanitary inspection to identify actual potential sources of contamination and address those, drain the tank, clean it; however restore it to good working condition and then they’re good to go.

So we want to make sure that the activity that happens is done safely. The work
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has to be done by a licensed master plumber or someone who has a permit from the Department and there is supervision by a master plumber. And we have a few firms that have a permit. But the majority of the work is done by several water tank cleaning companies. And some of the buildings have a master plumber and he does the work for them as well.

So the enforcement process, there are recordkeeping elements. So there’s a verification of the public posting. They are required to keep record of the annual inspection for five years and make that available upon request by the Department. Part of the problem is there isn’t a proof of samples being taken. That’s one of the recordkeeping requirements. So when we ask for proof that you took the sample to verify the water was safe, that’s a challenge for some building owners.

So in 2014, the Board of Health amended Article 141 of the Health Code to require owners annual reporting of the tank inspection. So previously the requirement was for a building owner to maintain a record and present that
record of inspection upon request. The health
code was changed to make that a proactive
requirement. Now building owners are required to
submit proactively each year proof of an
inspection. They’re going to be doing that online
through a web portal or they’re going to be
submitting that in paper on a form developed by
the Department.

And the proposed penalties range from
250 at initial violation, 500 for failure to
appear and respond and then 500 to 1,000 and
1,000 to 2,000 for the actual tank cleanings; and
kind of the range of the fines. I’m available for
questions if anybody has any questions.

MR. JORGE MARTINEZ, ESQ., DEPARTMENT OF
HEALTH AND MENTAL HYGIENE: Jorge Martinez,
Department of Health. Just by way of background,
water tanks is so important. Why is it that some
buildings have water tanks and some do not? I’m
wondering also if you can explain how does the
water get into the water tank. Is it connected to
the municipal City supply in some way? And why
don’t we just get rid of water tanks? Why don’t
we require pumps? How did it get there in the
first place?

MR. BOYD: Yeah. So, water tanks are filled with municipal water. So there’s a connection between the water main in the street and a building; that water flows to the building. And then there’s a pump that moves that water to the top of the building into the water tank. And then gravity supplies the pressure to the rest of the building. And some buildings do choose to install a series of staged pumps to bring water pressure to different floors. It’s really a building by building kind of decision. Most of the historical buildings, you’d be asking 10,000 buildings to rejigger their internal plumbing systems. It would be a gargantuan thing to do. And we don’t think that there would be any public health benefit from going one way or the other. It’s really a building owner decision in terms of how they’d like to manage that.

COMMISSIONER DEL VALLE: I have a more fundamental question.

MR. BOYD: Sure.

COMMISSIONER DEL VALLE: You said these violations are now returnable to the Health
MR. BOYD: Yes.

COMMISSIONER DEL VALLE: You do realize that by the end of this year there’s not going to be any difference between the Health Tribunal and the ECB tribunal. So, but what is all this about? It doesn’t make any sense.

MR. BOYD: So, the decision to go to ECB was several-fold. ECB has the ability to generate automated violation.

COMMISSIONER DEL VALLE: We’re going to stop that.

MR. BOYD: What?

COMMISSIONER DEL VALLE: We’re going to stop that.

MR. BOYD: You’re going to --

COMMISSIONER DEL VALLE: We will not be issuing violations on behalf of agencies anymore.

MR. BOYD: Well, we’re not asking you to issue a violation on behalf of the agency. What happens is that the tracking number, there’s a docket number that’s created for the violation. The Health Tribunal doesn’t have a mechanism to do that from an algorithm standpoint, where ECB
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COMMISSIONER DEL VALLE: By the end of this year, we’ll be using one computer system across all the tribunals. I think somebody should have talked to us first because I will oppose this.

MR. BOYD: Uh-huh.

COMMISSIONER DEL VALLE: Okay? Anything else?

MR. BOYD: So, there you go. Yes, ma’am?

MS. KNAUER: Elizabeth Knauer, citizen member. I just was -- in terms of the violation penalties, are those the same penalties that are currently being imposed by the Health Department? Or I mean --

MR. BOYD: The tribunal doesn’t have set penalties. There’s not a set penalty schedule.

MS. KNAUER: Okay.

MR. BOYD: It’s determined by the hearing officer. So, we provide recommended penalties for, you know, consideration. But the tribunal doesn’t have a set penalty schedule. I’m assuming that’s going to change as well.

COMMISSIONER DEL VALLE: Well, one of
the problems with the process that exists at ECB is the agencies create their rules and then we here at ECB as a Board in a vacuum have to determine whether or not the proposed rule schedule makes any sense.

MR. BOYD: Mm-hmm.

COMMISSIONER DEL VALLE: And for us to do that with due diligence, we would essentially have to replicate, which we don’t, the logic behind fine schedule. And in my view that fine schedule should be appropriately done by the enforcement agency, the regulatory agency; as for example does the Taxi and Limousine Commission. Taxi and Limousine Commission has rules and part of their rules creates a fine structure. And they are the individuals who are in the best position to analyze and consider within their realm of public policy what is the appropriate fine structure to compel people in the industry that they regulate to abide by the rules.

You know, part of what I was talking about earlier, which is they see ECB as some kind of a service organization; where agencies plop down on us proposed fine structures almost in a
vacuum and expect us to rubberstamp them. Which I think is totally inappropriate for us to for example decide whether a $5,000 penalty for something is appropriate or not. The best person, entity that should be making that decision is those people who are working day to day in that industry, understand the complications of that industry, understand the financial structure of that industry, understand what kind of a fine or penalty or rule will have the desired effect on that industry; as opposed to us over here just making a gut determination that: Gee whiz, this is a really bad thing and $5,000 is appropriate for it.

That sort of rulemaking really belongs on the regulatory entity. We are not a regulatory entity. We’re essentially an adjudicatory entity. The criminal court doesn’t decide what the penalties are under the penal law. That’s done by the Legislature. That’s a public policy issue.

So my suggestion is that the rules specify what the penalties are and that it stays at the Health Tribunal, which is far less complicated than the ECB Tribunal and
particularly the appeals process and more direct. And if the issue is one of relating to data entry, that’s something that should have been brought to frankly my attention and our IT people could work on it.

But you can take this back to your agency that I will oppose moving any cases that are returnable to Health returnable to ECB. Primarily because among other things by the end of this year every hearing officer under OATH will be hearing ECB cases, health cases, taxi cases, sanitation cases, whatever cases interchangeably. We are now in the process of cross-training our hearing officers to do that.

MR. BOYD: Mm-hmm.

COMMISSIONER DEL VALLE: Somebody will eventually be able to walk into a hearing with a Sanitation summons and with a Health Department summons and have one hearing officer adjudicate everything in one shot, using one computer system.

MR. BOYD: So one of the advantages of us effecting this change now versus waiting for the potential integration of multiple boards into
a unified data system that would provide the same level of capacity is that as we rollout this new enforcement program, building owners being required to submit 10,000 reports flowing into the Department electronically hopefully and violation determinations being determined based on the data being supplied or not supplied by building owners; there will be an automated process by which to issue a violation for failure to report.

Shifting and keeping that with the tribunal for the year and then as IT projects go, they sometimes go a little farther than we anticipate, would result in the agency having to assume the clerical responsibility for individually generating a docket number for thousands of potential violations. So that would be a significant sort of administrative burden that we could address now.

I understand that eventually all the systems will be integrated and there’ll be an IT solution that would accommodate that. But in the interim it would be efficient, both in terms of how we process the violation and how the building
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owner gets notice in order to have that flow to ECB. And my assumption is that staff upon seeing the draft of our proposal shared that draft with folks internally. Is that assumption not true?

COMMISSIONER DEL VALLE: Apparently not.

MR. BOYD: Apparently not. Okay. So, you know, it’s not coming out of the blue from our perspective, that we’ve been planning to bring this to ECB for some time; that we’ve drafted regulations to come to ECB. We’ve had comments from ECB staff on the proposed rule and responded to those comments. So it is a little surprising to me to hear now that you feel that you’ve been blindsided by this proposal, which is on the agenda. So I think from an administrative standpoint, the proposal is solid. It serves the public purpose. It allows us to implement a new enforcement requirement that was adopted by the Board of Health and do that efficiently. We’re rolling out the online portal to allow building owners to come into compliance and document their compliance routinely. That’ll happen soon. And violations will start to come out February of 2016. And we anticipate that first round of
violations will be around 2,000 violations.

COMMISSIONER DEL VALLE: And the new computer system I expect will be online in three months. So, we got a lot of talking to do.

MR. BOYD: So in three months the Health Tribunals are going to be able to generate an algorithm docket number?

MR. DEL VALLE: We have to talk about this.

MR. BOYD: Uh-huh.

COMMISSIONER DEL VALLE: Because I don’t like this.

MR. BOYD: Okay.

COMMISSIONER DEL VALLE: I’ll tell you that right now.

MR. HYLTON: Can I ask a question about the actual proposal in terms of the --

MR. BOYD: Sure.

MR. HYLTON: -- the procedures that you have in place? You talk about structural integrity inspections.

MR. BOYD: Yes. Mm-hmm.

MR. HYLTON: And I wonder who is doing those inspections?
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MR. BOYD: So those inspections are being done by a master plumber or staff under the supervision of a master plumber or a firm that has a permit from the Department.

MR. HYLTON: Of Health?

MR. BOYD: Yes.

MR. HYLTON: Okay. And you talk about the Board, Article 141 --

MR. BOYD: Yes.

MR. HYLTON: -- that requires the owner’s annual reporting of tank inspections.

MR. BOYD: Mm-hmm.

MR. HYLTON: They’re just reporting or are they reporting, what about defects? If they found defects, is there a requirement there for them to repair those defects?

MR. BOYD: Yes. Yes.

MR. HYLTON: Or just reporting?

MR. BOYD: So, the previous process was simply a certification that the tank met standards and that was issued by the firm that inspected it. So the owner would get basically a certificate of adequacy from the firm that was performing the work. The new process requires a
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more detailed direct affirmation of the things
that were inspected; that the things that were
inspected were in compliance. And if there were
defects, were those defects corrected? And there
is an affirmation at the bottom of the report
that says: The information is being submitted
subject to civil and criminal penalties for
lying.

MR. HYLTON: So has there been any
thought to the idea of master plumbers certifying
structural stability of tank structures?

MR. BOYD: So the master plumber is
reviewing the tank itself.

MR. HYLTON: Okay.

MR. BOYD: And making a determination
whether: Is there pittings, is there corrosion,
is there rust present, things that need to be
fixed?

COMMISSIONER DEL VALLE: Any other
questions?

MR. THOMAS D. SHPETNER, CITIZEN MEMBER:
One of the penalties in the schedule seem to be
sort of an outlier. Under it’s 141-07(e) and
it’s: failure to clean drinking water tank when
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required. I mean, that to me seems like a sore thumb. I don’t understand. I mean, that one seems to be lumped in with a bunch of other ones about not giving notice about things or it seems to me to be the big one. Why was that one set as low as it was? Do you know?

MR. BOYD: That was sort of a decision from our management based on what we considered to be the relative risk from the failure to clean the water tank. We don’t have data to identify a significant risk at this point. It’s a preventative measure. So the fine schedule is designed to evaluate similar levels of risk to other Health Department violations.

MS. KNAUER: Elizabeth Knauer, citizen member. I guess just generally speaking, I was wondering whether given the apparent complete lack of compliance that exists now whether this entire penalty schedule is high enough to encourage building owners to get into compliance? I mean, I don’t know expensive it is to do these inspections and then do the appropriate repairs that inspections may reflect.

MR. BOYD: Right. Mm-hmm.
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MS. KNAUER: But given the public health concerns, would it be, you know, simply easier for them to take the risk and defer doing these inspections and take the risk of not --

COMMISSIONER DEL VALLE: Ms. Knauer’s question goes exactly to the same point that I made before. Which is we’re being asked to come to a decision as to the appropriateness of a fine structure virtually in a vacuum. You can have businesses to whom a $5,000 fine is no more than a nickel to some of us or other organizations, a $5,000 fine could be backbreaking. We don’t know. We don’t deal with water towers and buildings and the owners and have no experience on compliance and what motivates them and so forth and in a general public policy structure. And when we are asked to -- and this is not just your agency, this is across the board; when we are asked to pass on these proposals, we are doing so in a virtual vacuum. And that’s not really the right way to make public policy.

MR. BOYD: So I think one way to think about that is that the agency that’s presenting you the fine schedule has gone through that
deliberative process internally to come up with a fine schedule based on its expertise and its understanding of the industry for what they think is appropriate.

COMMISSIONER DEL VALLE: And that’s as it should be.

MR. BOYD: And that’s as it should be.

COMMISSIONER DEL VALLE: And it should be within that agency’s rules to establish that fine structure. It shouldn’t be dumped on us to assume and take on face value all that should be done to make that analysis was done and basically treat us like a rubberstamp. I’m not criticizing you. I’m criticizing the City Charter basically.

MR. BOYD: No, no, I understand. I’m just trying to -- I just want to get a sense of how we’re going to proceed with this. I don’t know how it works at ECB. Right now if we came to you with a proposal with no fine schedule and --

COMMISSIONER DEL VALLE: It wouldn’t work.

MR. BOYD: -- it wouldn’t work. So if we adopted a fine schedule in the health code --

COMMISSIONER DEL VALLE: Then it’s yours
and it is in place.

MR. BOYD: -- then that would work for ECB as well?

MR. DEL VALLE: That would work.

MR. BOYD: No, it wouldn’t?

COMMISSIONER DEL VALLE: It would work -- that would work in the other tribunals right now. It would not work with an E-summons. And E-summons is a summons that’s one of the summonses from like 16 different agencies that either by regulation or the Administrative Code or the City Charter must go to the Environmental Control Board. In 1971 they thought the Environmental Control Board was something very different than what it is now. That’s how cases are now structured.

Eventually there will be one tribunal, a hearings tribunal that will hear all the cases; whether they’re Health, Taxi, ECB or whatever. The distinction will be if it’s -- right now the way the Charter is structured if it has to be an E-summons, the difference will be that the appeals process will be different. The appeals process will have to go through the convoluted
ECB process rather than for example the more straightforward process in the Health Tribunal or the Taxi Tribunal. But that’s really the only effective difference. And at the end of the exercise until there are changes to the Charter, the only difference will be the appeals process.

MR. BOYD: Mm-hmm.

COMMISSIONER DEL VALLE: Everything else will be identical.

MR. MARTINEZ, DEPARTMENT OF HEALTH AND MENTAL HYGIENE: So what do you suggest that the agency do now? Do you want us to take it off the table and adopt it as part of the health code?

COMMISSIONER DEL VALLE: Right now I understand this is for the most part in the health tribunal. I want to have further discussions with staff of both agencies as to what the issues are. From what I hear, primarily the main issue has to do with data processing. And going through this entire exercise because there’s an issue with data processing that somehow couldn’t be figured out or resolved is -- I’ll restrain my editorializing but crazy; especially in light of the fact that that process
is being, as we speak, being made the same across the board and being made the same across the board for 26 agencies in the City of New York. I want to dive into this a lot more carefully. I don’t want to shoot from the hip and say: Kill the whole thing or stick it over here or stick it over there. There’s a lot of things that have popped up over here today that I have some very, very serious questions about. I would say both.

MR. BOYD: So I would say one of the other challenges we have with using the health tribunal is I can’t serve by U.S. mail from the health tribunal. I have to serve by a certified letter, which is like seven bucks a pop.

COMMISSIONER DEL VALLE: So we pay for it.

MR. BOYD: No -- well, I pay for that because I have to do the service. So --

COMMISSIONER DEL VALLE: Yeah, but if it comes to ECB, I have to pay for it. Which by the way is a subject of the next thing on the agenda.

MR. BOYD: So the way we’re proposing this right now is that ECB would not assume any responsibility for the issuing of the summons.
They would have no involvement in that whatsoever. That would all be handled by the Department. If we move to the tribunal, we’ve got two big challenges for a program that’s going to rollout in about two weeks. One challenge is that we’re not going to be able to automatically generate docket numbers for violations. They have to be done manually. That’s a big chunk of work.

The second is that there will have to be a certified letter mailed to every person who’s been violated. The certified letter is a complicated thing to manage from a clerical standpoint and it’s expensive. So we’re talking hundreds of thousands of dollars in additional cost to the taxpayer by having us stay at the tribunal under the current scheme of things.

COMMISSIONER DEL VALLE: So understand as of July 1st, you don’t have to use certified mail.

MR. BOYD: As of July 1st, we’re going to be able to go mail?

MS. KNAUER: I’m sorry. I’m just a little confused about the timing. What was the February 2016 date that you mentioned?
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MR. BOYD: So owners have one year to submit their documentation.

MS. KNAUER: So you wouldn’t be issuing these violations until February 2016?

MR. BOYD: Yeah.

MS. KNAUER: By which point presumably things will have changed.

COMMISSIONER DEL VALLE: A lot.

MS. KNAUER: A lot. So, it might be a moot point. Is that --

MR. BOYD: I mean, potentially we’re --

MS. KNAUER: Right? Is that -- and I’m just trying to understand.

MR. BOYD: Yeah, the challenge is that we’re rolling out IT solutions now. So, we would have to basically stop all of our IT solutions now and then roll that over until the tribunal’s data system comes online at some point in the future. And then we would have to figure out how to align it. We’re in a position now to align all the IT infrastructure, roll this out and have it functional now. So it’s just a --

MS. KNAUER: And that process can’t continue unless we adopt this -- approve this? Or
could it continue under the assumption of --

MR. BOYD: I mean, we could go back and we can try to pull it off the table and see if we can come up with some better IT solutions. But again we’re --

COMMISSIONER DEL VALLE: I assume your IT folks have been talking to our IT folks?

MR. BOYD: My IT folks have been talking with the ECB IT folks, yes.

COMMISSIONER DEL VALLE: Alright.

MR. BOYD: To understand how to implement this and make it work and generate the algorithm for this violation type; so that we could do this in an automated way.

COMMISSIONER DEL VALLE: Okay. Anything else? I move to table this at this time until I get more information supplied to the Board and other folks. Is there a second?

MR. MARTINEZ: Abstain.

COMMISSIONER DEL VALLE: We have one, two, three, four, five, six in favor. Seven in favor. Two abstentions. Eight in favor, including myself. Thank you.

MR. BOYD: Thank you.
COMMISSIONER DEL VALLE: Oh, that was a computer. I thought that was an editorial comment. We have a proposal coming up having to do with to cure a rather bizarre thing, process I found in connection with some ECB hearings. Which is we have a hearing and the respondent is there; the enforcement agency may or may not be there. But in any event, it’s a straightforward, relatively simple case where the hearing officer makes a decision right there essentially. And we tell the respondent that: We’re not going to tell you what the decision is. We’re going to mail it to you and you might get it in a week or two. Whereas, we could have just as easily have told him to wait outside a few minutes, as is done in some of the other tribunals. Such as for example the TLC Tribunal, where a cab driver comes in for a hearing; he has his hearing. He waits outside and in a short period of time, a clerk comes over to him or her and hands the respondent the decision. And they walk away knowing whether they have to pay a fine or not; whether they’re guilty or not; whether they’re suspended or not. For reasons probably lost somewhere in
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the mysteries and the fog of space and time, we don’t do that with ECB hearings. We mail it. The proposal that is about to be presented essentially allows hearing officers to give the decision or rather the tribunal to give the decision to the respondent right there. Some cases you can’t do that because they’re a little more complicated and they require the decision to be reserved because they may require a longer decision to be written. It could be involve multiple issues, any number of reasons. In those cases it’s reserved and the person will get the decision in the mail.

Aside from the fact that we have a $1.1 million dollar postal budget, which is also insane in of itself, it just does not in my opinion make sense to keep somebody hanging, trying to figure out what their situation is walking out the door when we could tell them right there what it is. And that’s what’s about to be described. Thank you.

MR. JAMES ARMSTRONG, LAW SCHOOL FELLOW,

OATH: Good morning ladies and gentlemen of the Board. I am James Armstrong, Law Fellow, the
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Geneva Worldwide, Inc.
256 West 38th Street, 10th Floor, New York, NY 10018

General Counsel’s Office. I am presenting right now a proposed rule that relates to service of decisions and orders. So this was actually first discussed last month, as you may remember. And this rule would specifically say, it would specify that mail or hand delivery of decisions and orders is permissible. And further, it would permit that cease and desist orders are served by regular mail and personal delivery rather than by certified mail. This rule has been certified by Law and OPS. Are there any questions?

COMMISSIONER DEL VALLE: I’ll just add that somebody sends me a certified letter, I’ll be lucky to get it before the weekend, which is when I can get to the Post Office. And many people ignore and we know this because we get it back, we get the returns back; never get to the Post Office. And one more piece is if typically I mail you a letter by regular mail, in New York City you get it within one or two days. A certified letter, because of the extra handling through the Post Office, you’ll be lucky if they attempt delivery within a week. Expense aside, just as a matter of I think just plain civility
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and common sense, I think this is a more rational process. Any questions? I’m big into rational processes. Irrational stuff drives me nuts. No pun intended.

MR. JOSEPH GREGORY, ESQ., FIRE DEPARTMENT: A question?

COMMISSIONER DEL VALLE: Yes.

MR. GREGORY: This would allow for the decisions once they’ve been determined by the hearing officer that they would be, if both parties, meaning if it’s an agency, as well as the respondent themselves, if they would be; the agency representative would be handed the decision also? Is that --

COMMISSIONER DEL VALLE: At the same time.

MR. GREGORY: Okay.

COMMISSIONER DEL VALLE: And it’ll be of course entered into the mystical IT system.

MR. RUSSELL PECUNIES, ESQ., DEPARTMENT OF ENVIRONMENTAL PROTECTION: Russell Pecunies, DEP. When we discussed this last month, I was under the impression that the agencies would still get their decisions by mail.
COMMISSIONER DEL VALLE: Sure.

MR. PECUNIES: Yes?

COMMISSIONER DEL VALLE: Sure.

MR. PECUNIES: Okay.

COMMISSIONER DEL VALLE: Unless you want them, you know, otherwise.

MR. PECUNIES: No. But that’s fine.

COMMISSIONER DEL VALLE: And we’re certainly open to that. Probably eventually we’re all be doing this electronically anyway.

MR. GREGORY: Just for clarification. So, Joseph Gregory, Fire Department. So when you, piggybacking onto your question about the clarification regarding the decisions being mailed. If it’s handed to the agency representative, so you’re saying in addition to that, it would also be mailed? Or --

COMMISSIONER DEL VALLE: If that’s what the agency wants.

MR. GREGORY: Okay.

COMMISSIONER DEL VALLE: Yeah.

MR. GREGORY: So the period as far as for appeal purposes, would that start the clock ticking upon when it’s handed personally to them
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or from the mailing?

COMMISSIONER DEL VALLE: The clock will tick from the moment of service to the respondent. Which is if he’s handed it to them personally, that’s when the clock starts to tick. If it’s mailed, it typically starts to tick -- I forgot; I think it’s five days after the date of mailing, something like that. I’m not sure. It’s what basically I think the CPLR says.

MR. GREGORY: So, I just --

MS. KNAUER: Elizabeth Knauer, citizen member. I think the question was that it’s for the agency appealing.

MR. GREGORY: Correct.

MS. KNAUER: Whether it would if they were hand-, if it was handed to the agency rep at the time of the hearing, would their time for appeal begin at that point or upon five days after mailing?

COMMISSIONER DEL VALLE: I would think it would begin at the point of service; which is when it was handed to the agency rep.

MS. HELAINE BALSAM, ESQ., DEPUTY GENERAL COUNSEL, OATH: Can I just interject?
COMMISSIONER DEL VALLE: Mm-hmm.

MS. BALSAM: Helaine Balsam, Deputy General Counsel for OATH, for the purposes of the record. So if you look at the actual proposed rule, it says: The decision and order shall be filed with the Executive Director and served on all parties or their authorized representatives either personally or by mail.

So to answer your question, Joe, I think the agency could opt in or out in which way it wanted to. And then in the appeals rules it says: any party aggrieved by the hearing officer’s recommended decision and order within 30 days of service on that same party. So if you were served with the decision and order by hand delivery, it would be 30 days. If we mailed it to you, you would get the extra 35 day-, the extra five days in the computation of time rule. Does that make sense?

MR. GREGORY: Yeah. So just to even fine tune it even more. So basically you’re saying that the agency representative can say: Well, no, I don’t want to carry back a whole lot of decisions. I’d rather it be mailed the way it’s...
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been in the past. Is that correct?

MS. SLIFKA: Yeah, I mean, it’s up to the agency. Like you said, it can’t be --

MS. BALSAM: Just for the record, that’s Amy Slifka.

MS. SLIFKA: Yes. So if you want to be served at the same time the respondent is served after the hearing, then you collect your decision and orders. If you don’t, they will be mailed to you.

MR. GREGORY: Okay.

MS. BALSAM: Same as the respondent will have that same choice, right?

MS. SLIFKA: Correct.

MS. BALSAM: They’ll be able to stay or they could be mailed; as it is in the other tribunals now. Taxi and Health does it the same way.

MS. SLIFKA: As it is the same, exactly in Health.

COMMISSIONER DEL VALLE: Yeah, we won’t hold the respondent hostage and someone can’t leave until we get the thing --

MS. SLIFKA: That’s right.
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COMMISSIONER DEL VALLE: If he walks out, then we’ll mail it to him.

MR. RENALDO HYLTON, EXECUTIVE DIRECTOR, DEPARTMENT OF BUILDINGS: Renaldo Hylton, Department of Buildings. I just want to make sure though. So at the end of a hearing, a hearing officer may hand deliver either to respondent or to petitioner a copy of their decision and that starts the clock, correct?

MS. BALSAM: Correct.

MR. HYLTON: If it’s handed?

COMMISSIONER DEL VALLE: It’ll probably be a clerk and not the hearing officer.

MS. SLIFKA: Actually, it’ll be a clerk.

COMMISSIONER DEL VALLE: Yeah.

MR. HYLTON: Right, right. Okay. If either parties refuses the hand deliver method and opted for the mailing to their place of business or home, that clock will begin at the time of mailing to either party or to whomever is getting --

MS. BALSAM: Whoever is getting the mailing.

MR. HYLTON: Whoever is getting. So
there’ll be two clocks?

MS. SLIFKA: Yes.

MS. BALSAM: There would be two clocks, yes.

MS. SLIFKA: There will be two clocks, correct.

MS. BALSAM: Yes, yes. Because that’s the way the rules are.

MR. HYLTON: Okay. Don’t you think that kind of messes, murks the water for ECB itself? I mean --

COMMISSIONER DEL VALLE: Not really because if there’s a mailing, they’ll both be mailed simultaneously. So the clock will be running together.

MR. HYLTON: I Understand. But --

MS. SLIFKA: No, in the sense that we will have; we will have a database. We will know who is served personally at the time of the hearing. And we will know that their clock started from the time they received it at the tribunal. If they’re not -- if it’s not there, we know that it was mailed to them. Plus, we have the date of mailing. So we will have --
MR. HYLTON: The difference is five days, correct?

COMMISSIONER DEL VALLE: Yeah.

MR. HYLTON: The difference here is five days?

MS. BALSAM: Mm-hmm.

MS. SLIFKA: Correct.

MR. HYLTON: I mean, how simple could we have just made it, just to have it start at the time of mailing if there was mail involved in either, in any of these parties’ decisions to be mailed or hand delivered? This way you wouldn’t have -- you would just be at the time of decision, 35 days, right? You understand what I’m; I’m just saying it’s --

MS. SLIFKA: Yeah, but we didn’t. And it’s an administrative thing and I think we can handle it.

MR. HYLTON: I think we should consider that, just making it; it’s a five-day difference. And you didn’t have to hire another person to try to figure -- I know you’re not hiring somebody else. But the time for another appeals rep or some appeals attorney to be looking at service,
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you know, between parties and who; I think it
should just be one straight time granted at
mailing.

COMMISSIONER DEL VALLE: That’s
something to consider, to make it 35 days across
the board or something like that.

MS. SLIFKA: Then if it’s --

COMMISSIONER DEL VALLE: But what we’re
doing is actually -- we’re actually following the
civil procedure law and rules of the State of New
York. And I’m not too sure we can fudge with that
too much. That’s something to look at though.

MR. HYLTON: Alright.

COMMISSIONER DEL VALLE: Because we may
be locked into whatever it is the CPLR says.

MR. HYLTON: Alright.

MS. BALSAM: I mean, I don’t -- we don’t
anticipate that it will be difficult for the
appeals unit staff to be able to --

MS. SLIFKA: Calculate.

MS. BALSAM: -- calculate the days.

MS. SLIFKA: Correct.

MR. HYLTON: No, not difficult. Just
another issue, you know, with who’s timely,
respondent versus that? And I think it goes into another --

COMMISSIONER DEL VALLE: Well, I think the way it happens when you get an appeal, essentially somebody’s going to look at the file and for the whomever it is who’s appealing. And it will be apparent immediately by looking at the file whether it’s 30 or 35 days. They don’t have to compare it to what the other party’s time was. It’s just, you know, Joe Blow files an appeal. You have to look up Joe Blow’s case and it says such and such a date is when the clock starts to run. Has it run or not? And that’s it. You have to go through that exercise regardless.

MS. SLIFKA: You’re either counting 30 days or 35 days regardless. So --

MR. HYLTON: Right, okay.

COMMISSIONER DEL VALLE: I understand what you’re saying. But I think that it’s still going to have to go through the exercise. Anything else? Is there a motion to accept this proposal? Which is essentially to -- okay. Well, I see all the hands up. Were there any abstentions or negative votes? I didn’t catch at
all. Okay, so it’s unanimous. Okay, thank you.

Sanitation Department has rules regarding recovery of refrigerants.

MR. ARMSTRONG: So, this proposed rule is in response to a Department of Sanitation proposal from last month. And it pertains to the lawful recovery of refrigerants from appliances disposed of by residents. So this proposed rule would amend the ECB Sanitation penalty schedule to create penalties for violations of Sanitation rules regarding disposal of refrigerants. This rule has been certified by Law and OPS. Are there any questions?

COMMISSIONER DEL VALLE: With the same caveat I had before regarding fine structures; is there a motion? We have one, two, three, four, five, six, seven, eight, nine in favor and one abstention. And it’s adopted. Thank you. We now have electronic [unintelligible] [01:24:02]. I’m sorry. Oh, okay.

MS. SLIFKA: I’m sorry.

MR. ARMSTRONG: Alright.

COMMISSIONER DEL VALLE: Oh, okay, I thought you were signaling me or something.
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MS. SLIFKA: No, I thought he was leaving. And I was like [unintelligible] [01:24:14].

MR. ARMSTRONG: Alright. So now I discuss a final rule, which amends the ECB Sanitation penalty schedule to create penalties for violations of local law 67, which relates to publicly accessible collection bins; and that also creates a penalty for violation of 16RCNY1-04.2, which prohibits the placement of electronic waste out for solid waste or recycling collection. So this rule was published in the City Record on March 13, 2015. And on April 14, 2015 there was a public hearing heard. It’s a joint hearing for both final rules I’m talking about today, but including this rule. Two members of the public attended. But no written comments or oral testimony were received for this rule. Are there any questions?

COMMISSIONER DEL VALLE: Were the members of the public opposed or in favor of the amendment, by the way?

MS. BALSAM: They didn’t say anything.

MR. MACRON: They didn’t say anything.
COMMISSIONER DEL VALLE: Oh, they didn’t say anything.

MS. BALSAM: They just watched.

COMMISSIONER DEL VALLE: Oh, they were just witnesses. Okay.

MS. SLIFKA: They were just hanging out.

COMMISSIONER DEL VALLE: Alright. It was a slow day in Bedrock. Is there a motion? It’s unanimous with one abstention. Buildings Department?

MR. ARMSTRONG: Excellent. Okay. So now this final rule amends ECB’s Buildings penalty schedule and order, one, to adequately enforce existing laws and rules; two, to reflect changes brought about by Local Law 141; and three, to reflect ongoing efforts by Department of Buildings to update violations in the Building rules. This too was published in the City Record on March 13, 2015. And at the joint hearing on April 14, 2015 those members attended. There was one written comment received. That comment, as well as any relative details about the hearing, have been provided to the members of the Board. Are there any questions?
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MR. MARTINEZ: Jorge Martinez, DOH. I point to the comment from National Grid, in terms relating to damaging a tree. Is there any definition of what constitutes damage? Because the commenter seems to infer that minor damage should not be something that should be issued a violation against.

MR. ARMSTRONG: I might defer on this question.

MS. BALSAM: I mean the comment from National Grid is sort of weird. Because if you look at the actual section, it says that you’ve damaged the tree without having a permit. But their comment says that they always have an arborist and they always get a permit. So, I was not really sure why they were making that comment.

MR. SHPETNER: Yeah, another -- Tom Shpetner, citizen member. There’s another peculiar thing, which is I believe it said something like: There’s going to be damage. We’re going to damage these trees anyway. That’s why we have an arb--; and I think that was in there as well. I don’t have I printed out. But it was a
peculiar letter.

MS. BALSAM: Right. I mean, basically what they were saying --

MR. SHPETNER: I mean, it said: You know, we’re going to make a mess. But we’re going to take care of it; I think is my --

MS. BALSAM: And we’re not necessarily hurting the tree.

MR. SHPETNER: That’s right.

MS. BALSAM: But that of course is something that they could allege at a hearing and could be decided at a hearing.

MS. KNAUER: Well, I think --

MS. BALSAM: And we do this all the time with Parks violations, by the way.

MS. KNAUER: And I think the related point that Tom was alluding to was that if they know they’re going to potentially damage a tree, they know that they need to get a permit.

MR. SHPETNER: That’s right. Yeah, they --

MS. KNAUER: So it’s not as though they’re being penalized, you know, for something that they didn’t foresee. So it’s easy enough for
them to just get the permit.

COMMISSIONER DEL VALLE: It’s a very
inartful letter I think, to say the least. You
know, I’ve got another possible interpretation
that they may be asking for a graduated penalty
schedule or mitigation schedule or God knows
what. But it’s a very -- and they didn’t bring a
human being into testify, right? They just sent
the letter.

MS. BALSAM: Yeah, I, I --

COMMISSIONER DEL VALLE: So maybe this
is in the nature of the maximum penalty is
$5,000, I believe. And we are an international
multibillion dollar corporation and we’re not too
concerned about it one way or the other. I don’t
know.

MS. BALSAM: Actually, the penalty --
the hearing penalty is $800. So --

COMMISSIONER DEL VALLE: Right. I don’t

MS. BALSAM: You know, on the mitigation
question, you know, I would bump it over to
Renaldo. But I think --

MS. KNAUER: Couldn’t that be part of
the permit conditions? I mean, I don’t know how
these permits work. But if they get a permit,
wouldn’t whatever mitigation is required be built
into the conditions of the permit?

MR. HYLTON: Well -- Renaldo Hylton,
Department of Buildings. Well, the permit is
actually not Department of Buildings permit. It
is actually from the City Planning -- Department
of City Planning. We -- it is built in our code
because we enforce the zoning resolution. So if
they were to get a permit, there would not be a
violation.

MS. KNAUER: Right.

MR. HYLTON: So there’s no issue there
with mitigation. If mitigation -- the reason why
this violation is not mitigatable is because
there is really and if you think about it the
majority of these violations are going to be for
home owners or businesses that remove trees in
these natural districts -- remove them; not
necessarily, you know, accidentally chop the
trunk of it or things like that.

COMMISSIONER DEL VALLE: Or not
necessarily accidentally cut around the entire
bark --

MR. HYLTON: Right. So that it --

COMMISSIONER DEL VALLE: -- so you wind up killing the tree and then expect the City to come and take it away because it’s a dead tree, which happens a lot.

MR. HYLTON: Correct. And so mitigation is not; because you have to, in order to mitigate that issue, that problem, you have to go back to the City Planning and work out a solution to how you’re going to replace that tree. So it’s not -- the mitigation here that they are talking about is not a penalty. They’re talking about fixing the problem. I think that’s what I got from the letter.

MS. KNAUER: But they could work that out in advance.

MR. HYLTON: They can work it out. Yes, it’s always worked out in advance, especially for these people. But if any home owner should do that, they would have to go back to the Department of City Planning and get a permit basically to undo the damage that they did or permission to undo the damage. And that’s how we
would assess or approve the correction of that violation.

COMMISSIONER DEL VALLE: Make a donation to the Million Trees Fund and buy a new tree. Anything else, discussion or whatever? Is there a motion? It’s unanimous with one abstention from the appropriate agency. Is that it?

MR. ARMSTRONG: Thank you.

COMMISSIONER DEL VALLE: And show time.

MR. PECUNIES: Okay. Russell Pecunies, DEP. This month DEP has ten requests for the Board to issue cease and desist orders. These ten requests are all under the air code for failing to renew operating certificates. And in each of these ten cases, the building has an expired operating certificate to use number six fuel oil; the use of which will be prohibited as of June 30th. So, since these respondents have all been adjudicated in violation for failing to renew their certificates and have not complied with the order in the decision to come into compliance; DEP is asking the Board to issue orders to cease and desist in these ten cases.

COMMISSIONER DEL VALLE: Questions? Is
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there a motion? It’s unanimous in favor with one --

MR. PECUNIES: Abstention.

COMMISSIONER DEL VALLE: it is unanimous with one abstention.

MR. PECUNIES: Okay. And DEP has 28 requests for cease and desist orders for failing to install backflow prevention devices. In each of these cases, the DEP Commissioner’s order to install was not complied with. A notice of violation was issued; that NOV has been adjudicated in violation either in person or by default. The respondents continue to be in violation for not installing the required device. And DEP is therefore requesting that the Board issue cease and desist orders in these 28 cases.

COMMISSIONER DEL VALLE: Is there a motion? Again, it’s approved with one abstention.

MR. PECUNIES: Okay. Yup, thank you.

MR. DEL VALLE: It’s amazing to me how many people have trouble with backflow preventers. Is there a motion to go into an Executive Session to go over --

MS. KUO: Pre-sealing.
MR. PECUNIES: Pre-sealing.

COMMISSIONER DEL VALLE:Oops. Oh, I’m sorry. Missed one I see at the bottom line. Pre-sealing reports.

MS. KELLY CORSO, ESQ., ASSISTANT DIRECTOR OF ADJUDICATIONS, ECB: Good morning, Board. I am Kelly Corso, Assistant Director for ECB. We have 34 pre-sealing reports today. And they’re all pretty ordinary, except for the final one which I will go into detail about. It’s a noise case and the hearing officer in that case has recommended that the equipment be sealed.

So first we have 30 -- I’m sorry, 25 backflow cases. In 22 of those cases, the hearing officers recommended that there be no sealing given the respondents' compliance. And in the three remaining cases, the hearing officers also recommended that the C&D order be discontinued. And the reason for those recommendations are: in one case, respondent is deceased; in the second case, the premises has been demolished; and in the third case, a recent DEP inspection showed that the cited premises is vacant. Any questions on the 25 backflow cases?
MR. HYLTON: I have a question procedurally. When we rescind it because the respondent is deceased, does DEP then take it up again with --

MR. PECUNIES: We, yeah, I know which one this is because I just got an E-mail about it yesterday I think. Yeah, the respondent on this one we would have to start over with the new, whoever the new building owner is by issuing them an order to install the device. If they comply with that, fine; it never comes back to ECB again. If the new owner doesn’t comply, then we would have to issue a new NOV.

COMMISSIONER DEL VALLE: That makes sense.

MS. CORSO: Okay. The next case is a sewer code case. And in this case the hearing officer recommended that the C&D order be discontinued because a recent inspection had shown that the cited restaurant had come into compliance. Any questions on that one?

Okay. The next cases are air code cases. There are five of those. In the pre-sealing report, the hearing officers also recommended
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that no further action was necessary, given the respondents compliance. The respondents were able to show at the hearing that they had obtained the operating certificates that were needed. Any questions?

Okay. The noise code cases, we have three of those. In two of those cases, the respondents were able to provide proof of work done on the equipment to bring it into compliance. And based on that evidence, the hearing officers recommended that DEP re-inspect and that the equipment remain unsealed if the initial re-inspection shows no violation and further re-inspections show no violation for 180 days.

And the final noise case is the one that I mentioned; where the hearing officer has recommended that the equipment be sealed. This is a restaurant located at 228 West 18th Street in Manhattan. And the equipment involves a kitchen exhaust fan. This goes back to 2013 when DEP issued a notice of violation to the respondent for operating an exhaust fan in excess of 42 decibels. At that time the inspector had noted
that readings taken from three-feet from an open
window in the complainant’s apartment showed that
there was a total decibel level of 67, an ambient
decibel level of 56 and that made a source level
of 67. Respondent failed to appear for the
hearing and the case went into default.

There were three subsequent notices of
violations issued regarding this equipment. And
in all cases the respondent again failed to
appear and default orders were issued. On
February 26, 2014 the Board issued a cease and
desist order directing the respondent to appear
for a pre-sealing hearing to show good cause why
the equipment should not be sealed. At the
initial March 17th pre-sealing hearing, the
respondent’s representative stated that the
respondent had sold the restaurant.

The case was adjourned for the
respondent to provide evidence that the
restaurant had been sold. It was adjourned two
more times for the same reason. Finally, at the
pre-sealing hearing on April 21st, the
representative came in and said that he had been
informed that the new owner of the restaurant is
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El Cocotero Inc.

Now the cease and desist order had been
issued to Morontas Café Inc. DBA El Cocotero.
When the only evidence that the representative
presented with respect to this alleged change in
ownership was a cellphone photograph of a New
York State Department of Taxation and Finance
Certificate of Authority that’s addressed to El
Cocotero Inc., Restaurant Solutions NYC, 75
Maiden Lane; which is not even the address of the
restaurant in question.

The DEP representative at the hearing
recommended sealing of the kitchen exhaust
because the respondent had failed to present
adequate evidence of the change in ownership and
had failed to provide anything to show that the
equipment was being repaired or replaced. The
hearing officer agrees with the DEP’s
representative’s recommendation to seal the
equipment immediately.

COMMISSIONER DEL VALLE: Any questions?

MS. KNAUER: Elizabeth Knauer -- I’m
sorry -- we are on --

MS. SLIFKA: Yes.
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MS. KNAUER: Okay. Elizabeth Knauer, citizen member. So has there been any attempt to try to determine whether El Cocotero Inc. is in fact a different entity and that they possibly don’t have awareness of these violations prior to sealing?

MS. CORSO: I’m not sure what DEP has done.

MR. PECUNIES: If I’m allowed to --

COMMISSIONER DEL VALLE: Yes.

MR. PECUNIES: I mean, there are two different corporations at the time of the hearing.

MS. KNAUER: Uh-huh.

MR. PECUNIES: That was looked up. The restaurant has always been called El Cocotero; apparently has been for about 20 years.

MS. KNAUER: Mm-hmm.

MR. PECUNIES: And apparently the gentleman who owns the restaurant is a very well-known Venezuelan culinary figure.

MS. KNAUER: Mm-hmm.

MR. PECUNIES: And he as of February I believe was quoted in a newspaper article, where
he identified himself as being the owner of the restaurant. So there may have been a corporate name change but there does not appear to have been an actual change in the ownership of the restaurant.

COMMISSIONER DEL VALLE: What’s the location of this restaurant?

MR. PECUNIES: Excuse me?

COMMISSIONER DEL VALLE: What’s the location?

MS. CORSO: 228 West 18th Street.

COMMISSIONER DEL VALLE: Alright. I think the documents with DBA on it kind of tells the tale. It’s the same entity for all practical purposes. In any case, any discussion or other questions? Is there a motion to accept? It’s unanimous with one exception --

MR. PECUNIES: One abstention.

COMMISSIONER DEL VALLE: -- one abstention rather. Thank you. Now I’ll ask if there’s a motion to go into Executive Session? And it’s unanimous. We’re going into Executive Session.

[OFF THE RECORD 01:42:14]
[ON THE RECORD [01:42:30]

COMMISSIONER DEL VALLE: Okay. We’re back in Executive Session, is there a motion -- Public Session, I’m sorry. Is there number one a motion to adopt the personnel question, which is to name me the Executive Director of ECB? All signify aye. Thank you. That is unanimous.

We have two questions on appeal to determine. One is New York State Racing Association and the other one is New York City versus Genting Inc. The issues are essentially the same. And the question is whether we will maintain that the New York City fire code is applicable to inspections at the racetracks? If everyone concurs on option A that they are applicable, then that will be the decision. If we don’t have a majority, then we’ll discuss whether or not some other course of action is appropriate. So I call the question as to whether or not the New York City fire code should be applicable in those two cases.

MR. HYLTON: Therefore, adopted alternative to the decision?

MR. GREGORY: Right.
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COMMISSIONER DEL VALLE: Correct. All in favor? It’s unanimous with one abstention and one -- two abstentions and I’m not sure how --

MS. KNAUER: I was voting --

COMMISSIONER DEL VALLE: In the negative?

MS. KNAUER: In the negative.

COMMISSIONER DEL VALLE: And one vote in the negative.

MR. MACRON: And what about Doug Swann?

COMMISSIONER DEL VALLE: Where’s Doug Swann? Well, he’s not present. Thank you very much.

MR. SOUTHWICK: The regular appeals --

MR. SOUTHWICK: Wait. Do we need to vote on the recommendations also, Commissioner?

COMMISSIONER DEL VALLE: Oh, I’m sorry. On the appeals recommendations, is there a motion to adopt the recommendations? And it appears to be unanimous. Thank you very much again. Right? Doug, all done? I’ll write a note for you if you like. Sorry about that. And thank you very much for coming. Sorry I got a little long-winded. Some of what happened today reflects I think what

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I was complaining about that some agencies view us as a clerical service instead of an adjudicatory entity.

MR. GREGORY: So, are we out of Executive Session?

COMMISSIONER DEL VALLE: Oh, yeah.

MS. SLIFKA: Yes, we’re in Public Session.

COMMISSIONER DEL VALLE: We’re in Public Session.

MR. GREGORY: I’m sorry. I have concerns but I’ll leave it for -- to talk to specific people regarding what you just said.

COMMISSIONER DEL VALLE: Mm-hmm. Yeah, yeah. I think a lot’s got to be talked about, all over the landscape.

MS. SLIFKA: Motion to adjourn?

COMMISSIONER DEL VALLE: A motion to adjourn? It’s unanimous. Thank you. See you.

(The public hearing concluded at 12:05 A.M.)
CERTIFICATE OF ACCURACY

I, Andrew Slawsky, certify that the foregoing transcript of the Board Meeting of the Environmental Control Board on April 30, 2015 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

Date: May 1, 2015

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