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
September 18, 2014
9:30 A.M. to 11:10 A.M.
MEMBERS PRESENT:

Lt. Dan Albano, Esq. - Police Department
Suzanne Beddoe, Esq. - Chair, OATH
Robert Carver, Esq. - Citizen Member
Hon. Ernest J. Cavallo - Citizen Member
Renaldo Hylton - Exec. Dir., Dept. of Buildings
Elizabeth Knauer, Esq. - Citizen Member
Tayo Kurzman, Esq. - Fire Department
Emily Lally - Citizen Member
Madelynn Liguori, Esq. - Dept. of Sanitation
Russell Pecunies, Esq. - Dept. of Environmental Protection
Douglas Swann - Citizen Member

ALSO PRESENT:

Leslie Bailey - Law School Fellow, OATH
Denis Brogan - Assistant General Counsel, OATH
Kelly Corso, Esq. - Asst. Director of Adjudications, ECB
Arisleyda Fernandez - Facilities Assistant, OATH/ECB
Fana Garrick - Public Affairs Assistant, OATH/ECB
Shamonda Graham - Department of Transportation
David Goldin, Esq. - Administrative Justice Coordinator
Diana Haines - Assistant General Counsel, OATH
Mark H. Leeds, Esq. - Special Counsel, ECB
Jim Macron, Esq. - Counsel to the Board, ECB
Maria Marchiano - Senior Counsel/Assistant Commissioner, OATH
Denise Ortega - IT Support, OATH
Teresita O'Neill - Assistant Director of Public Data
Peter Schulman, Esq. - Deputy Supervising Attorney, Appeals, ECB
Marisa Senigo - Assistant Commissioner for Public Affairs & Communications
Frances Shine - Secretary to the Board, ECB
Amy Slifka, Esq. - Deputy Commissioner/Executive Director, ECB
Thomas Southwick, Esq. - Supervising Attorney, Appeals, ECB
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The public hearing commenced at 9:30 A.M.)

MS. SUZANNE BEDDOE, ESQ., CHAIRPERSON, COMMISSIONER & CHIEF ADMINISTRATIVE LAW JUDGE,

OATH: Okay. So good morning, everyone.

LT. DAN ALBANO, ESQ., POLICE DEPARTMENT:

Good morning.

MS. BEDDOE: As all of the Board members know and I think most of the audience members know, this will be my last Board meeting and my last round as Chair of the Board and as the Commissioner both. But it has been a wonderful tenure and working with all of you has been a tremendous joy in my professional life. And I certainly; too bad Tom isn't here because -- Tom Shpetner, because he talked me into the Board meeting today. I said: Well, you know; but he said: No, no, no. You should do it. So I said: You know what? You're right. So without further ado, let us get started with today's agenda.

MR. ROBERT CARVER, ESQ., CITIZEN MEMBER:

Wait, wait. So, I think we need a round of applause.
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MS. AMY SLIFKA, ESQ., DEPUTY COMMISSIONER/EXECUTIVE DIRECTOR, ECB: Yes, absolutely.

MS. BEDDOE: Thank you. Thank you. I, I don't, you know -- I don't ever overlook the fact that it has been this sort of collective effort; not only with the Board's input with the issuing agencies, the cooperative sort of endeavor we've had that has really changed I think this organization and changed what government can be. Which is really what, you know, I've been all about. It's, it's when people walk in and they expect government, that they get something really spectacular. And that kind of excellence is what, you know, my team has brought to the table, what this Board has brought to the table. And so that applause is really for everyone here. So thank you so much.

So after the meeting obviously I just want to exchange contact information and let you know where I'll be, what I'll be doing. But I know you've been waiting here for a while. So let's get started. The -- is there a motion to
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adopt the minutes from our last meeting of September 18th? Alright. Any abstentions? No.
Okay. So the first item on our agenda today is our quarterly presentation that Amy Slifka is going to present.

MS. SLIFKA: If I can figure out how to work this. I'm getting there. Good, I did it. Okay, good morning everyone. For those of you who don't know, the quarterly review is a report that sets forth the number of violations received by ECB, broken down by issuing agency; quarterly comparison of the violations received; violations heard and decisions rendered; a look at the elapsed time from hearing to decision date; a look at the decision results for each of the issuing agencies; and lastly, a look at the most commonly issued violations by agency.

So let's begin. We're looking at the third quarter of 2014. I'll just organized here. Okay. So in the third quarter, comparing the second quarter to the third quarter, there has been for DSNY, there's been a decrease of four percent. For DOB, a 36 percent increase. You're
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killing us, Renaldo. So for DOT, a 13 percent increase. FDNY, a 22 percent increase. DEP, a 25 percent increase. And Department of Health, a 16 percent increase. For the Department of Parks and Recreation, an eight percent decrease. NYPD, it's a four percent decrease. DoITT, a 98 percent increase from 192 to 381. BIC is a 12 percent increase. And Landmarks is a 52 percent increase from 31 to 47.

So the violations received, hold on here. Okay. So comparing the third quarter of 2013 with the third quarter of 2014, you see for DSNY there's been a 20 percent increase. For FDNY, a 48 percent increase. For DOB, a 27 percent increase. For DOT, a two percent decrease. For Health, a five percent decrease. For NYPD, a five percent increase. For DEP, a nine percent increase. For Department of Parks, a 38 percent increase. For DoITT, a 115 percent increase. And for Landmarks, a 161 percent increase.

Okay. Comparing the total violations heard third quarter 2013 with 2014, you have an
eight percent decrease for Sanitation. A one percent increase for DOB. For FDNY, it's about even. For Health, it's a 21 percent decrease. And for DEP, it's 11 percent increase. For NYPD, a 25 percent increase. For DOT, a 38 percent decrease. For DoITT, a 34 percent decrease. For Parks and Recreation, a 36 percent decrease. For Landmarks, a 21 percent decrease. And for BIC, a 65 percent decrease.

Okay. And then we have decisions rendered third quarter, comparing third quarter of 2013 with third quarter of 2014. So we have a 14 percent increase for Sanitation. For DOB, a 12 percent increase. For FDNY, an eight percent increase. For Health, a 24 percent decrease. For NYPD, a 55 percent increase. For DEP, a 13 percent increase. DOT, a 21 percent decrease. Parks, a six percent increase. DoITT, an 11 percent decrease. And Landmarks, a 60 percent decrease. And BIC, a 55 percent decrease.

So, and then for hearing to decision date, you can see that we're getting 84 percent of our cases are decided in less than ten days;
and 14 percent between 11 to 20 days. And again I just want to thank Sue Beddoe because she really had an impact and it was really her influence that caused this. So thank you.

MS. BEDDOE: Right back at you.

MS. SLIFKA: So, okay. So, decisions rendered, you could see that the total in violation is 52.2 percent and the totally dismissed is 46.7 in 2013. Now in 2014, it's gone -- in violation has gone up a bit to 59.8 percent and dismissal has gone down to 39.3 percent. So --

LT. ALBANO: Going in the right direction.

MS. SLIFKA: Well, I think also, if you're questioning why, I think more of the agencies happen to sending representatives to hearings. NYPD is sending representatives. DEP is sending more reps for different types of cases and such. So --

MR. HYLTON: Amy, Renaldo from DOB. Could, could some of that be attributed to just better written violations?
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MS. SLIFKA: That of course too. But, so all of those things come into play. But yes, definitely. So -- okay. So for DSNY, you have 43 percent in violation; 57 percent dismissed. For DOB, you have 78 percent in violation; 22 percent dismissed. For DOT, it's 59 percent in violation; 41 percent dismissed. FDNY, 89 percent in violation; nine percent dismissed. DEP, 76 percent in violation; 14 percent dismissed. And NYPD, 49 percent in violation; 51 percent dismissed. So, it's getting better. So as far as you're concerned, Dan. So --

LT. ALBANO: Compared to past years, it's a lot better, right?

MS. SLIFKA: Exact—well, yes. And I think the fact that you're sending representatives at the hearings could have—be having an impact.

LT. ALBANO: I, I, I'd love to have you tell you that to the Chief, who doesn't want me to do that.

MS. SLIFKA: Well, it's always two sides. Then you have both parties represented,
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equally represented.

LT. ALBANO: That's great.

MS. SLIFKA: DOH, you have 53 percent in violation; 47 percent dismissed. Parks, 59 percent in violation; 41 percent dismissed. DoITT, 64 percent in violation; 36 percent dismissed. And Landmarks, 71 percent in violation; 29 percent dismissed. Okay.

The most commonly issued violations. For DOT, it's failure to comply with the terms and conditions of a permit; failure to permanently restore the cut within the required time; and opening on the street without a permit. NYPD, it's vending in a bus stop or within ten-feet of a subway or a crosswalk; failure to display your license; or vending on a sidewalk less than 12-feet from the curb. DOB, unlawful acts --

LT. ALBANO: But Amy, is that -- that's included in the vicarious liability ones are in there too, right?

MS. SLIFKA: I'm not sure what you mean by that --

LT. ALBANO: Yeah, we were holding the
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permit holder for having an --

MS. SLIFKA: Yes, yes. It's all, yes, right.

LT. ALBANO: Okay.

MS. SLIFKA: Yes. For DOB, it's unlawful acts; failure to comply with the Commissioner's order; failure to maintain building in code compliant manner; failure to comply with the Commissioner's order to file a certificate of correction. DSNY, it's dirty sidewalk; failure to clean 18-inches into the street; and failure to store your receptacles. For DEP, its failure to submit an annual test flow for backflow preventer; failure to install backflow preventer; and operating without renewing an operating certificate. For FDNY, it's inspection and testing; it's permits and it's unnecessary alarms.

For Health, it's failure to eliminate rodent infestation for active rodent signs or eliminate conditions conducive to rodent or unpermitted mobile booth cart. For Landmarks, it's basically not having a permit. They're
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basically the same thing, those three, the different charges. For DoITT, its failure to provide working public pay telephones; failure to maintain your public pay telephone and your sign if missing. And for Parks, it's unauthorized consumption, unauthorized vending and failure to comply with the directions of the signs. And for BIC, it's idling a motor vehicle; failure to register your wholesale business; and failure to register per the Section 210 days.


MR. HYLTON: Very good.

MS. SLIFKA: Thank you.

MS. BEDDOE: Any questions for Amy?

LT. ALBANO: No.

MS. BEDDOE: Okay. Alright, next up on
our agenda is Shamonda Graham from DOT, to
discuss modifications to the DOT penalty
schedule.

MS. SHAMONDA GRAHAM, DEPARTMENT OF
TRANSPORTATION: Good morning ladies and
gentlemen of the Board. My name is Shamonda
Graham and I'm here on behalf of the DOT's
Commissioner Maniscalco. The DOT is requesting
that the Board review and approve modifications
to our penalty schedule. We're asking that the
fine associated with infraction for inadequately
protected work zones be increased from 400 to
$1,200. This fine and infraction code was created
back in 1995. It has not been increased nor has
anything changed since then. As such, the DOT
believes that we should increase it to match
other infractions similar in nature.

I submit to you and I ask that you pass
out random photos of what we believe to be
inadequately protected work zones. As you can see
once you receive the photos, you can pass one to
each person -- it doesn't matter. You will find
that these work zones are very unsafe. You will
find open excavations, whereby the public, any member of the public could, could be exposed to danger. You will find inadequately protected equipment, where equipment hasn't been cordoned off so that members of the public do not enter the work zone.

The point being, the Department believes that if you increase fines associated with egregious and unsafe violations, we will likely deter these acts. The enabling legislation for this section of law is Administrative Code Section 19-109A, per Administrative Code Section 19-150. The maximum fine amount for this infraction is $5,000. So as you can see, a $400 penalty in relation to a $5,000 maximum is relatively low. Therefore, the Department is not only asking that you increase the penalty associated with this infraction; we're likewise requesting that the default amount would also change. The current default is $1,200. And we'd like to adjust it to $3,600. We believe that if you approve our request, it will enable the Department to effectively and adequately maintain
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public safety by preventing breaches.

MS. BEDDOE: Okay.

MR. HYLTON: Just a quick question by

the --

MS. BEDDOE: Okay -- Renaldo.

MR. HYLTON: Renaldo from DOB. How do

you come up with your default --

MS. GRAHAM: The DOT has routinely set
defaults three times.

MR. HYLTON: Three times.

MS. GRAHAM: The original penalty

amount.

MR. HYLTON: Thank you.

MS. BEDDOE: Elizabeth?

MS. ELIZABETH KNAUER, ESQ., CITIZEN

MEMBER: Elizabeth Knauer, Citizen Member. Are

there -- are there sort of rules governing what
types of protections are needed for what type of

work?

MS. GRAHAM: Absolutely.

MS. KNAUER: Okay.

MS. GRAHAM: Under Section 19-109A of

the Administrative Code, it basically says that
all work zones must have adequate protection, barriers, lights, shoring, that type of thing. It also states that the Commissioner has the right to promulgate rules within our highway rules; that basically outline specific items that have to be -- that have to be at these work locations, namely, MUTCD approved traffic safety devices in cordonning off what- temporary traffic control devices.

So while there are no specific rules in relation to specific situations; because again, inspectors can come across virtually anything when they're in the field. So we do have to allow for a certain amount of discretion for the inspector to determine that. However, once a violation is written and it's put before an Administrative Law Judge, we believe having it in front of that neutral body will give us the leverage we need to, to basically say whether or not the inspector used his discretion properly or it was incorrect.

MR. HYLTON: So just a follow up on that -- Renaldo again.
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MS. GRAHAM: Mm-hmm.

MR. HYLTON: So the discretion lies mainly with the inspector and not with; how about the -- how about the person doing the work, the contractor? What-- how does their discretion as to what is adequate if there's no rules?

MS. GRAHAM: Well, again, the rule itself does say that every work zone must be adequately protected with barricades, with parti- and again the MUTCD outlines and that's where it gets very specific.

MR. HYLTON: Okay.

MS. GRAHAM: The MUTCD outlines what type of barricade, what type of cone, what height of cone, what color. It outlines all of those things. And what the Department has done is created an overall rule that says any time you use these type of devices it must be in accordance with MUTCD.

MR. HYLTON: And MUTCD is --

MS. GRAHAM: Oh, the manual -- wait, let me make sure I get it correctly. The Manual on Uniform Traffic Control Devices and it's a
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federal -- it's a federal mandate.

MR. HYLTON: Okay, alright.

MS. GRAHAM: So again, the discretion is whether or not the inspector sees adequate protection. The use and the type of devices used is based off of the MUTCD.

MS. BEDDOE: Okay. Any other questions for Ms. Graham? Okay. Well, with that, is there a motion to approve? Anyone against? Any abstentions? Okay. We'll proceed with CAPA. Okay. Next up we have -- is Diana here? Yup. Diana Haines from --

MR. CAVALLO: You skipped Dan.

MR. JIM MACRON, ESQ., COUNSEL TO THE BOARD, ECB: It's Dan Albano.

MS. BEDDOE: Oh, I'm sorry, Dan. Excuse me.

LT. ALBANO: Oh, okay.

MS. BEDDOE: Excuse me. I skipped -- I skipped, I skipped Dan because I put a checkmark next to him. Dan, penalties for traffic related violations and you have a handout.

LT. ALBANO: Yes. And I think
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everybody's got a copy of the update.

    MS. BEDDOE: Yup.

    LT. ALBANO: Good morning everybody. I'm Dan Albano from the Police Department. And I'm here today to ask for a increase or actually to ask for a penalty schedule for some new legislation that was passed by the City Council. As part of the Mayor's Vision Zero Plan to reduce traffic fatalities, both pedestrian and vehicular, the Mayor has proposed two new statutes. One is which- of which is the right of way. If a motorist fails to yield the right of way to a pedestrian or bicyclist, they're subject to a new fine under the Administrative Code and it's Section 19-190A: failure to yield the right of way. And we're asking for the maximum penalty that the Administrative Law Judges be allowed to impose the maximum penalty with a default penalty of 100.

    Now the penalty increases if the failure to yield the right of way causes a physical injury. And that penalty again we're asking for the maximum of $250 with a default penalty of
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250. If the -- the next statute is about leaving the scene. Now all of these things, both statutes, both failure to lead the right -- the failure to give the right of way and leaving a scene of an accident without exchanging your information; both of these are offenses under the current State Vehicle and Traffic Law. But the Mayor's Office and the Police Department feel and the City Council felt that the, the fines under the State Traffic Law are too low and not helping us reduce traffic accidents and fatalities.

So, the next section's about leaving the scene. And if it's only property damage, you leave the scene of the accident without reporting it to the police; if it's only property damage, we're asking for a penalty of 500 with a default penalty of 500. If you're leaving a scene and it's a physical injury, the penalty we want is $2,000, which is the maximum allowed under the Statute; with a default penalty of 2,000. If you leave the scene and there's a serious physical injury and serious physical injury is defined in the State Penal Law as a long-term protracted
illness such as broken bones, concussions, things like that; so if somebody suffered a serious physical injury, we're asking for the penalty, the maximum penalty allowed under the Statute of $10,000 with a default penalty of $10,000.

And last but not least, if you leave the scene of the- of an accident causing death and I think we've all seen that happen several times each year in the City and it's always some heart-rendering situation; if you leave the scene of an accident without reporting it and someone suffered a death, we're asking for a penalty of $10,000, which again is the maximum allowed under the Statute, and a default penalty of $10,000. We think that these substantial penalties will help reduce traffic fatalities and make people more responsible drivers.

This is one part of the Mayor's Vision Zero Plan. Next month I hopefully will before you with a plan to reduce the City's speed limit from 30 miles an hour to 25 miles an hour. The Mayor just recently signed that legislation. So there's several pieces to this package. This is the first
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one that we're presenting to the Board. Thank you.

MS. BEDDOE: Dan, I have one quick question.

LT. ALBANO: Sure.

MS. BEDDOE: In terms of how it plays out in the adjudication process, for example, if someone receives a violation ticket for leaving the scene and there's a serious physical injury; first of all, does that change or do you reissue a ticket if the person subsequently dies? Or do you get hit with 10,000 because there was a serious injury and then 10,000 because there's a subsequent death? And how -- you know, how does that play out?

LT. ALBANO: Yeah, more likely than that, just because of the bureaucracy of handling something like that, more likely than not the person would just receive the first summons for leaving the scene of the accident with a whatever type of injury. Unless there was some subsequent criminal charges: the person was drunk-driving or intentionally ran the person over; unless we were
able to discover that, it would probably stay at
the initial summons.

    MS. BEDDOE: Okay.

    LT. ALBANO: And there wouldn't be an
increase.

    MS. BEDDOE: So would -- I'm just trying
to understand what gets funneled to criminal
court and what would come to ECB. So let's play
out the serious physical injury. I imagine there
may be some criminal charges and then this sort
of civil fine. Would you be staying the civil
matter for resolution of the criminal matter? How
would that work?

    LT. ALBANO: That would be up to the DA.
We'd go by what the DA wanted.

    MS. BEDDOE: Okay.

    LT. ALBANO: But I've got to add is that
the, the most common offense, which is going to
be the first one: the failure to yield the right
of way when no one is injured; we currently write
about 8,000 summonses a year under the current
VTL Statute. And because it's easy for the
officers, they're aware of it, they know it;
that's what we're probably going continue doing rather than using a piece of the Administrative Code.

MS. BEDDOE: Okay. Elizabeth?

MS. KNAUER: So in that sentence you wouldn't contemplate the officers would be writing a ticket to DMV or that's returnable at DMV and a ticket that's returnable at ECB --

LT. ALBANO: In which case?

MS. KNAUER: For the example of the one that you just gave, for the failure to yield. I think you mentioned that that is -- I mean, obviously that is something that's, that --

LT. ALBANO: But all of this is covered by the VTL.

MS. KNAUER: Right.

LT. ALBANO: The, the most common one is failure to yield; there's no injury, there's no property damage. Just somebody failed to yield to a pedestrian or bicyclist.

MS. KNAUER: Uh-huh.

LT. ALBANO: Just because it's such a lift for us, a heavy lift for us to do all this
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training; we're going continue using the Vehicle
and Traffic Law provision. And that's --

MS. KNAUER: And, and having those go to
the DMV?

LT. ALBANO: And they go to Traffic
Violations Bureau.

MS. BEDDOE: Okay. Arnie -- I'm sorry.

MS. KNAUER: So, but do you, do you, do
you expect that for even for some of the more
serious ones, that someone might be issued a
summons both to ECB and to Traffic Violations?

LT. ALBANO: No. They'd only be issued
one summons?

MS. KNAUER: They'd just be issued one.

LT. ALBANO: Just one, one summons with
the offense.

MS. KNAUER: And these are just higher
penalties that would be available?

LT. ALBANO: Yes.

MS. KNAUER: Okay.

LT. ALBANO: But I, I've got to be quite
frank. Because we already have tools that we're
well familiar with under these sections.
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MS. KNAUER: Mm-hmm.

LT. ALBANO: And under the VTL if you lose the scene of an accident, you're subject to arrest and not just a civil penalty.

MS. BEDDOE: Right. Mm-hmm. Ernie?

HON. ERNEST J. CAVALLO, CITIZEN MEMBER:
Ernest Cavallo, citizen member. Dan, I sit in court and I see many police reports that say: left scene of accident. But I don't see ticket given. The driver that stayed gives the police officer a license number. What's the procedure? How is -- what level of proof is going to be necessary before you issue a ticket to somebody who allegedly left the scene of an accident?

LT. ALBANO: Well, if, if somebody left the scene of an accident and it's clear -- it would be clear to, just by common sense, it's clear that I was in an accident.

MR. CAVALLO: Right.

LT. ALBANO: Right? Let's say you have people have accidents and they don't realize it. That's not leaving the scene.

MR. CAVALLO: What I'm saying is: Is the
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police officer going to go and check out where
this car is and see if there's damage on it and
then issue a ticket to him? Or are they just
going to take the say-so of the person that is
back sitting in the street waiting for the police
to come to write up an accident report?

LT. ALBANO: No, we would have to -- we
would have to go find the person who left the
scene.

MR. CAVALLO: There'd be an
investigation?

LT. ALBANO: There'd be some; not much
of an investigation. But there would be an
investigation.

MR. CAVALLO: On the serious ones there
--

LT. ALBANO: Yes.

MR. CAVALLO: -- clearly would be.

LT. ALBANO: On the serious ones, it's
handed over to the detective squads. And it's
more -- it's more of an investigation. But for
the average property damage, they leave the
scene; the officers will track down the person
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based upon the information they get from the
person who stayed behind at the scene and serve a
summons upon that person. Now, now we're going to
have a choice between whether we're going to use
the VTL, which the officers are familiar with;
and we've got to gear them up to get them trained
to do what the Mayor wants, which is the -- to
use the Administrative Code.

MS. BEDDOE: Okay. Doug, you have a
question?

MR. DOUGLAS SWANN, CITIZEN MEMBER:
Douglas Swann, citizen member. I just wanted to
know in terms of leaving the scene, I'm not -- I
think we've all seen that people get into an
accident. It's traumatic. They might do something
rash and leave the scene. If they come back five
minutes later, is that still --

LT. ALBANO: Then, that we're not going
to arrest somebody; you'll give them the summons.
Leave the scene is when we have to go look, or
the police have to go look for you.

MR. SWANN: Okay.

LT. ALBANO: And find you. You're right.
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People do that. They get upset. Sometimes they're, they're frightened or the person they'd have an accident with is, is angry. They're frightened. So they leave the scene and come back at some, some other point. Or they drive to a police station because that's where they feel safe exchanging the information. And that's not leaving the scene.

MS. BEDDOE: Okay. Tayo?

MS. TAYO KURZMAN, FIRE DEPARTMENT: Tayo Kurzman, Fire Department. I'm just wondering why the regular penalty and the default penalty are the same? Like what the justification would be?

Do you expect --

LT. ALBANO: They -- the Police Department wanted the highest, the maximum penalty under the Statute. And naturally somebody that defaults I think should suffer the same penalty.

MR. HYLTON: Really? I mean --

LT. ALBANO: I mean, I think that's what we do in a lot of other contexts if I'm not mistaken.
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MS. KURZMAN: I just wonder what the --

LT. ALBANO: With the default penalty and not just the highest penalty.

MS. KURZMAN: Usually, I mean, usually what we do is we, we have a default penalty higher -- at least a little bit higher so that the respondents have an incentive to --

LT. ALBANO: To show up?

MS. KURZMAN: -- to show up at the hearing. So it just might be something you'd like to think about. I understand wanting the maximum penalty for all of the infractions. But then is there incentive for them to show up at the hearing if they're going to receive the same penalty regardless?

LT. ALBANO: A very good question. But I, I, I believe is that we can only set it as the maximum penalty under the law, right? And that is the $100 in the Vehicle as a maximum penalty.

MR. HYLTON: The default you can. Right.

LT. ALBANO: The default can be accepted?

MR. HYLTON: But you have discretion
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under standard penalty.

    LT. ALBANO: Alright, that's something I
didn't know. Alright.

    MS. KURZMAN: Instead of making -- I
mean, even to just make the standard penalty 950
[sic] instead of 100, just to give an incentive
to a respondent to show up or something like
that; you know, just a little bit less.
Otherwise, my concern would be that people won't
actually show up for the hearing.

    LT. ALBANO: That's a good point. That's
something I can bring back to my superiors. But
my concern right now is to get this rolled out as
soon as possible.

    MS. BEDDOE: Okay. Russ?

    MR. RUSSELL PECUNIES, ESQ., DEPARTMENT
OF ENVIRONMENTAL PROTECTION: Yeah. Russ
Pecunies, DEP. My question relates to the, the
consequences of being found in violation at ECB,
as opposed to criminal court or traffic court.
Will the results of these hearings affect a
driver's insurance? Could they result in license
revocation? Or will this just be a fine and
there'll be no impact on the driver's record?

   LT. ALBANO: Another very good question. And you're probably right is that if somebody was found guilty in ECB, at the Environmental Control Board, there is no way for the Department of Motor Vehicles to know that. It's just that the fine is higher.

   MS. KNAUER: So they wouldn't be [unintelligible][00:30:30]?

   LT. ALBANO: And I think that was the purpose of the Administration is the higher fine and hope that we would get compliance. The idea is not of course to collect fines. The idea is to get people to comply.

   MS. BEDDOE: Okay. Elizabeth, you had a comment?

   MS. KNAUER: I'm sorry. I shouldn't have interrupted. So they -- you, there would be no ability obviously of the ECB to, to issue points on someone's license?

   LT. ALBANO: No. No.

   MS. KNAUER: So --

   LT. ALBANO: DMV, the Department of
Motor Vehicles at the Traffic Violations Bureau would have that authority, yes.

   MS. KNAUER: So, in the, I guess --

   LT. ALBANO: And criminal court has a, a connection --

   MS. KNAUER: Right.

   LT. ALBANO: -- with the Department of Motor Vehicles. And criminal court would be able to notify the Department of Motor Vehicles that you've been convicted of whatever the offense is.

   MS. KNAUER: Mm-hmm.

   LT. ALBANO: And that has an effect on your license.

   MS. BEDDOE: Tayo, you had a further comment?

   MS. KURMAN: Well, my question was just to that end. Would there be possibly, I mean, maybe not at the moment but maybe the possibility of looking in; speaking to DMV and seeing if either the Police Department could provide the ECB decisions or if ECB could provide a decision directly to Motor Vehicles and have some kind of connection there? But that would be probably down
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the line -- I'm not sure, you know, if possible?

MS. BEDDOE: Elizabeth?

MS. SLIFKA: It's that unlikely that ECB would be providing decisions to the Department of Motor Vehicles. So, I mean, so NYPD is making a choice whether they want to have points on someone's license when they do the issuance or not; that where they decide where they're making the case returnable to. And it's their, their -- it's in their hands.

LT. ALBANO: Alright. But the, the Department --

MS. BEDDOE: Elizabeth and then Renaldo.

LT. ALBANO: Excuse me. The Police Department can't impose points on someone's license. Only the Department of Motor Vehicles can do that.

MS. KNAUER: In response --

LT. ALBANO: So there would have to be some connection between the Environmental Control Board and the Department of Motor Vehicles.

MS. BEDDOE: Elizabeth?

MS. KNAUER: Well, I, I would just think
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as suggestion that in training police officers; I mean, obviously when they -- when they stop or they get somebody for a violation of this nature, they'll run their license. So, if, if it's somebody who's -- who already has a lot of points or has a history, that might be something that's taken into consideration to which enforcement mechanism to use. But maybe sometimes it's better to suspend someone's license than issue a larger fine. Maybe that's just something to consider for training purposes.

LT. ALBANO: There's, unfortunately, there's a limited picture that the officers can get out in the field by radio or by the computers that we have in the radio cars. There's a limited pictures of what, what we can see on your license.

MS. KNAUER: Oh, okay.

MS. BEDDOE: Renaldo?

MR. HYLTON: So -- thank you. So that's where my question is: How much discretion then is the officer in terms of where does he, in terms of using these enforcement mechanisms, whether it
be through ECB or criminal or traffic? Because I can see the enforcement of this being so, you know, all over the place: somebody given a break to somebody going to ECB.

LT. ALBANO: Right. And I understand your point. It, it -- you think it might be left up to the discretion of the individual officer: Am I going to go with DMV summons? Or am I going to go with the ECB summons?

MR. HYLTON: Right.

LT. ALBANO: And that's not going to be the case. They will continue to, as I explained before, the more common one -- the failure to yield --

MR. HYLTON: Okay.

LT. ALBANO: -- because they've already, they're already familiar with it. They're writing summonses. I think last year we wrote 8,000 summonses for failure to yield to a pedestrian or bicyclist under the VTL. They will continue to do that. And then they're going to be instructed to write ECB summonses; ECB notices of violations for all the other offenses.
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MR. HYLTON: Okay.

LT. ALBANO: Now there may be some individual cases that are, you know, something very egregious; where we're going to arrest people under the VTL for leaving the scene of an accident, for causing a serious physical injury. That may happen.

MS. BEDDOE: Elizabeth?

MS. KNAUER: Just out of curiosity: What is the penalty available under the VTL for these types of violations?

LT. ALBANO: The VTL has a variety of penalties. If it's an equipment violation, it's as low as $40, which, you know, you're missing a mirror or your headlight's out.

MS. KNAUER: Right.

LT. ALBANO: And I think --

MS. KNAUER: But for leaving a scene?

LT. ALBANO: Um, I think the Department of Motor Vehicles can impose up to like about $400 penalty. But that's for like red lights; I'm not sure exact- going through a red light. I'm not sure exactly what the penalty is under the
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VTL for failure to yield or one of these other
offenses. But they're not as substantial as this.

MS. BEDDOE: Okay. Alright. Let's wrap
up this dialogue. Any other questions for Dan
before we take a vote? Okay. Well, let's see
where we are with this. Is there a motion to
Alright.

LT. ALBANO: Thank you.

MS. BEDDOE: Thanks, Dan. And now we
have Diana, who's going to talk to us about
amendments to our procedural rules.

MS. DIANA HAINES, ASSISTANT GENERAL
COUNSEL, OATH: Okay. Good morning. We have just
some revisions and amendments predominantly
really just refining some of the sections and
providing some definitions and clarity on the ECB
procedural rules. So what I'd like to do is run
through; you should have received the memorandum
from Helaine. I'd like to just run through it.
Obviously, if there are questions I'll, I'll
pause in between; so that if you have questions
pertaining to a specific provision just let me
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know.

The first one is pertaining to the Board or Tribunal. There are several sections being amended to clarify when the Tribunal is acting on behalf of the Board and when the Board itself is acting. Moving along, the definition of exception and appeals processing. The charter section of 1049A allows the Board to consider exceptions to a hearing officer's recommended decision and order. When in actuality the filing of exceptions is treated as an appeal. So we have several amendments here that are making this clearer. Including the addition of an actual definition of an exception. And amendments to the wording in subchapter D, which details appeal procedures.

We're also requesting a change that would require appeals and extension requests to be filed on forms prescribed by the Executive Director. Which would align ECB procedures with the requirements of other OATH tribunals. And finally with respect to that, we are requesting to extend the time for payment of the penalty or requesting a waiver of the prepayment from 20
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days to 30 days.

Okay. Next, we have -- we're defining the Executive Director. Basically this is to clarify that the Executive Director is empowered to designate someone else to act on his or her behalf if the Executive Director is unavailable. So to that extent, we've deleted references where they say: Executive Director or his or her designee.

We've defined petitioner to the extent, several sections of the Administrative Code provide for the commencement of ECB actions by citizens. Recently, ECB has seen a rise in the requests by citizens to commence actions. And so in those circumstances, the petitioner is actually -- the citizen is actually the petitioner. However, the definition of petitioner as it stands is not currently broad enough to include the citizen population. Therefore, we're requesting that the definition be reworded to include the citizen petitioners.

Okay. Regarding documents, 48RCNY3-14C is being amended to change the word "affidavit"
to "certification," as many submissions by both petitioners and respondents are not sworn or notarized. Basically, we're looking to provide better access to justice by putting respondents who may not understand the legal complexities of drafting an affidavit on equal footing with petitioners who routinely file certifications of service.

Okay. Next, regarding computation of time, 48RCNY3-15B is being amended to allow an additional five days to take action when making any response whenever mail is in use, you know, to serve documents.

LT. ALBANO: Why did we pick the five? They couldn't have made it more, more days?

MS. HAINES: Well, currently it's --

LT. ALBANO: It's always when we find we have to mail something to a city agency, five days is such -- for something important, such a tight time.

MS. HAINES: Right. And that's the thing, it currently is five. And so we're extended it an additional five days, so it will
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be ten.

LT. ALBANO: Ten, okay.

MS. HAINES: Is that enough?

LT. ALBANO: Yup.

MR. SCHULMAN: No, right now.

MS. HAINES: I'm sorry?

MR. SCHULMAN: No. Right now it is five
days in the rules. But that's limited by rule to
when a party sends another document to another
party. So we're expanding it to include documents
sent by the Tribunal as well. So that would
include decisions as well as appeal decisions.
And that's, that really comports with the CPLR,
as far as the five days.

LT. ALBANO: So it's still five days?

MR. SCHULMAN: It's still five days. But
it expands it to include documents sent by the
Tribunal. Whereas right now, it's only documents
being served on one party to the other.

MR. HYLTON: So this is not going to
benefit petitioners, right?

MS. HAINES: Yes.

MR. SCHULMAN: It would benefit you
because it's documents that we; if we mail you
something, you would also get five days as well,
if we mail it. If we email it, then, then it's
questionable but it's good for everybody.

MR. HYLTON: Okay.

MS. HAINES: So everybody gets five
days.

LT. ALBANO: But we're under such time
constraints because of the CPLR. We can't go past
what the CPLR want -- says.

MR. SCHULMAN: Well, could we -- I think
we could go past. I mean, we're modeling it after
the CPLR.

MS. HAINES: We are.

LT. ALBANO: Alright.

MR. SCHULMAN: We're modeling it after.

And five days, as far as what party they're
currently using on each other is working fairly
well.

LT. ALBANO: You know, my point is just
sometimes we put ourselves, the City puts itself
in such time constraints that it's very difficult
for a City agency to do something in that short
window of time. And if we should get any opportunity we can to expand it, we should have it.

MR. SCHULMAN: Well, it's five additional days to the time provided by any other rule. So if you have 30 days to file an appeal, you'll have 35 days.


MR. HYLTON: We're not debating this right now, right? Just because some --

MS. HAINES: Yeah, let's --

MR. HYLTON: Okay.

MS. HAINES: Do you have questions about this particular --

MR. HYLTON: I was just wondering if; I was going to raise a question about whether or not is it business days versus calendar days?

MS. BEDDOE: Calendar days.

MR. SCHULMAN: If, if -- that rule is modified by several other time computation rules, which define rules of calendar days. But at the
same time, depending upon when the period starts, if you mail something on a Friday, it will start counting on a Monday.

MR. HYLTON: By what rules?

MS. KNAUER: No.

MR. HYLTON: By what—by who -- by discretion?

MR. SCHULMAN: No, by, by rule.

MS. KURZMAN: No, that's not what this says.

MR. SCHULMAN: No, no, the rule --

LT. ALBANO: That's also not what the law says.

MR. SCHULMAN: ECB's rule has several other rules in the time computation. This is only talking about this one particular rule.

MS. HAINES: Right.

MS. KURZMAN: No, that's not what it says in, in one, two and three. But we can discuss this after she's done with this part of the presentation.

MS. HAINES: Regarding appearances.

MS. BEDDOE: Let's let Diana proceed
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please.

MS. HAINES: 48RCNY3-16D is being amended to clarify when a current property owner may appear on behalf of a prior owner. Registered representatives, 48RCNY3-16.1F is being amended to clarify the types of disciplines which a registered representative might be subject. And also 48RCNY3-52D is being amended to clarify that hearing officers have the power to bar participants from hearings. And this is actually different from and in addition to the types of discipline for registered representatives.

Regarding motions to intervene, 48RCNY3-35A allows intervention as a right at ECB only when a person may be directly and adversely affected by an order of the Board. The section goes on to state that: Imposing only a monetary penalty shall not be deemed an order directly or adversely affecting any person other than the respondent. Because intervention as of right—because of the status of intervention as of right gives the intervener the same rights as of party, including the right to appeal. Many complainants
attempt to intervene as of right. And while these requests are usually denied and complainants are granted discretionary intervener status, there has been some ambiguity as to when intervention as of right is allowed.

So basically this amendment clears up the ambiguity by allowing intervention as of right only in a cease and desist proceeding commenced pursuant to 48RCNY3-91. And also with respect to that, we're looking to increase the time period to file a written application to intervene as of right prior to the hearing from five days to ten days.

Okay. Next we have adjournments. Basically 48RCNY3-52.1 is being amended to clarify some of the terminology, as well as when hearing officers may or may not adjourn.

MS. KNAUER: Can I -- can I just -- sorry. Can I just make a suggestion on that section?

MS. HAINES: Sure.

MS. KNAUER: In terms of the Subsection B2, the added languages, whichever is greater; I
thought whichever is later would make more sense in this context. Because it's really -- it's not a time period.

MS. BEDDOE: Right.

MS. KNAUER: It's --

MS. HAINES: You're talking about a timeframe as opposed to --

MR. KNAUER: Timeframe. And so like time after. So I would just -- that is just a suggested word change.

MS. SLIFKA: Excellent. Okay.

MS. HAINES: Okay. Regarding decisions, we're proposing to add a new section, 48 -- RCNY3-57C, to allow parties to make an application to the Executive Director for a superseding decision and order if the hearing officer's order contains a ministerial error. So this should hopefully lead to fewer appeals to correct these types of errors; since the application should truly be only for ministerial reasons.

MS. KNAUER: I have a question about --

MS. HAINES: Yeah.
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MS. KNAUER: -- sorry, Elizabeth Knauer, citizen member. I was just wondering about this one because of the language that the issuance of the superseding decision and order under this section would not extend the time period in which to file an appeal.

MS. BEDDOE: Mm-hmm.

MS. KNAUER: So if that's -- if that's the case, how, how would this actually; you know, somebody's who's faced with this situation where they believe there's a ministerial error but they don't, you know, they might bring that up and request a superseding decision. But they only -- they still only have the 30 days to appeal. Wouldn't they, you know, pending a decision on that request for a superseding decision; they would still have to file an appeal. So I'm just wondering how many appeals is this actually going to avoid? They might -- you know, many of them may be ultimately mooted by a superseding decision but that just; it would depend on the timing. There's no real timing set forth for the Executive Director to, to make a decision on that
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application. So, if -- I, I, you know, as someone's attorney, I would feel that I'd have to do both.

MS. SLIFKA: Right, you raised -- you raised a good point and we looked at it. What happens often is it goes to; they end up appealing and appeal comes to us and says really they're only appealing because the penalty is incorrect. So, then we want to correct it rather than go through the appeal. We didn't actually look at it from going to the Executive first and not the appeal. And we also looked at it as we don't want to give someone additional 30 days if we're only-- we're not correcting anything that deals with the merits of the case that they would be appealing anyway. So it's interesting. I don't know, I'd have to think about this. So you raised very -- you raised a good point. I'll have to think about it.

MS. KNAUER: And then another related issue is that, I mean, there's not -- I don't, I don't know if you would; if you want to consider just putting in any kind of time limitation on
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seeking the superseding decision? Because there's not -- there's not one in this text. So that, just that people aren't years later saying: Oh, I was charged the wrong penalty or whatever.

MS. SLIFKA: Good points. So we'll look at that.

MS. BEDDOE: Ernie?

MR. CAVALLO: Ernest Cavallo, citizen member. I agree with Elizabeth but I go one step farther. I think -- I think it's a real trap for an unsophisticated litigant not to have the toll while the Executive Director does this. I just don't think they understand the process at all. And if somebody is reading: Oh, I can write to the Executive Director rather than do an appeal, I'll do that. They think they've preserved their rights. I, I find this; and how difficult is it for the Appeal Division to just issue a, a one-sentence thing saying: The fine was wrong. We hereby grant the appeal to the extent of correcting the fine amount to $300. And why give this; I think people are going to be writing to the Executive Director all over. They'd rather do
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that than, than go through what they consider to
be an appeal process. I think this is not helpful
to the ordinary citizen at all.

MS. BEDDOE: Renaldo, did you have a
comment?

MR. CAVALLO: I would eliminate the
whole thing, is what I'm saying.

MS. BEDDOE: Alright, I get that.

MS. SLIFKA: I think -- I think for the
purposes of there are other issues here that I'd
like to see go through; so for the purposes of
this change, we'll take out that section. It's
not -- we're not married to it. It's not that
important to us. So, we'll take out; we'll delete
that section. That's fine.

MR. HYLTON: Yeah, we -- I completely
agree with you.

MS. SLIFKA: Okay.

MR. HYLTON: But I just want to; I
think, Elizabeth, you brought up a good point
about the timeframe for --

MS. HAINES: I'm taking it out.

MR. HYLTON: -- for perhaps the
superseding. Is that --

    MS. SLIFKA: Well, we're taking it out.

We're taking it out.

    MS. BEDDOE: Well, if you -- if you
remove the provision.

    MS. SLIFKA: We're taking out the whole, the whole section.

    MR. HYLTON: Okay.

    MS. KNAUER: And I, I would just -- I would just add to this, you know, my, I, I agree that I think it would just add to the confusion for probably everybody.

    MS. SLIFKA: Gone. It's gone.

    MR. HYLTON: Okay.

    MS. BEDDOE: Okay. Next, the exhaustion of --

    MS. HAINES: Yeah, just a couple more.

    MS. BEDDOE: Mm-hmm.

    MS. HAINES: 48RCNY3-75, regarding exhaustion of administrative remedies. They allow for an application for superseding appeal decision in order to correct ministerial errors or errors due to mistake of fact or law. Some
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parties to ECB proceedings routinely file these requests because they believe this step is required before an appeal can be taken in the courts. And this confusion causes additional work for the Appeals Unit. And so we're therefore requesting the additional of a sentence to clarify that this step is not required in order for a party to exhaust its administrative remedies.

LT. ALBANO: Who is the --

MS. KNAUER: Sorry, I have a one -- I have a question on this one too. Elizabeth Knauer. So, I, I find this confusing because I reading this am not sure if, if when I am able to; I, I, I understand that this says that if I get an appeal decision that's adverse to me, I can then file an Article 78 petition.

MS. BEDDOE: Mm-hmm.

MS. KNAUER: But I guess the question that this raises in my mind is if the appeal decision is final, do I then have four months from that date to file my Article 78? Or if I decide to request a supersede, is it up to me? Do
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you see what I mean? That if I decided to request a superseding appeal, do I then -- am I then thereby totally; because the general rule or the jurisprudence at least under Article 78 is that if you request a reconsideration of a final decision, that doesn't add to your- the limitations period or toll limitations period.

LT. ALBANO: You still have four months.

MS. KNAUER: So this is confusing to me; as if I am going to seek a superseding appeal, do I still have to move forward in the judicial process at the same time? Or there's this ambiguity there.

MS. SLIFKA: You're right. So we should make clear that there's no tolling of your right-your appeals time.

MS. KNAUER: That the --

MS. SLIFKA: So add a sentence to --

MS. KNAUER: That the appeal decision, the first appeal decision is final, a final administrative decision. And then, you know, if you also decide on this separate track to seek the superseding appeal, that that's not adding to
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your four months. I, I -- or if you want to do it the other way, you could. I just think it needs to be clear for people; so there's, you know, you don't have litigation about this.

MS. SLIFKA: So, we'll, we'll add some clarification in regard to that.

MS. HAINES: Okay.

MS. BEDDOE: Okay.

MS. HAINES: And then finally regarding service of cease and desist actions; this staff is requesting 48RCNY3-91C be amended to offer service of cease and desist orders and notices of special hearing by regular mail. Since DEP also serves this orders by delivering them to respondents at the address where the equipment is located, service by certified mail return receipt requested is not necessary. Furthermore, ECB rules provide for prompt hearing post-sealing special hearings should equipment be sealed based on failure to appear at a pre-sealing hearing.

Anything on that one?

LT. ALBANO: I would make it in a document that something's been sent by certified
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mail.

MS. SLIFKA: Well, we've been doing it certified. We want to do it by regular mail.

LT. ALBANO: Let me ask you, by regular mail --

MS. SLIFKA: The same way that we do with decisions, there'll be an affidavit.

LT. ALBANO: Okay.

MS. SLIFKA: That will be signed when it's mailed out.

MS. BEDDOE: Okay. Elizabeth?

MS. KNAUER: Um, is it really a big deal to do the certified mail? I'm just --

MS. BEDDOE: Yes.

MS. KNAUER: It is?

MS. SLIFKA: It actually is. It really is.

MS. KNAUER: Because I just, I feel like for a cease and desist, it's really important that the person receive it.

MS. SLIFKA: I get that. And there's two issues. One, it is -- it actually is a really big deal. And two, I don't even know that that works
because people have to go then to the Post Office
to get it and people are busy. They don't get;
like I've gotten things certified mail and it's
like by the time I get to the Post Office, it
could be a week later because I'm at work from
the times the Post Office is open. So I have to try to go on a Saturday or something like that.
So I don't necessarily think we're doing the respondent any favors by sending it certified mail. I really thought this one through. So --

MR. HYLTON: But I did --

MS. BEDDOE: And especially because DEP is serving it --

MR. HYLTON: But I get her point though because you're talking about a cease and desist action.

MS. SLIFKA: Well, C -- DEP is also going out.

MR. PECUNIES: Yeah. We, we send an inspector to serve all of them. I, I, I would just say that if it turns out that this results in an abrupt drop in the number of people that are showing up for hearings, then we might have
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to --

MS. SLIFKA: To reconsider.

MR. PECUNIES: -- go back and reexamine it.

MS. SLIFKA: Right.

MS. BEDDOE: Okay? Alright. Emily, I'm sorry, go ahead.

MS. EMILY S. LALLY, CITIZEN MEMBER:

This is -- I don't know, have we ever seen anybody else issue a cease and desist?

[unintelligible][00:56:05], DEP?

MS. SLIFKA: No.

MS. HAINES: No.

MS. LALLY: So if you are going to serve them all personally and -- is it really and by regular mail rather than or by regular mail?

MS. HAINES: No.

MR. HYLTON: I think it has to be both, right? Because you need that person that --

MS. HAINES: Right. But this says or.

MR. PECUNIES: Yeah. As, as of right now, it's, it's either one is enough. But we do both.
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MR. HYLTON: But if you're going to do regular mail, it can't be -- it can't be one.

MR. CAVALLO: That can't be the only one.

MS. HAINES: No, personally is still --

MR. PECUNIES: Yeah, that's probably a good point.

MS. KNAUER: So, should we propose a change that this should say and regular mail?

MS. BEDDOE: So, Subsection C, is that what you're looking at?

MS. SLIFKA: Right.

MS. KNAUER: If that's the practice anyway, it shouldn't be an additional burden on the agency.

MS. BEDDOE: Okay. So just to clarify, we're looking at --

MR. PECUNIES: Yeah. We, I don't think -- we do it anyway; so I don't think we would have an objective --

MS. SLIFKA: Okay. So I mean, it's just -- right, it's just -- no.

MR. PECUNIES: I don't think we would
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object to making it and instead of or.

MS. SLIFKA: Okay, fine.

MS. BEDDOE: Okay. Alright. So just to recap where we are. With respect to the changes to the ECB procedural rules that were presented; we are looking at the following modifications under the adjournment section 48RCNY3-52. Just terminology, talking about later instead of greater. The section below, where we -- in decisions where we talked about a process for getting the Executive Director to amend decisions; we said we were going to remove that provision wholesale. And then with respect to the exhaustion of administrative remedies, we are going to clarify that that option does not extend the time for filing an Article 78; so the four months isn't tolled. And then with respect to this final provision, cease -- the service the cease and desist actions; we will change the connector in 3-9 -- subsection, Section 3-91, Subsection C to read: That the order to cease and desist and notice of special hearing shall be served personally and by regular mail; so instead
Okay? So that those were the comments. Tayo, you had one other thing?

MS. KURZMAN: I think that some of the agencies have quite a bit of other concerns. So I think Madelynn can sort of tell you about one.

MS. BEDDOE: Madelynn, you wanted to --

MS. MADELYNN LIGUORI, ESQ., DEPARTMENT OF SANITATION: -- Liguori, Sanitation. I guess we're just a little bit concerned that -- I actually just received rules yesterday; there was an issue with emailing to me.

MS. BEDDOE: Okay.

MS. LIGUORI: So my agency really didn't get a chance to fully review this. I got it in late afternoon yesterday.

MS. BEDDOE: Okay.

MS. LIGUORI: And are we approving this today? Or is this going to be told to --

MS. BEDDOE: We are -- we are seeking the approval with the amendments to that that we just discussed.

MS. LIGUORI: Could we move that to the
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next Board Meeting?

MS. BEDDOE: Why would we do that?

MS. LIGUORI: And have -- and have ECB come back with a new draft for us to approve before we sit and approve it? And maybe be- have more time to give any other comments we may have?

MS. HAINES: No.

MS. BEDDOE: Well, let's take a straw poll. Let's just see: Who's prepared to approve it with the amendments that we just discussed?

MR. CARVER: Well, I just have a question as to which agencies think they need more time?

MS. BEDDOE: Fire, Buildings, Sanitation, DEP.

MR. CAVALLO: Will it hurt if we do it a month later?

MR. PECUNIES: It's actually only three weeks I think until the next meeting.

MR. CAVALLO: Three weeks?

MS. KURZMAN: And I don't feel comfortable, just -- Tayo from Fire; I also have quite a number of concerns to bring up.
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MS. SLIFKA: But let, let me just -- I, I, that's; we can put it off but let me just explain. We're not revamping all the rules. These were very little minor errors. So we're not looking, you know, to change this. We're not looking to rewrite our rules at this point in time.

MR. HYLTON: But it was broad-based. It wasn't any particular section. You did a whole review of the entire rule. It wasn't just a particular section.

MS. BEDDOE: Well, let me just clarify. This is not an opportunity to reopen ECB procedural rules.

MS. SLIFKA: Correct.

MS. BEDDOE: This is an effort to clarify what already exists. And if you want input in that, that's what we're bringing to the table. Okay?

MR. HYLTON: But does it -- does any of these changes change the procedural rule stuff though?

MS. SLIFKA: No.
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MR. HYLTON: The procedures?

MS. KURZMAN: Yes, they do.

MS. SLIFKA: Which ones?

MS. KNAUER: DEP rules.

MS. SLIFKA: DEP is fine. We've discussed; we discussed this with DEP prior to this change.

MS. KURZMAN: I under- right.

MR. PECUNIES: That part, yeah.

MS. BEDDOE: The service, mm-hmm.

MS. KURZMAN: But there are things that affect the other agencies. There are also I think based on some of the changes that may be potentially definitions that needed I think a couple of the rules actually are a little; they make things a little too narrow. And I can give you an example: 316.1F talked about subject to discipline only in accordance with these rules. But then if kind of leaves out any other types of discipline.

MS. SLIFKA: Three dash what?

MS. KNAUER: 3-16.1F. It says that --

LT. ALBANO: The registered
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representatives --

MS. KNAUER: Registered representatives would only be subject to these rules in accordance with 16.2C and 16.2D. But it's too -- I think it's too narrow. What about all of the other licensing entities? And what about DOI? So kind of would -- if I were reading this --

MS. SLIFKA: This is for just discipline within ECB.

MS. BEDDOE: This is just discipline within ECB.

MS. KURZMAN: Right. But if ECB chooses to report it outside, that is --

MS. SLIFKA: We can still do that.

MS. BEDDOE: Well, we don't have to; we don't have to embody that language here because we are obligated to do that by other City rules. So we don't have to repeat that provision in here. I mean, we're obligated to report corruption and other kinds of improper practices do DOI.

MS. KURZMAN: Okay.

MS. BEDDOE: So I don't think we need to
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have a rule that says that.

MS. KURZMAN: I would think that this rule seems to limit it. But --

MS. BEDDOE: Okay. Let's just stop there.

MS. KURZMAN: There are a couple other concerns that we have.

MS. BEDDOE: Let's just stop there. Excuse me, let's just stop there. Let's take a straw poll. What we are trying to do is clarify rather than revisit. So if you're not prepared to go forward with this, with these amendments as they are, can I see a show of hands?

MS. KURZMAN: Not prepared to move forward?

MS. BEDDOE: Not prepared. You're not prepared to vote on this today. Okay. Alright. So the majority of the Board here is not prepared to go forward today. Let's table this and put this over for the next meeting. Okay. Alright. So, it will be revisited at another time. Okay? Alright.

MR. CAVALLO: Not next month?

MS. BEDDOE: That will not be up to me.
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MR. CAVALLO: Oh, that's right.

MS. BEDDOE: So, we will see if and when that will happen. Alright. Thank you, Diana.

MS. HAINES: I'm staying. Right? I’m up next again?

MS. BEDDOE: Well, there is a Department of Transportation penalty schedule that we are looking at.

LT. ALBANO: Yeah. We haven't gotten their [unintelligible][01:04:00].

MS. BEDDOE: Yeah. Is there a Leslie Bailey who is presenting?

MR. MACRON: We have to do the Buildings.

MS. HAINES: We have to do buildings as well.

MR. MACRON: We didn't do the Buildings.

MS. BEDDOE: No. Do I have the wrong one here -- number six?

MR. MACRON: Number six.

MS. BEDDOE: I'm checking things too soon. I'm so sorry. I'm so sorry. Go ahead.

MS. HAINES: You're still here.
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MS. BEDDOE: The Buildings penalty schedule. Thank you.

MS. HAINES: Okay. So these amendments were proposed by Buildings in September. We did receive approval certification from the Mayor's Office of Operations, as well as the Law Department. And so pending your approval today, will, will then, you know, be subject to, to public hearing. I do want to note that local law has changed the effective date of this rule from October to December 31st of 2014. Okay?

And basically ECB is proposing to amend the Department of Buildings penalty schedule, you know, for notices of violations issued by Department of Buildings, to help enforce local law 141, which updates the Administrative Code, the Plumbing Code, the Building Code, the Mechanical Code and the Fuel and Gas Code. So, local law 141 amended some requirements, added some new requirements and renumbered the existing sections of the codes. And the penalty schedule now has to be amended to reflect these changes.

I just want to note that the penalty
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amounts for all the existing infractions remain unchanged; that they all fall within the guidelines for all classes of violations and that any new violations that are not immediately hazardous are indicated as curable in the penalty schedule. So should we go through each section? Or are there questions?

MS. BEDDOE: I'll just ask if there are questions on that? Elizabeth?

MS. KNAUER: Um, on the -- I just, just referring to the Council Member Rose's comments that were included in our package; there was one about --

MS. HAINES: That's the DEP. We'll --

MS. KNAUER: Oh, I'm sorry.

MS. HAINES: I'll, I'll answer that later gladly.

MS. KNAUER: Okay, I'm sorry.

MS. HAINES: Yeah, that's -- we're doing DOB right now.

MS. KNAUER: Yes, oh, okay. Sorry.

MS. BEDDOE: Okay. Any other questions?

Alright. So shall we take a vote? Is there a
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motion to approve? Anyone against?

MR. HYLTON: Vote to approve it, I guess, right? I think so.

MS. BEDDOE: Yeah. Okay. Anyone against?

Any abstentions? Okay.

MS. HAINES: Thank you. I'll be back.

MS. BEDDOE: Alright.

MR. HYLTON: [Unintelligible][01:07:10] abstentions?

MS. BEDDOE: No, there were no abstentions.

MR. HYLTON: I should have abstained on that.

MS. BEDDOE: Renaldo -- okay. Renaldo's going to change his vote to abstention.

MS. HAINES: Yeah.

MS. BEDDOE: Okay. Next up we have is the proposed rule to amend the Department of Transportation penalty schedule. Leslie?

MS. LESLIE BAILEY, LAW SCHOOL FELLOW, OATH: Good morning. I am Leslie Bailey. I am a Legal Fellow in the OATH General Counsel's Office. And I'm going to present two related
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rules which amend ECB's DOT penalty schedule. Both of these rules were presented to the Board by DOT during September's meeting. And I note that both rules have now been approved by the Law Department and the Mayor's Office of Operations. So the first rule decreases the fine for failure to obtain a confirmation number for a street opening permit on a protected street where
the permittee is not engaging in backfill. So the penalty would be reduced from the current $750 to $250, with a default penalty of $750.

The second rule establishes a new penalty for failure to obtain a confirmation number two hours prior to the commencement of a backfill on a protected street. The new rule carries a penalty of 750, with a default penalty of $2,250.

MS. BEDDOE: Okay.

MS. BAILEY: Are there any questions?

MS. BEDDOE: Any questions for Leslie on this? Okay. Is there a motion to approve? Anyone against? Abstentions? Okay. Thank you. That was easy. Alright. We've got an active Board today.
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Come on.

Okay. Next up, this is another final rule for an amendment to the Air Asbestos -- the Air Asbestos Code. Diana, you're at it again?

MS. HAINES: Here I go.

MS. BEDDOE: Okay.

MS. HAINES: Hold your questions. Okay.

So this is a final rule. Obviously, it's already been approved by the Mayor's Office and the Law Department and a public hearing on this was held on September 12th. And also the rule was published in the City Record on August 12th. Some of the changes address the evolving industry practice that raised certain safety concerns and others were introduced in response to revisions by the rules of the City of New York. It should be noted that there are no cure periods available because the governing statutes mandate the imposition of a minimum penalty.

Regarding the public hearing that was held, there was one member from the public and a representative from DEP. The member from the public chose not to testify. We also received
certain written comments, which have been sent to
the Board and addressed and we'll address any
other questions that you have as well.

So I just want to briefly go through
them. There's a change to the Air Asbestos
penalty code -- penalty schedule; basically
requiring DEP to establish a program that
provides registration of practicing master
environmental hazard remedy technicians. And so
the ECB penalty schedule needs to be modified to
specify any violation of this, where an
individual falsely identifies him or herself as a
master hazard remediation technician.

There's also with respect to the Air
Asbestos penalty schedule, an added penalty that
basically the section requires contractors to
carefully install ducting for negative pressure
units. Because the improper installation does
threaten the release of asbestos. Okay.

Then there's several changes to the Air
code penalty schedule. These relate to dry
cleaning facilities. And basically what they do
is they spell out each requirement: First, New
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York State requirement that notice has to be posted; and then subsequently, you know, whether they're using Perc or non-Perc chemicals and the related penalties for not having those postings.

In addition, the Air code penalty schedule is being amended to set forth performance standards and engineering criteria for boilers and water heaters. Basically requiring that boilers that require a certification— a certificate of operation undergo an annual tune-up and combustion efficiency test. And those testings need to be maintained; the records of those testings need to be maintained.

And finally, the air pollution control code which prohibits the use of delivery or use of heating oil that contains less than two percent biodiesel by volume carries certain penalties depending on whether you're using or delivering noncompliant heating oil.

Are there any questions about any of these provisions?

MS. BEDDOE: Elizabeth, you had a question?
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MS. KNAUER: Yeah. I just would be interested to hear DEP's response to the Council Member Rose's comments on Section 1-91N about the failure to fully install ducting to ensure against the fiber release of asbestos fibers. I think she had just asked how, you know, how carefully install is defined. I mean, is there some kind of standard?

MR. PECUNIES: Well, this is not -- this is not a new section.

MS. KNAUER: It's not?

MR. PECUNIES: This is an existing section that had been accidentally omitted from the penalty schedule.

MS. KNAUER: Okay.

MR. PECUNIES: So it's not, you know, this is not something that we just promulgated in terms of the rule itself. The rule has been there for, you know, 30 years.

MS. KNAUER: And it's been -- and the violations have been issued under a more general section.

MR. PECUNIES: It's not a section; it,
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it really came to light that it had been omitted when an inspector finally wanted to issue it. It's not a section that is regularly or routinely cited.

MS. KNAUER: Okay. So there, there aren't any, you know, specific requirements that would, you know, carefully would be defined by --

MR. PECUNIES: Carefully is not -- carefully is not defined to my knowledge, no.


MR. PECUNIES: Yup.

MS. BEDDOE: And we have a lot of them.

MR. PECUNIES: Actually not as many as we've had on some other occasions. But, okay. Okay. This month DEP has in terms of requests for cease and desist orders: first, one request under the noise code. This is for TJ Food Corp at 3419
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Broadway in Manhattan. Their air conditioning unit has been cited on four occasions: three times last summer and fall and now again in September of this year. The same unit has been cited again for being too noisy. This is apparently a Subway sandwich store. Based on the repeated violations and the fact that the unit is still too noisy, DEP is requesting an order to cease and desist.

MS. BEDDOE: Okay.

MR. PECUNIES: Do we go all of them?

MS. BEDDOE: Well, let's just ask if there; because it's a noise issue, let's just ask if there are any questions on this particular request?

MR. PECUNIES: Okay.

MS. BEDDOE: No? Okay.

MR. PECUNIES: Okay. We also have one request under the Air code for something other than a boiler. This is for Diamond Cut Auto Body at 2364 Flatbush Avenue in Brooklyn. They have a spray booth for painting cars. And they have been cited on three occasions this year for operating
the spray booth without a certificate of operation. They have defaulted on the first two violations. The third one is coming up for a hearing in December. This is a location that we're getting a lot of complaints about. And because of the repeated violations and continuing failure to correct, DEP is requesting an order to cease and desist from the use of the spray booth.

MS. BEDDOE: Okay. Any questions on that air violation? Okay. Russ?

MR. PECUNIES: Alright. We have two requests under the Air code relating to locations that have boilers that have expired certificates of operation to use number six oil. And these are the same essentially as the ones that we've been bringing to the Board each month for the last few months.


MR. PECUNIES: And then we have the usual 28 requests for cease and desist orders related to failure to install backflow devices.

MS. BEDDOE: Okay. Any question- any
questions on any of those 28 backflow requests?

    LT. ALBANO: No.

    MS. BEDDOE: No? Okay. So let's take a vote collectively on the noise, the three air and the 28 backflow C&D requests. Is there a motion to approve? Anyone against? Any abstentions?

Russ. Okay.

    MR. PECUNIES: Yup, thank you.

    MS. BEDDOE: Thank you very much. Okay. Now we have the pre-sealing reports. Kelly Corso is presenting today.

    MS. KELLY CORSO, ESQ., ASSISTANT DIRECTOR OF ADJUDICATIONS, ECB: Good morning.

    LT. ALBANO: Good morning.

    MS. CORSO: We have 19 pre-sealing reports today; two of them pertain to noise from kitchen exhaust systems. And in both of these cases, the respondents' representatives provided proof of work done on the kitchen exhaust systems to bring them into compliance with the noise code. And based on the evidence of compliance, the ALJ's in both cases recommended that DEP re-inspect the equipment and that the equipment
remain unsealed if the initial re-inspection shows no violations and if further re-inspections for a period of 180 days show no violations.

MS. BEDDOE: Okay.

MS. CORSO: The next case we have is pertaining to violation of the Air code. In this case again this is related to boiler equipment. Again, in this case respondent's representative provided proof of a valid operating certificate bringing the boiler into compliance with the Air code. Based on that information, the ALJ has recommended that no further action is necessary given the respondent's compliance.

Then we have one case pertaining to failure to install proper sewer equipment. In this case the ALJ recommended that the C&D order be discontinued because DEP records show that the respondent had come into compliance.

MS. BEDDOE: Okay. Any -- oh, I'm sorry, Kelly. Go ahead.

MS. CORSO: And 15 of the reports pertain to failure to install backflow devices. In 14 of those cases, the ALJ's recommended that
there be no sealing or other action given the respondent's compliance. In the remaining case, the ALJ recommended that the C&D be discontinued based on DEP's acknowledgement that the C&D was issued for incorrect lot number.

MS. BEDDOE: Okay.

MS. CORSO: And that's it.

MS. BEDDOE: Alright. Any questions on any of those reports? Okay. So let's vote on them collectively. Is there a motion to approve? Anyone against? Abstentions? Russ. Great. Okay. It's about that time when we have to discuss our litigation and appeals. And so is there a motion to go into executive session? Alright. Anyone who isn't a part of OATH will have to excuse us for a while.

[OFF THE RECORD]

[ON THE RECORD]

MS. BEDDOE: So with that, is there a motion to affirm the appeals decisions from the October 9th and the October 23rd panels? Okay. Thank you very much.

MS. KURZMAN: I just have a procedural
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question --

MS. BEDDOE: Yes.

MS. KURZMAN: -- with the votes on the pan- for the panels. Do you have the agencies abstaining from their own decisions? Or --

MR. MACRON: Right, we note that.

MS. BEDDOE: Yes, we note that.

MS. KURZMAN: Okay. I just -- I just wanted to make sure.

MS. BEDDOE: Yeah, absolutely. And so is there a motion to adjourn? Okay. Thank you everyone.

(The public hearing concluded at 11:10 A.M.)
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CERTIFICATE OF ACCURACY

I, Andrew Slawsky, certify that the foregoing transcript of Environmental Control Board on October 30, 2014 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

Date: October 31, 2014

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