

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

October 26, 2017

9:22 A.M. to 9:47 A.M.

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MEMBERS PRESENT:

Fidel F. Del Valle, Esq. - Chair, Chief Administrative Law Judge, Commissioner, OATH
Joseph Gregory, Esq. - Fire Department
Elizabeth Knauer, Esq. - Appointed Member
Madelynn Liguori, Esq. - Department of Sanitation
Russell Pecunies, Esq. - Dept. of Environmental Protection
Matthew Smith, Esq. - NYC Police Department
Jorge Martinez, Esq. - Dept. of Health and Mental Hygiene
Thomas Shpetner, Esq. - Appointed Member
Douglas Swann - Appointed Member

ALSO PRESENT:

John Castelli - Assistant Commissioner for Legislative Affairs
David B. Goldin - Administrative Justice Coordinator
Diana Haines, Esq. - Assistant General Counsel, OATH
Susan Kassapian, Esq. - Deputy Commissioner/Hearings Division, OATH
Hani Kfourri - Office of Management & Budget
Mariko Matsuyoshi - OATH
Ashford Morgan - Computer Service Technician, OATH
Tynia Richard, Esq. - Deputy Commissioner/General Counsel, OATH
Simone Salloum, Esq. - Senior Counsel, OATH
Peter Schulman, Esq. - Assistant Director of Adjudications, OATH
Frances Shine - Secretary to the Board, OATH
Amy Slifka - Deputy Commissioner/Hearings Division, OATH
Thomas Southwick, Esq. - Supervising Attorney, Appeals, OATH
Olga Statz, Esq. - Assistant Commissioner/Deputy General Counsel, OATH
D. Stewart - DOT

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2 (The Board Meeting commenced at 9:22
3 A.M.)

4 FIDEL F. DEL VALLE, ESQ., CHAIR, CHIEF
5 ADMINISTRATIVE LAW JUDGE, COMMISSIONER, OATH:
6 The formal meeting will start shortly. We -- I'm
7 saying this for the record -- will start shortly
8 because we are short one vote for a formal
9 quorum, but the quarterly presentation will take
10 place now, so we don't delay everybody.

11 AMY SLIFKA, DEPUTY COMMISSIONER/HEARINGS
12 DIVISION, OATH: Okay, so since you're all
13 familiar with the quarterly report, we'll just
14 jump right into it. Okay, so first of all, we'll
15 deal with the summonses received on the Board
16 cases, comparing the third quarter 2017 with the
17 second, first and fourth quarter 2016.

18 So for DSNY, there's a decrease of 80
19 percent. It's 99,064 summonses received. DOB at
20 six percent increase. DOT at 11 percent
21 increase. FDNY 12 percent decrease. DEP where
22 there was a 15 percent decrease from 4,321 to
23 3,664. DOHMH there was 129 percent increase from
24 10,051 to 23,003.

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2 And if you're questioning, I see there
3 are a lot, what's going on here. They've
4 increased because of cooling tower violations.
5 They are issuing a lot of cooling tower
6 violations. Apparently, they were supposed to
7 start in 2016. They really just got the program
8 rolling and I know in Manhattan alone we're
9 receiving like 300, at least 300 a week. They
10 issue more than one to a, to a Respondent.
11 They're getting like ten summonses or something
12 like that. So it's, it's a bit burdensome, but
13 we're handling it, so.

14 Parks, there's a 25 percent increase,
15 3,237 to 4,037, and this has to do with the CJRA
16 cases. They now are issuing tickets that used to
17 be returnable to criminal court are now
18 returnable to us, like public urination, being in
19 the park after hours and such, pedi-cab
20 violations, they've always issued and reckless
21 bikes, bike riding and things like that.

22 NYPD again, a huge increase, 458 percent
23 from 5,371 to 29,982. And, again, this has to do
24 with the CJRA cases you're seeing, we're seeing a

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2 lot of public urination cases in the, in the park
3 after hours and things like that. We're also
4 seeing a lot of uncovered container cases,
5 drinking alcohol on a public street. That
6 happens not to be a board case. You don't see
7 that, you won't see that on appeal. That comes
8 to the hearing division, and that number, those
9 cases are not included in this number.

10 DOIT, a two percent increase. BIC, a 23
11 percent decrease. And landmarks, a 33 percent
12 decrease. Okay, so for our non-board cases for
13 health, pretty much the sa- -- well a 5.7 percent
14 decrease from 4,803 to 4,529.

15 DCA cases, a 10.6 decrease from 4,732 to
16 4,230. And vehicle for hire, there was an eight
17 percent, it says increase, but it looks like
18 decrease. So that's a mistake. So it's 25,830
19 to 25,432, and I'll see that that is corrected.

20 Okay, so Board cases, comparing the
21 third quarter 2016 with the third quarter 2017,
22 you can see DSNY, there's a 19 percent decrease
23 from 122,784, and to 99,064. We see, again, a
24 huge increase in DOHMH cases from 10,000 to

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2 23,003. It's 130 percent increase.

3 Again, NYPD, a 585 percent increase from
4 4,378 to 29,982. DOIT, a 100 percent increase
5 from 32 to 64. Landmarks, there's been a
6 decrease of 58 percent. So overall, we're seeing
7 from third quarter 2016 to third quarter 2017,
8 with seeing a 13 percent increase.

9 ELIZABETH KNAUER, ESQ., APPOINTED
10 MEMBER: Elizabeth Knauer, appointed member. I'm
11 also noticing that Buildings has a fairly
12 substantial --

13 MS. SLIFKA: Increase.

14 MS. KNAUER: -- increase. Do you know,
15 is that just a coincidence or --

16 MS. SLIFKA: I think, yeah, I think I
17 can explain Buildings. There's nothing that I've
18 heard that's happened, no new enforcement or
19 anything like that to the best of my knowledge.
20 So I just, you know, maybe that -- it has been an
21 increase in building. You can see construction
22 has increased.

23 MS. KNAUER: Oh, right.

24 MS. SLIFKA: From 2016 to 2017, so that

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2 could have an impact on what's happening. Okay,
3 so summonses heard. Sanitation, there's a 16
4 percent decrease from eight thou- -- 18,683 to
5 15,717. Buildings, there's an increase from
6 15,202 to 18,306. A huge increase again in NYPD,
7 2,612 to 5,693.

8 So we're seeing a lot of people who are
9 receiving these CJRA cases, they're coming in for
10 hearings, which is a good thing. Parks, a 21
11 percent increase from 620 to 751. BIC, there's
12 been a huge decrease of 64 percent. Landmarks, a
13 huge decrease of 63 percent. So overall there's
14 a six percent increase in the summons heard.

15 So decisions rendered, again, a decrease
16 with DSNY, 27 percent decrease. For DOB, a 17
17 percent increase. Again, huge number with NYPD,
18 makes sense, 204 percent increase. Parks, 42
19 percent increase. DOIT, a 55 percent increase.
20 And BIC, of course, decrease of 55 percent. And
21 Landmarks, a decrease of 50 percent. So overall,
22 there's been a three, three percent increase from
23 46,830 to 48,288.

24 So basically, we're getting a lot of

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2 decisions. 90 percent of the decisions are done
3 within less than 20 days.

4 So, making our third quarter comparison
5 2016 versus 2017 of the dismissal rates. In
6 2016, 52.6 percent were found in violation
7 overall. In 2017, it's decreased a little bit to
8 50.4 percent.

9 And then making the comparison again,
10 from '16 to '17, you see DSNY it was 72 percent
11 in violation; '17, it was 67 percent in
12 violation. DOB, there's a slight decrease 80
13 percent to 75 percent in violation.

14 Department of Transportation 62 percent
15 in violation to 58 percent in violation, okay?
16 FDNY 90 percent in violation in 2016; 91 percent
17 in 2017. I guess, Mr. Gregory, your enforcement
18 officer isn't doing a good job, I guess, I just
19 wanted to say that.

20 DEP 82 percent in violation to 76
21 percent in violation, right? NYPD, we had a 45
22 percent in violation rate. Now, we have an 83
23 percent dismissal rate and we also, the two
24 percent has to do with CJRA cases. So what's the

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2 case there is they're found in violation, but
3 they're doing community service instead of paying
4 a penalty, okay? So and then a 17 percent in
5 violation rate.

6 DOHMH, it went from 59 percent to 49.57
7 percent in violation rate. Parks, it's 49
8 percent in violation to 60 percent in violation,
9 again, the two percent has to do with CRJA cases
10 where again they're found in violation, but
11 they've opted to do community service. DOIT, a
12 74 percent dismissal to 55 percent dismissal.

13 BIC, 55 percent in violation to 20
14 percent in violation. And Landmarks, they're 0
15 for 0, 100 percent in violation, 100 percent in
16 violation for their six cases and then three
17 cases, so.

18 So for the non-Board cases, we have a
19 60.8 percent in violation rate and a 39.2 percent
20 dismissal rate for the health cases. For the DCA
21 cases, we have an 81.8 percent dismissal rate and
22 an 18.2 in violation rate. And for the vehicle
23 for hire, we have a 64.7 in violation rate and a
24 35.3 dismissal rate, okay?

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2 So the most commonly issued summonses by
3 agency for the Board cases is failure, the DOT
4 failure to permanently restore your cut, failure
5 to comply with the terms and conditions of the
6 DOT permits, and open [unintelligible] [00:10:03]
7 without a permit.

8 For DOB, it's the comply with the
9 commissioner's order to file your certificate of
10 correction, unlawful act and failure to comply
11 with an order of the commissioner, and just
12 miscellaneous violations.

13 For Parks, it's, you know, unauthorized
14 presence in the park when closed to the public,
15 public urination, first offense, and failure to
16 comply with directions for prohibitions on signs.

17 And for DSNY, it's failure to clean 18
18 inches into the street, dirty sidewalk, and then
19 dirty area.

20 For DEP, failure to submit an annual
21 test report, failure to install backflow
22 preventer, and failure to adopt a noise
23 mitigation plan.

24 For DOHMH, failure to eliminate rodent

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2 infestation, failure to eliminate conditions
3 conducive to rodent infestation and failure to
4 eliminate conditions conducive to pests. And, by
5 the way, we're not the only ones with rats.
6 Congress, I understand, has huge rats, running
7 all over. So it's not just a New York problem.

8 FDNY, inspection and testing, permits
9 and failure to provide protection system, failed
10 to prevent unnecessary unwarranted alarms.
11 Landmarks is work without a violation of -- work
12 without, or violation of certificate of approval,
13 work without or in violation of certificate of
14 approval, or no permit type violation. Okay?

15 For DOIT, it's failure to provide work
16 in public pay phone, failure to clean and
17 maintain public pay phone, and required sign
18 missing. BIC, it's idling a motor vehicle
19 engine, failure to obtain an identification card
20 and failure to register.

21 And for Parks, it's unlawful vending,
22 and here, unlawful consumption and possession of
23 alcohol beverage, that's a parks violation which
24 is returnable to the Board and its failure to

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2 comply with direction and prohibitions on signs.

3 Okay?

4 And appeals, we've had 1,233 appeals in
5 the third quarter of 2017. Appeal summonses for
6 non-Board cases, 499. Okay? And total number of
7 defaults, there have been 70 reviewed and 79,190
8 defaults this quarter. Okay? For non-Board
9 cases, 10,797 altogether. And that's it. Okay.
10 Thank you.

11 MR. DEL VALLE: Thank you. Next time
12 around, we're going to have a slide just on, on
13 the Criminal Justice Reform Act stuff. It's not
14 particularly relevant to the responsibilities of
15 the Board, but I think it's, it's good
16 information to have anyway.

17 It's, in fact, in the last quarter, we
18 started getting real numbers on that, and they
19 were roughly a little less than 30,000 of those
20 cases, including we opened up on, on weekends, on
21 Saturdays, to make it more convenient for the
22 public and we met like, I think, what four people
23 show up? So we may not be doing that very long.
24 But, you know, give it a shot.

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2 Welcome to October's meeting. Is there
3 a motion to adopt a meeting -- the minutes of the
4 last meeting? It's unanimous. Thank you. For
5 those of you guys that came in a little later,
6 it's -- we're doing that now because we didn't
7 have a quorum until two, two more of you guys
8 showed up. DEP?

9 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT
10 OF ENVIRONMENTAL PROTECTION: Alright. Okay,
11 good morning, my name is Russell Pecunies, with
12 DEP's Bureau of Legal Affairs. This month, DEP
13 is requesting that the Board issue one cease and
14 desist order under the sewer code for Regency
15 44th Street LLC, which is located at 59 West 44th
16 Street in Manhattan. This location was inspected
17 in May of 2015, and was determined to be a
18 location where grease was being introduced into
19 the sewer. DEP issued a Commissioner's Order to
20 the Respondent requiring them to install --
21 actually to have a BIC [phonetic] [00:15:06]
22 licensed waste hauler clean out their grease
23 interceptors and to maintain written proof of
24 such cleaning, and to make written proof of these

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2 cleanings available to the Department. Based on
3 their failure to comply with that Commissioner's
4 Order, a Summons was issued. Then in April of
5 2016, the Department issued another summons after
6 measuring 440 pounds of grease in the grease
7 interceptor rated to handle 150 pounds of grease.
8 And subsequently, additional summonses and orders
9 were issued. And most recently, the Respondent
10 was ordered to attend a mandatory compliance
11 meeting on April 26th, which they failed to do
12 and because the Respondent is continuing to be --
13 is continuing to be in noncompliance with the
14 Commissioner's Order, the Department is
15 requesting a cease and desist order, requiring
16 Respondent to hire a licensed waste hauler to
17 clean out its grease interceptors and submit
18 proof of such cleaning, and if they fail to do
19 so, that the water and sewer service to the
20 premises would be terminated.

21 UNIDENTIFIED MALE: Is that the Regency
22 Theater?

23 MR. PECUNIES: This is a little bit of
24 an unusual request in that usually these are

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2 because they don't have grease interceptors.

3 This is for failing to maintain the grease

4 interceptor appropriately and that they

5 apparently continually allow the existing grease

6 traps to become overloaded.

7 MR. DEL VALLE: Is there a motion? It's
8 unanimous.

9 MR. PECUNIES: Thank you. DEP also has
10 one request under the noise code for a cease and
11 desist order for Fairway Broadway LLC at 2127
12 Broadway. This location has been cited on three
13 occasions since last November for noise from
14 their kitchen exhaust, and based on their
15 continuing failure to come into compliance with
16 the noise code, the Department is asking the
17 Board to issue an order to cease and desist?

18 MR. DEL VALLE: Any questions? Motion?
19 Again unanimous.

20 MR. PECUNIES: Okay. And finally, DEP
21 has 26 requests for cease and desist orders
22 pertaining to failure to install backflow
23 prevention devices. In each of these cases, the
24 building owner has been served with a

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2 Commissioner's Order directing them to install
3 the required devices. They have been then issued
4 a summons for failing to comply with that
5 Commissioner's Order, which has been adjudicated
6 in violation or defaulted on, and in each of
7 these cases, the building owner has still not
8 complied. So the Department is requesting that
9 the Board issue orders to cease and desist.

10 MR. DEL VALLE: Any questions? Motion?
11 It's unanimous.

12 MR. PECUNIES: Alright. Thank you.

13 MR. DEL VALLE: Thank you. And we are
14 now look at the presealing reports and the --

15 MR. PETER SCHULMAN, ESQ., ASSISTANT
16 DIRECTOR OF ADJUDICATIONS, OATH: Good morning.
17 Peter Schulman, Assistant Director of the Hearing
18 Division. We have 13 presealing reports for
19 today's Board, 11 involve backflow violations and
20 two involve sewer code violations. In six of the
21 backflow cases, the hearing officers recommend no
22 sealing or other action based on Respondents'
23 evidence of compliance presented at the hearings.
24 In the other five backflow cases, the hearing

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2 officers agree with DEP's recommendation to
3 discontinue the C&D proceedings, because recent
4 inspections at the cited premises indicate that
5 backflow prevention devices are no longer
6 required. In the two sewer code cases, hearing
7 officers agree with DEP's request and
8 recommendation to discontinue the C&D
9 proceedings, because the Respondents have
10 complied with the orders. That's it for the
11 C&Ds.

12 MR. DEL VALLE: Any questions? Motion?
13 Accepted.

14 MR. SCHULMAN: Great, thank you.

15 MR. DEL VALLE: Thank you. Is there a
16 motion to go into executive session? We'll go
17 into executive session in a few seconds. We are
18 now in public session. Cameras on. Is there a
19 motion to adjourn? We are adjourned. Thank you.

20 (The Board Meeting concluded at 9:47
21 A.M.)

Environmental Control Board, 10/26/17

CERTIFICATE OF ACCURACY

I, Fei Deng, certify that the foregoing transcript of Environmental Control Board Meeting on October 26, 2017 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

A handwritten signature in black ink, appearing to read "Fei Deng", written in a cursive style. The signature is positioned above a horizontal line.

Date: November 6, 2017

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018