

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

BOARD MEETING

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

December 18, 2014

9:22 A.M. to 10:35 A.M.

December 18, 2014

MEMBERS PRESENT:

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

ALSO PRESENT:

Helaine Balsam, Esq. - Deputy General Counsel, OATH
**Kelly Corso, Esq. - Assistant Director of Adjudications,
ECB**
Arisleyda Fernandez - Facilities Assistant, OATH/ECB
Fana Garrick - Public Affairs Assistant, OATH/ECB
David Goldin, Esq. - Administrative Justice Coordinator
Shamonda Graham - Department of Transportation
Joseph Gregory - Fire Department
Diana Haines - Assistant General Counsel, OATH
Peggy Kuo - Deputy Commissioner and General Counsel, OATH
Mark H. Leeds, Esq. - Special Senior Counsel ECB
Jim Macron, Esq. - Counsel to the Board, ECB
Maria Marchiano - Senior Counsel/Assistant Commissioner,
OATH
Denise Ortega - IT Support, OATH
Peter Schulman, Esq. - Deputy Supervising Attorney,
Appeals, ECB
Frances Shine - Secretary of the Board, ECB
Amy Slifka, Esq. - Deputy Commissioner/Executive Director,
ECB
Thomas Southwick, Esq. - Supervising Attorney, Appeals,
ECB
Phillip Sturgers - Appeals Attorney, ECB

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2 (The board meeting commenced at 9:22
3 A.M.)

4 MR. FIDEL F. DEL VALLE, ESQ.,
5 CHAIRPERSON, COMMISSIONER & CHIEF ADMINISTRATIVE
6 LAW JUDGE, OATH: Good morning, ladies and
7 gentlemen and guests. I'll call the meeting to
8 order and ask if there's a motion to adopt the
9 minutes from the last meeting? Since everybody
10 raised your hands, I assume it's by acclimation.
11 Oh.

12 DOUGLAS SWANN, CITIZEN MEMBER: I
13 Abstain.

14 MR. DEL VALLE: Oh. Oh, you abstained.
15 Okay. One abstention.

16 RENALDO HYLTON, EXECUTIVE DIRECTOR,
17 DEPARTMENT OF BUILDINGS: Make that two
18 absentions. I was also out [00:01:07].

19 MR. DEL VALLE: Who? Oh, I'm sorry.
20 You weren't here. Sorry about that. Just one
21 little housekeeping thing before we go any
22 further. I was informed that the microphone
23 isn't working. How about that? Do I have to
24 repeat everything for the record? Do I have to

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2 repeat everything for the record?

3 MS. AMY SLIFKA, DEPUTY COMMISSIONER/EXECUTIVE
4 DIRECTOR, ECB: No. I think we're--

5 MR. DEL VALLE: No. Okay. I don't want
6 the first few pages to be blank. People, they
7 might wonder. Anyway, what I was saying is I
8 understand that previously the Chair didn't vote
9 except when there was a tie. And I was trying to
10 figure out why that was and I was told there is
11 no particular reason for that other than that was
12 the custom. So, I intend to vote on every item
13 whether there's a tie or not. I always have when
14 I've been -- when I've chaired other boards and I
15 have no intention of changing until I'm made
16 President of the United States Senate, then I'll
17 worry about that, which is not likely to happen
18 any time soon. Despite what concerns some folks
19 have about us establishing diplomatic relations
20 with Cuba. The first order of business other
21 than the minutes is presentation on a proposal
22 regarding amendment to the sanitation penalty
23 schedule.

24 MS. MADELYNN LIGUORI, ESQ., DEPARTMENT

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2 OF SANITATION: Hi. I'm Madelynn Liguori from
3 the Department of Sanitation. I'm here today to
4 request a technical amendment to the existing
5 ECB's penalty schedule pursuant to Local Law
6 Number 57 of 2013, which restricts the bulk
7 collection of recyclable beverage containers
8 while using a motor vehicle. Previously the
9 department came to the board in November of last
10 year to request a penalty schedule. During the
11 review by the Law Department and Mayor's Office
12 of Operations, a subsection was inserted into the
13 provisions pertaining to the owner violations for
14 this violation. We've had several decisions
15 since this occurred that the sections that were
16 added by the Law Department and Mayor's Office of
17 Operations really do not apply to owners. So,
18 the tickets are getting dismissed. We had the
19 Law Department on board with changing the
20 provision back to the entire section as opposed
21 to subsection A or subsection B. The penalties
22 remain exactly the same. They are fixed in the
23 local law itself and are fixed in ECB's penalty
24 schedule.

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2 MR. DEL VALLE: What's the effective
3 difference?

4 MS. LIGUORI: The effective -- it's a
5 difference of citing to 16-471 or 16-471
6 subsection A or subsection B. A and B are
7 actually operator provisions and they do not
8 pertain to an owner. And actually subsection D
9 does pertain to the owner, but it's not clear
10 from D what exactly the violation is for. So, it
11 makes sense to cite to the entire section of law.

12 MR. DEL VALLE: Are there any questions?
13 Discussions? Is there a motion? I think
14 everyone has their hand up. It is adopted.

15 MS. LIGUORI: I abstained.

16 MR. DEL VALLE: Oh. Everybody didn't
17 have their hand up. Okay. Next item on our
18 agenda is the presentation regarding amending the
19 ECB DOT penalty schedule of failure to provide
20 adequate protection at work sites.

21 MS. DIANA HAINES, ASSISTANT GENERAL
22 COUNSEL, OATH: Good morning everybody.
23 Assistant General Counsel Diana Haines for OATH.
24 This rule proposal is based on the presentation

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2 given last month by Shamonda Graham of the
3 Department of Transportation and has since
4 received certification from both the Mayor's
5 Office of Operations as well as the Law
6 Department regarding an amendment to the penalty
7 schedule for failure to provide adequate
8 protection at work sites. DOT is requesting that
9 ECB amend the penalty from \$400 to \$1,200. Are
10 there any questions?

11 MR. DEL VALLE: Just a matter of
12 personal observation, my office window you see
13 the construction site across the street where
14 that tremendous building is going up. And it's
15 kind of hard to concentrate sometimes when you
16 see this monster crane lifting these monster
17 things going up and wondering how safe it is and
18 whether there's a strong wind and I'm going to be
19 having several tons of steel sitting on my lap.
20 So, I think it's a good thing that such safety
21 rules at construction sites are strongly
22 enforced. At least while my office is there. Is
23 there a motion? I have to be very careful now,
24 make sure everybody's hand is up when I say

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2 everybody's hands up. Everyone's hands up. It's
3 unanimous. We have DEP's request for cease and
4 desist orders.

5 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT
6 OF ENVIRONMENTAL PROTECTION: Okay. Good
7 morning. Russell Pecunies of the Department of
8 Environment Protection. DEP has several requests
9 for a cease and desist orders this morning.
10 First we have two requests under the noise
11 control code. The first one regards 26 East 91st
12 Street in Manhattan. The respondent is Manna
13 Madison Avenue LLC, which does business as Gina
14 La Fornarina, which is restaurant. This
15 establishment has been cited once last year and
16 four times this year for noise from the kitchen
17 exhaust. Due to the repeated violations and
18 continuing failure to come into compliance, DEP
19 is asking the board to issue a cease and desist
20 order.

21 MR. DEL VALLE: Any questions?
22 Discussion? Is there a motion?

23 MR. PECUNIES: And obviously I abstain.

24 MR. DEL VALLE: So, it's with your

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2 abstention. I think it's -- we have only one
3 negative vote or it's -- did you vote?

4 MS. TAYO KURZMAN, ESQ., FIRE DEPARTMENT:
5 I voted for it.

6 MR. DEL VALLE: Okay. Then it's
7 unanimous other than your vote.

8 MR. PECUNIES: Okay. The next noise one
9 is in regard to 361 Clinton Avenue in Brooklyn.
10 This one the respondent is a Akam Associates,
11 which is the managing agent of the building,
12 which is owned by Clinton Hill Apartments Owners
13 Corp. At this location there is a fan that has
14 been cited three times since May of this year for
15 excessive noise. And due to the repeated
16 violations and continuing failure to come into
17 compliance, DEP is asking that the board issue a
18 cease and desist order.

19 MR. DEL VALLE: Any questions?
20 Discussion? Motion? It's unanimous. Thank you.
21 Except for you, I presume.

22 MR. PECUNIES: I abstain, yes. Next
23 under the air code, DEP has nine requests for
24 orders to cease and desist. These are all for

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2 locations that have expired certificates of
3 operation to use number six fuel oil in each of
4 these -- which is banned as of June of next year.
5 And you can no longer get a new certificate of
6 operation to use number six. In each of these
7 nine cases, the owner or managing agent has been
8 cited for the expired certificate of operation.
9 In each of these nine cases they have been
10 adjudicated in violation and the board order to
11 comply within 30 days has not been complied with.
12 So, in each of these nine cases DEP is requesting
13 that the board issue an order to cease and
14 desist.

15 MR. DEL VALLE: Okay.

16 MS. EMILY S. LALLY, CITIZEN MEMBER: I
17 just have one question about the violations on
18 these because I noted on some of them where it
19 says at the bottom it was number four or number
20 six, the six wasn't circled. So, it's in all
21 cases that it's just the number six that's no
22 longer allowed and four is still allowed? Is
23 that correct?

24 MR. PECUNIES: Right. Well we issue --

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2 I mean, we issue violations to people who use
3 other types of fuel for certificate -- expired
4 certificates also. But we're not bringing those
5 to the board.

6 MS. LALLY: So, these are all for six?

7 MR. PECUNIES: These are all for number
8 six, yes.

9 LT. DAN ALBANO, ESQ. POLICE DEPARTMENT:
10 Yea, but it's not because it's number six. It's
11 because it's expired certificate?

12 MR. PECUNIES: Well, the, the basis for
13 the order and compliance with the order is to get
14 a certificate of operation. The effect of it is
15 that they have to stop using number six because
16 you can't get a new certificate--

17 LT. ALBANO: Certificate.

18 MR. PECUNIES: --to use number six.

19 MR. DEL VALLE: Can you get a
20 certificate for number four?

21 MR. PECUNIES: Yes.

22 MR. DEL VALLE: Okay.

23 MR. PECUNIES: Until 2030.

24 MR. DEL VALLE: Okay.

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2 MR. THOMAS D. SHPETNER, CITIZEN MEMBER:
3 So, is the effect that these boilers are going to
4 be shut down? I'm not clear--

5 MR. PECUNIES: If they fail to comply?

6 [CROSSTALK]

7 MR. PECUNIES: We would -- if they fail
8 to comply or if they default on the cease and
9 desist order, we would have the ability to seal
10 the equipment as we do under all cease and desist
11 orders. We have a number of them, a number of
12 the ones that the board has approved over the
13 last few months that are in default at this time.
14 We have not gone to seal any equipment at this
15 time. We are trying other methods of reaching
16 out to the owner or managing agent to get them
17 into compliance. There were a couple of
18 buildings with financial issues that they're
19 trying to work through. And next spring at some
20 point as we approach June 30th, if people are
21 still not in compliance, at that point we
22 probably will seal some equipment.

23 MR. SHPETNER: Thanks for explaining. I
24 didn't understand the fine print.

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2 MR. DEL VALLE: I think there was a
3 little underlying concern that not going to
4 freeze people out in the middle of the winter
5 even if they are not in compliance.

6 MR. SHPETNER: Right.

7 MR. PECUNIES: Right.

8 MR. DEL VALLE: Does, does the equipment
9 have to be modified in order to, to use a
10 different fuel oil?

11 MR. PECUNIES: It depends on what you're
12 switching to. If you're switching to number
13 four, it is a minor modification. Usually the
14 main thing if you're switching to number four is
15 that the tank has to be cleaned out. And
16 sometimes when the tank gets cleaned out, they
17 find out that the tank was really only being held
18 together by the gunk on the bottom of it. And
19 they have to replace the tank. To convert to
20 number two, or natural gas, is a more extensive
21 operation. But on the other hand, if they
22 convert to number two and natural gas, they won't
23 have to change again in 15 years.

24 MR. DEL VALLE: Any other questions?

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2 MR. HYLTON: Yes. How much of the
3 issues that you see coming up are a result of
4 owners or managers not being able to obtain
5 building permits for that--

6 MR. PECUNIES: The owners?

7 MR. HYLTON: Not being able to obtain or
8 -- building permits to do this?

9 MR. PECUNIES: In financial?

10 MR. HYLTON: No. Building permits.

11 MR. PECUNIES: Oh, building permits.
12 Well, no, we haven't seen any -- well, the only,
13 the only holdup sometimes with buildings permits
14 is if they have open violations on the building.

15 MR. HYLTON: Right.

16 MR. PECUNIES: That will hold it up
17 sometimes. But I haven't seen any other issues
18 with them being able to get DOB permits.

19 MR. HYLTON: Because as a matter of
20 operation, if you need any assistance on that
21 like if they tell you there are open violations
22 that are prohibiting us from going forward, we do
23 have some--

24 MR. PECUNIES: Okay.

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2 MR. HYLTON: --operation obstacles there
3 I think sometimes and we'll be able to, to
4 facilitate--

5 MR. PECUNIES: That actually comes up
6 more often with the backflow stuff.

7 MR. HYLTON: Right.

8 MR. PECUNIES: That when they go to get
9 the buildings permit to do that--

10 MR. HYLTON: Right.

11 MR. PECUNIES: --that it turns out that
12 the building has open violations and they have to
13 clear then up first.

14 MR. HYLTON: Yea.

15 MR. PECUNIES: But it hasn't been a
16 major issue with the boiler ones so far that I've
17 seen.

18 MR. HYLTON: Okay.

19 MR. DEL VALLE: Any other questions?
20 Discussion? Is there a motion? It's unanimously
21 approved.

22 MR. PECUNIES: And obviously I abstain.
23 Okay. And finally we have 19 requests for cease
24 and desist orders for failure to install backflow

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2 prevention devices. In each of these cases, the
3 building owner has been ordered by the
4 commissioner to install the device because of a
5 hazard that exists in the building. In each of
6 these cases based on a failure to comply with
7 that order, a notice of violation has been issued
8 to the building owner, which has been adjudicated
9 in violation. And in each of these cases, the
10 building owner has continued to fail to initiate
11 the process of installing a backflow prevention
12 device and based on that, the department is
13 requesting that in each of these cases the board
14 order -- issue an order to cease and desist.

15 MR. DEL VALLE: Any questions? Is there
16 a motion? And with your abstention, it's
17 unanimous.

18 MR. PECUNIES: Thank you.

19 MR. DEL VALLE: Thank you. Our next
20 item involves request for presealing reports or
21 rather introduction of pre-sealing reports.

22 MS. KELLY CORSO, ESQ., ASSISTANT
23 DIRECTOR OF ADJUDICATIONS, ECB: Good morning.
24 I'm Kelly Corso. I'm Assistant Director for

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2 Adjudications ECB. We have 33 presealing reports

3 for today's board. Thirty of the reports pertain

4 to backflow violations, two pertain to noise code

5 violations and one pertains to an air code

6 violation. I will discuss the noise code

7 violation cases first. So, we have two of those.

8 They are C&D order A20140039 and A2014005. In

9 both cases the respondents' representatives

10 provided proof of work done to bring the

11 equipment into compliance. The equipment in one

12 case was a kitchen exhaust system and in the

13 other case it was an air conditioner. Based on

14 that information and the evidence of compliance,

15 the hearing officers in both cases recommend that

16 DEP -- I'm sorry. That DEP reinspect the

17 equipment and that the equipment remain unsealed

18 if the initial reinspection show no violations

19 and further reinspection show no violations for a

20 period of 180 days. The next case is an air code

21 case and this pertains to failure to comply with

22 the air code in connection with the respondent's

23 boiler burner. This report pertains to C&D order

24 A20140017. In this case, the respondent's

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2 representative provided proof of a valid

3 operating certificate bringing the boiler into

4 compliance with the air code. In this case, the

5 hearing officer recommends that no action is

6 necessary given the respondent's compliance. And

7 next we have the backflow cases. There are 30 of

8 these. In 25 of those cases, the hearing

9 officers recommend that there be no sealing or

10 other action given the respondents' compliance or

11 because DEP hasn't determined in fact that the

12 cited premises had an approved backflow

13 prevention device. In three of the cases, the

14 hearing officers recommend that the C&D's be

15 discontinued or that no sealing or other action

16 be taken because DEP has determined that no

17 backflow prevention devices are in fact required

18 at the cited premises. In one case, the hearing

19 officer recommends no sealing or other action

20 because the respondent has sold the premises and

21 has no further connection to the premises. And

22 in the final case, the hearing officer recommends

23 that the cease and desist order be discontinued

24 based on DEP's finding that the respondent cannot

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2 install the backflow device because they don't
3 actually have access to the line. And that's it.

4 MR. DEL VALLE: Any questions?

5 MS. LALLY: I have one question. I feel
6 like I remember it used to be for air
7 conditioning equipment it was 180 days
8 monitoring, but it was suspended for the
9 wintertime because the equipment doesn't usually
10 operate in the winter?

11 MR. PECUNIES: Which one is this?

12 LT. ALBANO: The air conditioner.

13 HON. CAVALLO: The air conditioner case.

14 MR. PECUNIES: I don't know if I did the
15 air -- which one is the air conditioner case?

16 MS. CORSO: The air conditioner case is
17 TJ Food Corp operating a Subway in Manhattan.

18 MR. PECUNIES: What's the question?

19 MS. LALLY: Well, for the fans you start
20 counting 180 days from now because they burn all
21 year around. But I thought for air conditioning
22 equipment it used to be start the 180 days in the
23 springtime or it gets suspended over the
24 wintertime because that stuff doesn't usually--

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2 MR. PECUNIES: That depends. Sometimes
3 the judge will make a recommendation if they are
4 made aware at the hearing that the equipment is
5 not used during the winter, the monitoring period
6 sometimes is suspended over the winter and starts
7 up again in the spring. I don't, I don't know
8 who -- I don't know who the DEP person was on
9 this hearing. I don't think it was me. But --
10 was it me?

11 MS. CORSO: No, it was not you.

12 MR. PECUNIES: Okay. So, I'm not sure
13 if that was brought out at the hearing. Normally
14 they just recommend six months monitoring and if
15 that doesn't get all the way into the summer, it
16 doesn't get all the way into the summer. But
17 there have been times when they've recommended
18 that the monitoring period start in the spring.

19 MS. LALLY: That's what I thought.
20 Right.

21 MR. PECUNIES: I mean, that's the
22 judge's recommendation, so.

23 MS. CORSO: That wasn't the case here.
24 They recommended -- they just recommended the 180

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2 days--

3 MR. PECUNIES: Six months starting now.

4 MS. CORSO: They didn't make that
5 distinction.

6 MR. PECUNIES: Yea. I mean--

7 MR. HYLTON: So, the ramifications are?

8 MS. LALLY: Well, it just reaches-- from
9 now it reaches into June. I always thought that
10 the suspension was a good idea because that stuff
11 is really irrelevant, so there'll be a little,
12 depending on if the stuff is running over the
13 winter, if it doesn't, May, June, it will
14 probably run so that will catch it.

15 MR. PECUNIES: If they're not going to
16 use it over the winter, we might not get any
17 complaints about it until May or June and then
18 the six months will have expired and if we find
19 the violation, we won't be able to seal. That's
20 the issue.

21 LT. ALBANO: You have to start all over
22 again.

23 MR. PECUNIES: We would basically have
24 to start all over again, yes.

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2 LT. ALBANO: So, the suspension is a
3 good idea?

4 MR. PECUNIES: Yea. I know that some
5 places do use their air conditioners year round.
6 I don't know what the situation is at this
7 location.

8 MR. DEL VALLE: I know for a fact I have
9 a neighbor who uses their air conditioner
10 virtually all year round which I think is kind of
11 weird, but it's their electric bill. Some people
12 do it just for health reasons for air quality
13 stuff.

14 MS. CORSO: Does the board have any
15 recommendations in this case?

16 [CROSSTALK]

17 MR. DEL VALLE: Do what? What was the
18 question? I didn't hear.

19 MS. LALLY: To add the suspension for
20 the wintertime.

21 MR. DEL VALLE: To extend -- basically
22 extend the period or just suspend it until, until
23 the weather gets warm.

24 MS. SLIFKA: It's up to you. It's up to

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2 you guys.

3 LT. ALBANO: We can do it?

4 MR. DEL VALLE: Is there a motion to--

5 [CROSSTALK]

6 MR. DEL VALLE: Is there a motion to
7 amend the recommendation in other words?

8 MS. LALLY: Yea.

9 MR. HYLTON: One second. When is it
10 normally? April 1st?

11 MR. PECUNIES: We are in December now.
12 So, the six months would expire in May. If it
13 was extended to nine months, that would take it
14 through August, so.

15 HON. ERNEST J. CAVALLO, CITIZEN MEMBER:
16 So, we could extend it to nine months--

17 MR. PECUNIES: Well, that's my
18 understanding--

19 HON. CAVALLO: --as opposed to--

20 HON. PECUNIES: --is that's a
21 recommendation and they can do--

22 MR. DEL VALLE: We can amend it.

23 MS. SLIFKA: The board can change it--

24 MR. PECUNIES: The board can change it.

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2 It's a recommendation from the hearing officer.

3 MS. LALLY: Right. Correct.

4 MR. DEL VALLE: So, is, is there a
5 motion to accept the recommendation with the
6 amendment that it be extended to August?

7 MR. PECUNIES: Yea. It would be -- nine
8 months would be August. Right.

9 MR. DEL VALLE: Yep. And it's
10 unanimous.

11 MR. PECUNIES: I abstain obviously.

12 MR. DEL VALLE: Let the record show that
13 there's an abstention from DEP. And I believe
14 we're now going to executive session.

15 [Break taken].

16 MR. DEL VALLE: With the exception of
17 one item where we'll take a full vote just on
18 that one item, is there a motion to adopt the
19 recommendation to affirm the appeals decisions
20 that were presented this morning to the board?

21 MS. ELIZABETH KNAUER, ESQ., CITIZEN
22 MEMBER: I'm sorry. Are we doing these
23 separately from the full Board appeal--

24 MR. DEL VALLE: Yea. It's unanimous.

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2 Number two, on -- specifically on the case of NYC
3 versus 114-15 Guy Brewer [phonetic] Boulevard
4 LLC, appeal number 1401000, is there a motion to
5 affirm the decision of the hearing officer?

6 LT. ALBANO: Alternative one.

7 MR. DEL VALLE: Alternative one. And
8 one, two, three, four, five, six, seven, eight,
9 nine and with myself, ten vote to affirm. Is
10 there a -- on the alternative to dismiss, is
11 there a motion? There are two votes to dismiss
12 and one abstention. The decision is to affirm
13 the hearing officer's decision. Procedurally we
14 missed voting on some items before, before we
15 went into executive session. Is there -- it's
16 item, item five on the presealing reports. Is
17 there a motion to approve the presealing reports?
18 One abstention. It is unanimous.

19 Mr. SHPETNER: Presealing reports.

20 MR. DEL VALLE: We voted only on one
21 item there instead of all of them before. So, if
22 there's no other items before us, have a happy
23 holiday season.

24 ALL: You too.

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MR. DEL VALLE: Thank you.

[The public hearing concluded at
approximately 10:35 A.M.]

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CERTIFICATE OF ACCURACY

I, Andrew Slawsky, certify that the foregoing transcript of the Board Meeting of the Environmental Control Board on December 18, 2014 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: December 19, 2014

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